

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Sep 16 2022

SC Court of Appeals

Appeal from Lee County

Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CEDRICK KAVON GAINES,

APPELLANT

APPELLATE CASE NO. 2022-000428

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying relief on appellant's motion to reconsider sentencing because the forty-six-year sentence handed down in the case was contrary to the goal of South Carolina State Constitution Article XII, §2, which is to rehabilitate (not punish) prison inmates.

STATEMENT OF THE CASE

Appellant Cedrick Kavon Gaines pled guilty on May 11, 2016, at the Richland County (General) Sessions Court on criminal charges of attempted armed robbery, first degree assault and battery, pointing and/or presenting a firearm, four counts of unlawful carrying of a pistol, four counts of possession of a weapon during the commission of a violent crime, nineteen counts of kidnapping, and fourteen counts of armed robbery. Judge L. Casey Manning presided over the plea proceeding, and on May 12, 2016, appellant was sentenced by Judge Manning to imprisonment for an aggregate forty-six-year term. A motion to reconsider sentencing was filed on appellant's behalf on May 13, 2016. On March 22, 2022, a hearing on the sentencing reconsideration motion was held before Judge Manning, who subsequently issued an Order dated March 24, 2022, denying the motion to reconsider sentencing. Jennifer C. Davis and Stephen F. Kryzstan represented appellant at the plea and sentencing proceedings, and Assistant Solicitors Kathryn Luck Campbell, Meghan L. Walker, Sandra Vrieslinga, and John P. Meadors appeared on behalf of the state for the same proceedings. Tricia Blanchette represented appellant at the reconsideration hearing, and Assistant Solicitor Daniel R. Goldberg appeared on behalf of the state for that hearing.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

On appeal, the court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. State v. Sheldon, 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981). A judge or other sentencing authority is to be accorded with discretion in determining an appropriate sentence and must be permitted to consider any and all information that reasonably might bear on sentencing. Supra.

ARGUMENT

The trial judge erred in denying relief on appellant's motion to reconsider sentencing because the forty-six-year sentence handed down in the case was contrary to the goal of South Carolina State Constitution Article XII, §2, which is to rehabilitate (not punish) prison inmates.

Appellant's history was relayed to the court at the guilty plea proceeding. Appellant had no prior criminal record and led an exemplary life prior to the events that occurred from November 21, 2014, up to December 22, 2014, from which emanated a raft of charges against him. R 3, l. 11 -p. 93, l.10.

Appellant served as an enlisted army soldier in the United States Military for sixteen years and worked as a Human Resource Specialist and Financial Management Technician. Ultimately, it was the strain and stress of combat during appellant's three tours of military duty in Iraq and Afghanistan that gave rise to his PTSD and mental illness. In 2012, after his tours of duty were completed, appellant received treatment for the mental illness and PTSD he suffered that arose from combat stress as documented and reflected in his military records. Note that there was a traumatic brain injury case being pursued on appellant's behalf as well. Appellant was experiencing nightmares, anxiety, thyroid disease, sleep apnea, fractured foot pain, depression, and PTSD, along with adjustments to anti-depressants and other medications prescribed during the time frame in which the incidents that led to his charges occurred. Appellant's mental and physical decline and deterioration affected his marriage as well. Prior to these criminal events, appellant was in couples therapy with his wife, who bore three children from the marriage (and one miscarriage). Note that prior to his military service, appellant graduated from Florida A&M University in 2002 and received a Master's degree in 2006 from Lynn University. Also, appellant was burdened with a pending separation from the military when these charges

occurred. As a result, appellant experienced the added stress of a huge financial burden at that point in time, and found a part-time job at Wal-mart. R. 95, l. 4 – p. 118, l.2

As outlined above, the challenges of military duty left appellant broken and unable to cope well with life, which in turn led to the activities that gave rise to the charges in the case. However, appellant has been rehabilitated since his incarceration at SCDC. During the sentencing reconsideration hearing, appellant offered numerous letters of support from family, friends, and the SCDC staff officials and military personnel who know him, as well as countless certificates and awards for his participation in SCDC programs, including his ranking status as a peace and unity agent within the prison complex. All of this evidenced appellant's leadership abilities and high work ethic since his incarceration. Moreover, it was made known to the court that appellant had been working in the carpentry program, and as a teacher's assistant, and head law library clerk at SCDC. Counsel acknowledged that appellant was sentenced to an aggregate sixteen years consecutive to his thirty-year sentence, and requested that the total sentence be reduced and that the sixteen-year sentence be converted from a consecutive to concurrent sentence. R. 131 – p. 160. Counsel's argument summary follows:

Defense Counsel: Your Honor, all I was going to say further is that he has the support of his friends and family as evidenced by those letters. He has made the most of his opportunities at Lee Correctional. And so we would ask Your Honor to consider that in reconsidering his sentence.

The Court: All right.

Defense Counsel: Currently he, like I said, is serving a 46 year sentence. Your Honor gave him a term of 30 years with multiple terms of 16 years run consecutive. Your Honor, we would respectfully—respectfully request that Your Honor consider running all the terms concurrent instead of having the 16 consecutive. We also would submit and ask Your Honor that if you would consider lessening the 30 year term as, as essentially a 46 year term is the remainder of his life in prison.

Defense Counsel: Your Honor, I submit to you, as I was saying, the 43 year old man standing in front of you today is not the man that stood in front of you at the time of sentencing.

The Court: What's the difference?

Defense Counsel: Your Honor, I hope, through what I have submitted to you---

The Court: No, no, no, no, no. My question to you is what's the difference between the man that robbed 14 stores back when he did them and the man today? I mean that he's been in jail? Is that the difference?

Defense Counsel: Your Honor, I believe that he has been rehabilitated and I have been working with Mr. Gaines---

The Court: So the basis of your---

Defense Counsel: ---for four years.

The Court: ---request is that he's been in jail. He's been rehabilitated. Therefore, I should change his sentence. Is that what you're asking me to do?

Defense Counsel: Yes, I am asking that your honor.
R.157, l. 5 – p. 159, l.16.

The trial judge issued an order denying appellant's sentencing reconsideration motion.

S.C. Const. Art. XII, §2 reads as follows

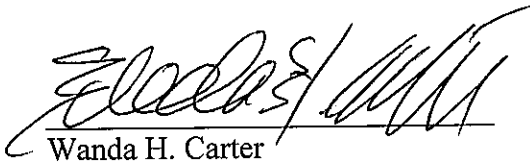
The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as maybe designated by law and shall provide for the custody, maintenance, health, wealth, education, and rehabilitation of the inmates.

Undoubtedly, appellant's stellar performance as a model and positive service-oriented inmate highlighted by his constructive contributions to SCDC and the prison inmate population, combined and in conjunction with his pre-SCDC status as a 16-year military soldier, husband, and father, who had no prior criminal record, clearly prove that appellant's rehabilitation had

been established. Therefore, appellant's forty-six-year sentence was contrary to the goal of rehabilitation, inasmuch as his rehabilitation has been reached in his case. The lower court erred in denying appellant's sentencing reconsideration motion.

CONCLUSION

Based on the foregoing argument, counsel for appellant requests that this Court remand for a new sentencing proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of September, 2022.

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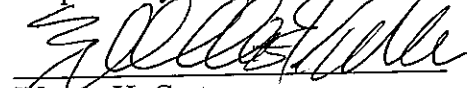
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cedrick Kavon Gaines states:

1. She is Deputy Chief 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 L. Casey Manning, which was held on March 22, 2022, 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 Cedrick Kavon Gaines.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of September, 2022.

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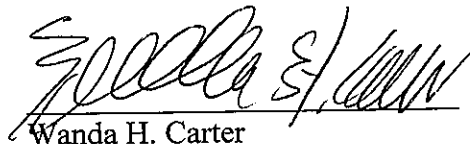
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) May 11, 2016 Guilty Plea Transcript
- (2) May 12, 2016 Sentencing Transcript
- (3) March 22, 2022 Sentencing Reconsideration Transcript
- (4) Motion to Reconsider Sentencing dated May 13, 2016
- (5) Order Denying Motion for Reconsideration dated July 20, 2016
- (6) Motion to Clarify filed August 10, 2018
- (7) Motion filed August 20, 2018
- (8) Order Denying Motion to Reconsider sentence dated March 24, 2022
- (9) Motion to Appeal dated April 17, 2022
- (10) Indictments
- (11) Sentence Sheets
- (12) Support Letters
- (13) Psychiatrist Evaluation
- (14) Achievement Certificates
- (15) Exhibits from March 22, 2022 Hearing
- (16) Exhibits from May 12, 2016 Sentencing Proceeding

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

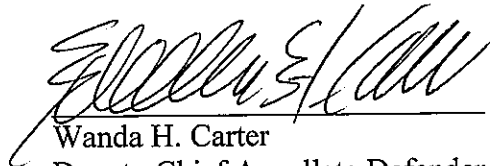


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ATTORNEY FOR APPELLANT

This 16th day of September, 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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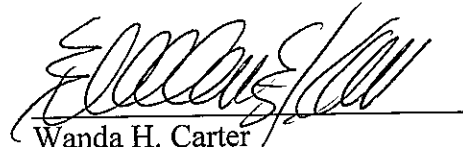
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APPELLATE CASE NO. 2022-000428

CERTIFICATE OF SERVICE

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 Cedrick Kavon Gaines, #368144, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 16th day of September, 2022.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT