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**Jul 06 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DA JUAN RAYSHARD YOUNG,

APPELLANT

APPELLATE CASE NO. 2021-001349

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ANDERS BRIEF OF APPELLANT

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JESSICA M. SAXON  
Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the plea court abused its discretion by denying Appellant's motion to reconsider his sentence where the court merely stamped the motion "denied" but never articulated a reason for the denial?

## STATEMENT OF THE CASE

During the August 2019 term of the Greenville County grand jury, Appellant was indicted for one count of burglary first degree, one count of attempted murder, two counts of armed robbery, two counts of kidnapping, one count of assault and battery first degree, one count of grand larceny, one count of conspiracy, and one count of possession of a weapon during the commission of a violent crime. R. 45-62. On November 1, 2021, Appellant, along with three of his co-defendants, appeared before the Honorable Edward W. Miller to enter a guilty plea to the charges as indicted. App. 1; App. 30. The State was represented by Walk Wilkins. Appellant was represented by Christopher Grubbs. App. 1.

Appellant was sentenced to incarceration for sixty years on the burglary first degree charge and the maximum<sup>1</sup> allowed under the law on the remaining charges. R. 39, ll. 18-23. Appellant, through Counsel Grubbs, filed a motion to reconsider his sentences on November 10, 2021. R. 41-43. The court denied the motion to reconsider on November 12, 2021. R. 44.

This brief follows.

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<sup>1</sup> Thirty years on the attempted murder. Thirty years on the two kidnapping charges. Thirty years on the two armed robbery charges. Ten years each on the grand larceny and the assault and battery first charges. Five years each on the conspiracy and possession of a weapon during the commission of a violent crime charges.

## STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Vick, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous.” Id. (quoting Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829). The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

## ARGUMENT

The plea court abused its discretion by denying Appellant's motion to reconsider his sentence where the court merely stamped the motion "denied" but never articulated a reason for the denial.

### **Relevant Facts**

On September 25, 2018, Jack Foreman, III (Foreman), Jack Foreman, IV, Jeffery Mullins, Mark Wright, Jermaine Williams, and Appellant ambushed, assaulted, and kidnapped Mr. Warren Willis from his place of work. They tied Mr. Willis' hands behind his back, placed him in his own car, and drove that car to his home. Once at his home, they entered the house, removed Mrs. Ann Willis from her bed, tied her hands behind her back, and brought her to the room her husband was in. Throughout the incident, both Mr. and Mrs. Willis were continually beaten and threatened, while the defendants repeatedly asked where the couple kept their money. Mrs. Willis eventually agreed to take them to the money. R. 20, l. 15-R. 23, l. 13.

Foreman and Appellant accompanied Mrs. Willis to another room where they located over one hundred thousand dollars and several Louis Vuitton bags. Before leaving the home, a pillow was placed over Mrs. Willis' body, and she was shot twice. The defendants then fled the area, burned Mr. Willis' car, and left the firearms at an acquaintances house. DNA collected from items at the scene and from the recovered firearms matched the various defendants. Further, all the defendants, except Appellant, had their cellphones on them during the incident which tracked their locations. R. 23, l. 14-R. 25, l. 19.

During the plea hearing, the State alleged that Foreman was the ringleader of the group, and the other's referred to him as "the CEO." Foreman would find targets and surveil them for a period of time while formulating a plan to rob them. R. 30, l. 21-R. 31, l. 9. The State also

alleged that Appellant was the individual who shot Mrs. Willis with her husband's own gun. R. 32, ll. 1-3. However, the DNA recovered from that gun belonged to Foreman. R. 25, ll. 8-10. The State asked that the defendants be sentenced to life<sup>2</sup> in prison. R. 32, ll. 9-12. The court ultimately sentenced Appellant and Foreman to sixty years<sup>3</sup> incarceration on the burglary first degree charge. Additionally, they each received the maximum penalty under the law on their other charges. R. 36, ll. 2-8; R. 39, ll. 18-23.

Counsel Grubb subsequently filed a motion to reconsider sentence. In support of reconsideration, Counsel Grubb argued that, although the State alleged Appellant shot Mrs. Willis, it was Foreman's DNA that was found on the weapon. Additionally, the State possessed evidence that showed co-defendants Wright, Williams, and Foreman were responsible for the extensive planning of the crime over a period of time, but there was no evidence that Appellant participated in the planning. Finally, the motion re-emphasized that Appellant had no prior record whereas Foreman had an extensive prior record. R. 41-43. The court stamped the first page of the motion "Denied" and filed it with the clerk of court. R. 44. No hearing was held on the motion to reconsider sentence and no written order was ever filed.

## **Discussion**

Admittedly, the sentencing of an offender is entirely within the purview of the sentencing judge. The only limits on a judge's sentencing discretion being the statutorily created maximum and minimum sentencing limits for certain offenses. However, where it falls to the court to

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<sup>2</sup> The State had previously made a global plea offer of forty-five years incarceration. R. 35, ll. 10-12.

<sup>3</sup> Records found online through the Department of Corrections inmate search show each co-defendant was sentenced to the maximum on all charges except for the burglary first degree charge. On the burglary first degree charge, the sentences were forty-five years for Foreman, IV, fifty-five years for Jeff Mullins, and forty years for Mark Wright. Co-Defendant Williams was not sentenced on the burglary charge. See <https://www.doc.sc.gov/InmateSearchDisclaimer.html>

determine the appropriate punishment to be imposed and there is any discretion as to the punishment, it is the correct practice that the court hear and consider evidence in mitigation or aggravation of the punishment. See, State v. Adcock, 194 S.C. 234, 9 S.E.2d 730, 732 (1940); State v. Green, 220 S.C. 315, 318, 67 S.E.2d 509, 510 (1951). “The sentencing court...must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” Wasman v. United States, 468 U.S. 559, 563-564 (1984).

While the authority to change a sentence rests solely within the discretion of the sentencing judge, the judge is required to articulate on what basis their discretion was exercised. In State v. Smith, Smith had been tried in his absence, and his sentence was sealed. Smith, 276 S.C. 494, 496, 280 S.E.2d 200, 201 (1981). After his sentence was published, Smith moved for reconsideration. Id. The judge denied Smith’s motion, stating he lacked the jurisdiction to change the sentence. Id. at 497, 280 S.E.2d at 201. This Court held that the motion, although heard later, was “made within the term of court at which the sentence became the judgment of the court, to the sentencing judge,” and he therefore had the jurisdiction to alter, amend or modify the sentence. Id. at 498, 280 S.E.2d at 202. This Court found that the judge did not exercise any discretion at all but based his ruling on an erroneous view of the law. Id. The Court stated

It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. We call to the attention of the bench and bar that *the mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis the discretion was exercised.*

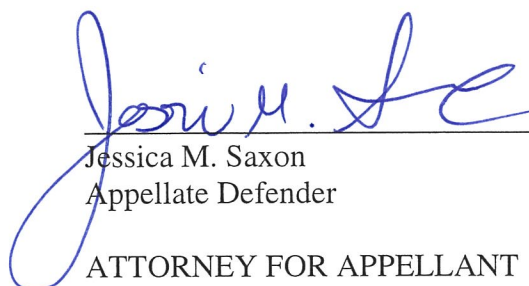
Id. (emphasis added).

In handing down Appellant's sentence, the court only remarked on the nature of the crime before sentencing Appellant to the same amount of time as Foreman. Foreman not only had an extensive prior criminal record but was also the mastermind of the crime. In contrast to Foreman, Appellant had no prior criminal record and was not involved in the planning of the crime. While the State alleged Appellant was the person who shot Mrs. Willis, the evidence stated during the plea hearing was that Foreman's DNA was found on the firearm that fired the shot, and not Appellant's DNA. All of this was information the court should have considered in fashioning an appropriate sentence for Appellant, but it does not appear that the judge considered any of this.

Counsel Grubbs filed a motion to reconsider, urging the court to consider the information that had been provided in mitigation. However, the court merely stamped the motion "denied" and failed to state if it had considered the information or on what basis it was denying the motion. No hearing was held, and no written order was produced. It is therefore impossible to know why the court denied the motion. It cannot be deduced if the court denied the motion to reconsider because it felt it was bound to the sentence it had previously handed down or because it felt its original sentence took all factors into account and was fair. Without an articulated reason, this Court can only guess the motives of the sentencing court and therefore cannot determine if discretion was used. The only plausible conclusion is that the court failed to exercise its discretion in denying the motion and Appellant should have his case remanded for sentence reconsideration. See State v. Smith, supra.

CONCLUSION

Based on the foregoing argument, Appellant respectfully request this Court remand his case to the Court of General Sessions of Greenville County for a full hearing on his motion to reconsider his sentence.

  
\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 6th day of July, 2022.

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APPELLATE CASE NO. 2021-001349

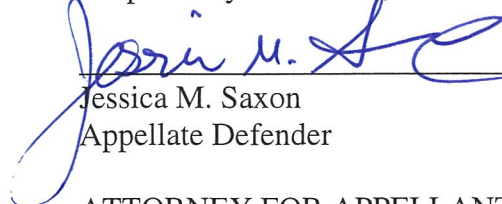
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Da Juan Rayshard Young states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Edward W. Miller, which was held on November 1, 2021, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Da Juan Rayshard Young.

Respectfully Submitted,

  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 6th day of July, 2022.

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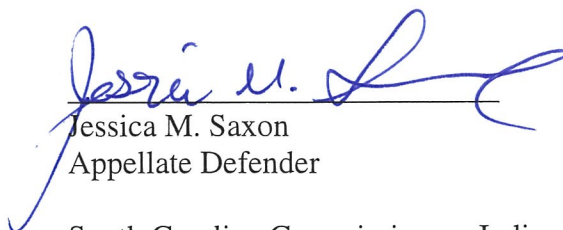
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

Appellant proposes the following be included in the Record on Appeal:

- (1) Transcript of Guilty Plea dated November 1, 2021;
- (2) Motion to Reconsider Sentence;
- (3) Denial of Motion to Reconsider Sentence;
- (4) Indictments.

I certify that this designation contains no matter which is irrelevant to this appeal.

  
\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender

South Carolina Commission on Indigent Defense  
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PO Box 11589  
Columbia, SC 29211-1589  
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ATTORNEY FOR APPELLANT

This 6th day of July, 2022.

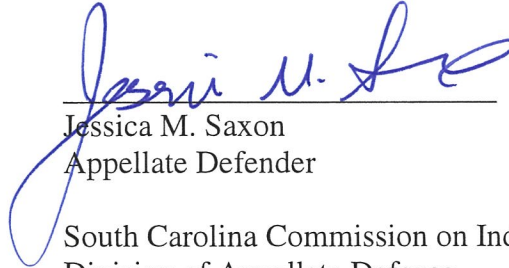
**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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**Jul 06 2022**

**SC Court of Appeals**



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ATTORNEY FOR APPELLANT

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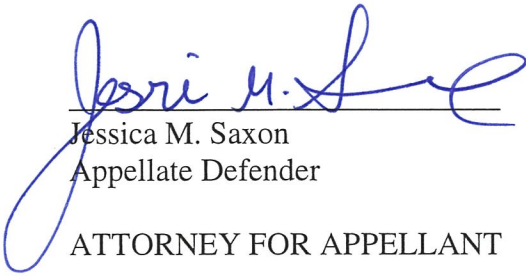
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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Da Juan Rayshard Young, #386524, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 6th day of July, 2022.

  
\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR APPELLANT

**From:** [Warren, Kaylynn](#)  
**To:** [William Blich](#)  
**Cc:** "[ccollins@scag.gov](mailto:ccollins@scag.gov)"; [Saxon, Jessica](#)  
**Subject:** 2021-001349 The State v. Da Juan Rayshard Young  
**Date:** Wednesday, July 6, 2022 2:56:00 PM  
**Attachments:** [2021-001349 The State v. Da Juan Rayshard Young Anders Brief of Appellant.pdf](#)  
[2021-001349 The State v. Da Juan Rayshard Young Record on Appeal.pdf](#)

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Good Afternoon,

Please find attached for service in the above-referenced case the Anders Brief of Appellant and accompanying Record on Appeal which will be filed today, July 6, 2022, with the Court of Appeals via OneDrive.

Respectfully,  
Kaylynn

**Kaylynn Warren**

Administrative Assistant  
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