STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA A. LOGAN,

APPELLANT

APPELLATE CASE NO. 2022-001007

ANDERS BRIEF OF APPELLANT

BREEN STEVENS
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the plea court reversibly erred in considering the State's dismissal of another charge against Appellant where it imposed the maximum sentence for the charge to which Appellant pled, saying, "I think that you got a break in the first place," and where the facts as alleged by the State during the plea colloquy would not have supported the dismissed charge?

STATEMENT OF THE CASE

Joshua Alan Logan (Appellant) was indicted by the Oconee County Grand Jury on August 17, 2020 for disseminating obscene materials to a minor under 12 years or younger. R. 3, lines 12-15; R. 20-21. On June 20, 2022, his case proceeded to a guilty plea before the Honorable Lawton McIntosh (Counsel). R. 1. Appellant was represented by Richard Warder, while the State was represented by Elizabeth Raymer. R. 2. At the end of the hearing,[1] the court imposed the maximum sentence of fifteen (15) years imprisonment. R. 18, line 10; R. 22-23.

On June 22, 2022, Counsel timely filed a motion to reconsider Appellant's sentence. R. 24. On July 5, 2022, the plea court filed its order denying Appellant's Motion to Reconsider. R. 25.

[1] Although the plea court conducted a colloquy with Appellant on the record regarding the plea agreement and various waivers of rights, the plea court never made a finding on the record that Appellant's guilty plea was knowingly, intelligently, and voluntarily made. See, e.g., Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); see also State v. Barton, 325 S.C. 522, 530, 481 S.E.2d 439, 443 (1997). However, no objection was made during the plea, and no motion to withdraw was filed. See State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982).

STANDARD OF REVIEW

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "A judge or sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonable might bear on the proper sentence for the particular defendant, given the crime committed." Id. (citing Wasman v. United States, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed2d 424 (1984)).

ARGUMENT

The plea court reversibly erred in considering the State's dismissal of another charge against Appellant where it imposed the maximum sentence for the charge to which Appellant pled, saying, "I think that you got a break in the first place," and where the facts as alleged by the State during the plea colloquy would not have supported the dismissed charge.

The plea court abused its discretion by considering information that did not reasonably bear on the proper sentence for Appellant, given the crime for which he was pleading, and the circumstances as alleged by the State. As such, the maximum 15-year sentence should be vacated, and Appellant's case remanded for resentencing.

While sentencing judges are permitted to consider a broad range of information when fashioning a sentence, the information allowed is still limited to that which "reasonably might bear on the proper sentence for the particular defendant, given the crime committed." Hicks, 377 S.C. at 325, 659 S.E.2d at 500. In the present case, the plea court impermissibly considered the fact that the State dismissed a first-degree criminal sexual conduct with a minor (CSCM 1st) charge against Appellant even though the facts produced by the State readily indicated CSCM 1st would not have been sustainable. Specifically, when discussing the disclosures made by Minor, the State relayed the following facts:

> That minor was ten years old. She disclosed multiple incidents, which included the defendant touching her private areas with his penis and teaching her about sex. In a forensic interview she disclosed that he would make her watch anime pornography.

R. 9, lines 3-9. When filtered through the elements of CSCM 1st,[2] it is clear that these facts would not support the charge because they indicate no "sexual battery" occurred in the complained of conduct.[3]

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[2] CSCM 1st requires the following elements to be present:

Yet the dismissed CSCM 1st charge was the primary factor considered by the plea court in its colloquy when sentencing Appellant. For example, the plea court stated "[i]t looks to me that by dropping the initial charge . . . he got a big break in the first place." R. 17, lines 4-6. Although Counsel responded that the CSCM 1st charge "lacked some legal foundation," and that Appellant was pleading to the offense he committed, the court nonetheless heavily considered the dismissed CSCM 1st when fashioning Appellant's sentence: "I think you got a break in the first place. I'll sentence you to 15 years." R. 17, lines 12-19; R. 18, lines 9-10. Moreover, the plea court provided no analysis or reasoning for its sentence in its Order denying Appellant's motion to reconsider. Rather, the court's rationale was encompassed in one-sentence: "The motion to reconsider the sentence of Joshua Alan Logan is denied." R. 25.

As such, the plea court abused its discretion when it imposed the maximum sentence by considering information that did not reasonably bear on the proper sentence for Appellant, given

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> (1) the actor engages in sexual battery with a victim who is no less than eleven years of age; or
> (2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contender to, or adjudicated delinquent for an offense listed in Section 23-3-430(c) or has been included in the sex offender registry pursuant to Section 23-3-430(D).

S.C. Code Ann. §16-3-655(A)(1) & (2) (West, Westlaw current through 2022 Act No. 268)

[3] Sexual battery is defined as follows:

> [S]exual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

S.C. Code Ann. §16-3-651(h) (West, Westlaw current through 2022 Act No. 268).

the crime for which he was pleading, and the circumstances as alleged by the State. Id. Accordingly, Appellant's sentence should be vacated, and his case remanded for resentencing.

CONCLUSION

For the foregoing reasons, Appellant Joshua Alan Logan respectfully requests this Court to vacate his sentence, and remand for resentencing.

Breen Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of January, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joshua A. Logan states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Lawton Mcintosh, which was held on June 20, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Joshua A. Logan.

Respectfully Submitted,

Breen Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of January, 2023.

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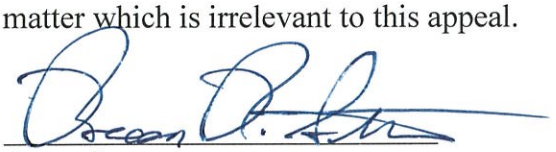
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True-billed indictment;
(2) Sentence sheet;
(3) Motion to Reconsider;
(4) Order Denying Motion to Reconsider Sentence;
(5) Entire June 20, 2022 transcript (pp. 1-19).

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



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ATTORNEY FOR APPELLANT

This 9th day of January, 2023.

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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."

Breen Stevens
Appellate Defender

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ATTORNEY FOR APPELLANT

This 9th day of January, 2023.

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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. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Joshua A. Logan, #388216, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 9th day of January, 2023.

Breen Stevens
Appellate Defender

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