RECEIVED
Oct 12 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Nancy C. McLin, Family Court Judge
Honorable Diane S. Goodstein, Circuit Court Judge
Appellate Case No. 2021-000280

The State, Respondent,

vs.

Isaac Colden Duran, Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE
Solicitor, First Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUES ON APPEAL

I. Appellant waived any issue related to his transfer from Family Court to General Sessions when he pled guilty to voluntary manslaughter.

STATEMENT OF THE CASE

Appellant was originally charged with murder in Family Court. Appellant had a pre-waiver evaluation performed pursuant to an Order of the Family Court on June 28, 2018. On February 11-13, 2019, the Honorable Nancy C. McLin held a hearing to determine whether Appellant's case should be waived to General Sessions or remain in Family Court. After the hearing, the Family Court granted the State's motion to waive Appellant's case from Family Court to General Sessions. (Order dated Feb. 15, 2019; R.___).

Appellant was then indicted by the Dorchester County Grand Jury in March 2019 for murder. (Indictment 2019-GS-18-0496; R.___). On October 19, 2020, Appellant pled guilty before the Honorable Diane S. Goodstein to the lesser included offense of voluntary manslaughter. Sentencing was deferred, and on November 18, 2020, Judge Goodstein sentenced Appellant to twenty-five years in prison. Appellant filed a Motion for Reconsideration of his sentence, which was denied. Thereafter, Appellant served and filed a timely Notice of Appeal.

STATEMENT OF FACTS

Appellant, Mr. Zalenski, Ms. Bortz, and Mr. Middleton were all involved in the murder of Victim. Victim was believed to have been involved in a burglary that occurred at a house belonging to a relative of Mr. Zalenski. Ms. Bortz sent a text offering to meet Victim for sex. (2/11T. 26-27; R.___). When Victim arrived to meet Ms. Bortz, she was to shoot at him. When she fired the shots, Appellant and Mr. Zalenski were supposed to come out from behind the building where they were hiding and "finish off" Victim. (2/11T.48; R.___).

Appellant gave multiple conflicting statements. He began claiming he was playing video games all day. Then he admitted being with the co-defendants but he did not get out of the car when Victim was shot. Eventually, he admitted he was with his co-defendant's and knew they were all planning to shoot Victim. However, he claimed his gun was not working because it did not have a magazine. (2/11T.54; R.___).

At his plea, Appellant ultimately admitted that he and the three co-defendants lured Victim to the location. Appellant and Mr. Zalenski hid behind the building and covered their faces. They planned to come around the building once Ms. Bortz started shooting. Ballistics indicated two 9-millimeter handguns were fired and Appellant had one of them. Mr. Middleton identified Appellant as one of the shooters. (10/19T.16-17; R.___). Appellant was asked by the Court whether he fired a gun on the night of the incident. He indicated he did shoot in the direction of Victim. He ultimately admitted he fired a shot at Victim but did not hit him. (10/19T.19; R.___).

ARGUMENT

I. Appellant waived any issue related to his transfer from Family Court to General Sessions when he pled guilty to voluntary manslaughter.

Appellant contends the Family Court erred in transferring his case to General Sessions. This issue is not properly before this Court because it was waived by virtue of Appellant pleading guilty to voluntary manslaughter in General Sessions.

Significantly, Appellant waived his right to contest the validity of the Family Court's waiver of his case from Family Court to General Sessions by pleading guilty to voluntary manslaughter in General Sessions. As this Court recently noted: "Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Green, 436 S.C. 492, 494, 872 S.E.2d 869, 870 (Ct. App. 2022) (citations and internal quotation marks omitted).

The South Carolina Supreme Court examined whether a defendant should have the right to appeal his transfer from Family Court to General Sessions once he pled guilty in General Sessions. See State v. Rice, 401 S.C. 330, 737 S.E.2d 485 (2013). After noting the general rule that a guilty plea constitutes a waiver of all nonjurisdictional defects and defenses, the Court quoted the United States Supreme Court for the rationale:

> [A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the plea. . . .

Rice, 401 S.C. at 332, 737 S.E.2d at 486 (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)).

The Supreme Court found instructive the case State v. Yodprasit, 564 N.W.2d 383 (Iowa 1997). The significant holding from Yodprasit established:

> A juvenile court might enter an erroneous order waiving jurisdiction. For example, there may not exist sufficient evidence to support the juvenile court's fact-findings on the criteria for the waiver. Such an order, however, does not undermine the district court's subject matter jurisdiction to conduct the criminal proceedings, accept a plea of guilty, and sentence the defendant-juvenile. **In short, the error is judicial, not jurisdictional.**

Yodprasit, 564 N.W.2d at 386. Our Supreme Court agreed with the rationale and holding of Yodprasit and found, in South Carolina, a valid guilty plea in General Sessions waives any contest of the validity of the waiver from Family Court to General Sessions. See Rice, 401 S.C. at 333, 737 S.E.2d at 486 ("We agree with Yodprasit's reasoning that an erroneous order transferring a juvenile to general sessions court would be a judicial error—not a jurisdictional error.").

As a result, Appellant, by pleading guilty to voluntary manslaughter in General Sessions, may not now contest the sufficiency of the evidence supporting his waiver from Family Court to General Sessions.[1]

---

[1] The Family Court utilized the eight factors provided by Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), and set forth her specific holdings and the evidence relied on in making her rulings. (2/11T.132-137; R.___). The gravamen of Appellant's argument is that he simply disagrees with the Family Court's conclusions and application of the factors. Simple disagreement is not sufficient to establish abuse of discretion. See e.g., State v. Corey D., 339 S.C. 107, 529 S.E.2d 20, 25 n. 4 (2000) (no abuse of discretion when the appellate court only mildly disagrees with the trial court's ruling). Further, his own statements at the plea hearing for voluntary manslaughter—most notably his admission he shot at Victim after lying in wait for the Victim who was lured to the location through subterfuge—belie any argument that the Family Court misapplied the Kent factors. The State reiterates its belief this Court should not even entertain the merits in light of the Supreme Court's holding in Rice.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

DAVID M. PASCOE
Solicitor, First Judicial Circuit

BY: _____
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 12, 2022