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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2022-000624

THE STATE,

Respondent,

vs.

SOLOMON TADESSE YEMAME,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

"The appellant was not awarded credit for his time served while on house arrest."

II.

"The appellants time served on house arrest including an electronic monitoring device should be credited towards his time served."

III.

"The court was grossly disproportionate in the appellant's sentence."

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

To the extent Appellant's appellate arguments concerning credit for the time he spent on unmonitored and monitored house arrest could be construed as an allegation of error, the plea judge did not abuse his broad sentencing discretion or otherwise err by declining to award such credit to Appellant because: (1) no credit could properly be awarded for any of the time Appellant served on unmonitored house arrest since such credit was not authorized by any provision of South Carolina law; and (2) it was entirely within the plea judge's discretion as to whether to award any credit for the time Appellant served on monitored house arrest, and, thus, it was not an abuse of discretion for him to choose not to grant such credit when structuring Appellant's sentence within the permissible sentencing limits.

II.

The plea judge did not abuse his broad sentencing discretion or commit any other error of law by sentencing Appellant, who sexually assaulted an incapacitated teenager incapable of providing consent, to an eight-year term of imprisonment after Appellant knowingly and voluntarily pled guilty to first-degree assault and battery because the sentence imposed fell within the permissible statutory sentencing limits for Appellant's offense and nothing appearing in the record established it was imposed as the result of any partiality, prejudice, corrupt motive, or improper considerations.

STATEMENT OF THE CASE

In June of 2017, Appellant Solomon Tadesse Yemame was arrested following an investigation into a sexual assault that had occurred a little over a week earlier. In July of 2017, the Richland County Grand Jury indicted Appellant for one count of third-degree criminal sexual conduct. On April 7, 2022, Appellant appeared in the Richland County Court of General Sessions and—based on negotiations with the State—entered a guilty plea to first-degree assault and battery before the Honorable Brooks P. Goldsmith, circuit court judge.[1] The plea judge accepted Appellant's guilty plea and sentenced him to an eight-year term of imprisonment. Following that, Appellant filed a timely motion seeking reconsideration of the sentence. Through an order dated April 27, 2022, the plea judge declined to reconsider Appellant's sentence. Appellant then timely filed a notice of appeal.

[1] As part of the plea negotiations, the solicitor agreed to dismiss Appellant's pending indictment for second-degree assault and battery, which stemmed from an unrelated case. (Tr. p. 3).

STATEMENT OF FACTS

On the evening of May 26, 2017, Appellant's nineteen-year-old victim ("Victim"), who had just recently completed her first year of college at Clemson University, decided to hang out with some of her friends from high school. (Tr. pp. 5-6; p. 19). Toward the outset of that evening, Victim and her companions drank alcohol together at a student housing apartment, and, at some point during that time period, Appellant, who was then twenty-eight years old, arrived at the apartment due to his familiarity with someone connected to the group of friends. (Tr. p. 6).

As the evening progressed, Victim and her friends decided to go out for more drinks and headed to the Five Points area of Columbia. (Tr. p. 6). When they did, Appellant traveled to Five Points, too, and he proceeded to continue hanging around the group, which began to make Victim feel uneasy. (Tr. p. 6).

Eventually, as the night of drinking wound down, the group headed back to the student housing apartment. (Tr. p. 6). By that point, Victim was highly intoxicated, and she vomited along the way back. (Tr. p. 6). Due to her condition, Victim's friends put her to bed in one of the apartment's bedrooms when they arrived back there, and Victim quickly passed out. (Tr. p. 6). At that time, Victim was fully clothed, and the door to the bedroom was open. (Tr. pp. 6-7).

Shortly thereafter, Appellant returned to the apartment, and, a little after that, Victim's friends noticed Appellant had disappeared from view. (Tr. pp. 6-7). Concerningly, Victim's friends also noticed the door to the bedroom where Victim had passed out was closed and locked. (Tr. p. 7). In response, Victim's friends began banging on the bedroom door, and, eventually, Appellant opened the door and came out with his pants unzipped. (Tr. p. 7). Victim's friends then rushed into the bedroom and found Victim still inside. (Tr. p. 7). However, unlike when they had initially left her in there, Victim was nude from the waist down

and experiencing pain in her pelvic area. (Tr. p. 7). Based on that, Victim was taken to the hospital for a sexual assault examination, and Appellant's DNA was confirmed to be present on Victim's underwear and on multiple spots around her vaginal area. (Tr. p. 7).

In light of what had occurred, law enforcement officers contacted Appellant, and, during the ensuing interview, he admitted he engaged in sexual intercourse with Victim on the night of the incident but claimed it was consensual. (Tr. p. 7). Appellant was then arrested for sexually assaulting Victim, and he was quickly indicted for third-degree criminal sexual conduct in connection to the incident. (Tr. p. 2; Arrest Warrant; Indictment).

Shortly after his arrest, Appellant was released from pre-trial incarceration on bond. (Arrest Warrant; Bond Form). Amongst the conditions of his release, Appellant was required to remain on house arrest with a curfew and to submit to electronic monitoring. (Bond Form).

However, less than five months later, Appellant filed a motion seeking for the conditions of his bond to be modified. (Motion to Modify Conditions of Bond). Specifically, Appellant maintained he was "essentially on house arrest" and requested "the ankle monitor be removed." (Motion to Modify Conditions of Bond). In response, a circuit court judge granted the motion and removed the electronic monitoring requirement as requested. (Order, dated Oct. 30, 2017).

Subsequently, in April of 2022, Appellant—following negotiations with the State—appeared before the plea judge and entered a guilty plea to first-degree assault and battery instead of the indicted offense of third-degree criminal sexual conduct. (Tr. pp. 3-5). In doing so, Appellant personally acknowledged "it happened," admitted he should not have engaged in sexual intercourse with Victim because she was too intoxicated to consent, and confirmed he was guilty. (Tr. pp. 9-10; p. 13). Appellant further indicated he understood the consequences of entering a guilty plea, was doing so on his own free will, and was aware he could potentially be

sentenced to as much as ten years in prison for his crime. (Tr. pp. 10-13). Following that, the plea judge accepted Appellant's guilty plea. (Tr. p. 13).

After the guilty plea was accepted, defense counsel spoke on Appellant's behalf, called the plea judge's attention to the fact Appellant had no prior criminal record, and indicated Appellant was embarrassed and remorseful for his actions. (Tr. pp. 13-14). Furthermore, defense counsel noted Appellant was employed at his mother's convenience store, provided support to his child and his child's mother, and had family and community support. (Tr. pp. 13-14). For all those reasons, defense counsel asked the plea judge to consider imposing a probationary sentence. (Tr. p. 17). In addition to that, Appellant personally expressed remorse and asserted what happened would not happen again. (Tr. pp. 17-18).

Following those remarks, a statement from Victim's parents was presented to the plea judge, and, in that statement, Victim's parents asked for the maximum possible sentence to be imposed based on the harm Appellant had caused. (Tr. pp. 19-20). Likewise, Victim spoke about the incident and the harmful impact it caused to her and her family. (Tr. pp. 20-22).

At the conclusion of the plea hearing, the plea judge indicated he was concerned by Appellant's act of locking the bedroom door prior to the sexual assault, which he found to be indicative of premeditation to commit the charged crime. (Tr. p. 23). Based on that coupled with all the other information that had been presented, the plea judge sentenced Appellant to an eight-year term of imprisonment. (Tr. p. 23). Furthermore, he awarded Appellant with credit for time served, but he elected not to award credit for any of the time Appellant spent on monitored house arrest prior to the entry of the guilty plea. (Tr. p. 23; Sentencing Sheet).

Subsequent to that, defense counsel filed a motion asking the plea judge to reconsider Appellant's sentence. (Motion to Reconsider, pp. 1-5). As support for that request, defense

counsel alleged Appellant's sentence was "grossly disproportionate" because: (1) Appellant had no prior criminal record; (2) Appellant's sentence was purportedly not in proportion to the sentences imposed in the cases of three other criminals sentenced around the same time as him; and (3) Appellant did not believe his act of locking the door to the bedroom prior to the sexual assault justified the imposition of the sentence imposed. (Motion to Reconsider, pp. 2-3). Furthermore, defense counsel pointed to the language of Section 24-13-40 of the South Carolina Code of Laws and asserted Appellant should be given credit for all the time he spent on house arrest prior to his entry of the guilty plea. (Motion to Reconsider, pp. 3-4).

In rebuttal, the solicitor submitted a response contending Appellant's sentence should not be reconsidered. (State's Response, pp. 1-7). More specifically, the solicitor argued the facts of Appellant's offense supported the sentence imposed, which—as she noted—was a sentence that was two years less than the maximum sentence authorized for first-degree assault and battery. (State's Response, pp. 2-4). Likewise, the solicitor noted the cases identified by defense counsel as receiving disparate treatment were not similar to Appellant's because: (1) two of the identified cases were resolved in the manner they were resolved due to problematic issues with an investigator involved in those—but not Appellant's—cases; and (2) one of the identified cases involved a sentenced imposed based on the wishes of the victim's family. (State's Response, pp. 4-5). Moreover, the solicitor confirmed another offender sentenced around the same time as Appellant received a four-year term of imprisonment while also being required to register as a sex offender despite not causing any direct physical harm to his victim. (State's Response, p. 5). Finally, the solicitor pointed out Appellant could not properly be given credit for the time he spent on unmonitored house arrest and was not required to be given credit for the time he spent on monitored house arrest. (State's Response, pp. 5-7).

Ultimately, after considering the arguments of counsel, the plea judge declined to reconsider Appellant's sentence. (Order, dated Apr. 27, 2022). In declining to do so, the plea judge found no grounds existed warranting a modification or change to the eight-year sentence that had been imposed. (Order, dated Apr. 27, 2022).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). When reviewing a sentencing issue on appeal, an appellate court will only interfere with a circuit court judge's sentencing decision in rare and unusual circumstances in light of the broad discretion afforded to the circuit court judge on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952); see State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits."); see also State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("A trial judge generally has wide discretion in determining what sentence to impose."). Furthermore, appellate courts in South Carolina have "no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law in the discretion of the [sentencing] judge, and is not the result of partiality, prejudice, oppression or corrupt motive." State v. Scates, 212 S.C. 150, 154, 46 S.E.2d 693, 694 (1948); cf. State v. Davis, 88 S.C. 229, __, 70 S.E. 811, 814 (1911) ("It is excepted that imprisonment for five years in this case is excessive. We have repeatedly held that we have no jurisdiction to correct a sentence on this ground, provided it is within the limits prescribed by law for the discretion of the trial court, and is not the result of partiality, prejudice, oppression, or corrupt motive.").

ARGUMENT

I.

To the extent Appellant's appellate arguments concerning credit for the time he spent on unmonitored and monitored house arrest could be construed as an allegation of error, the plea judge did not abuse his broad sentencing discretion or otherwise err by declining to award such credit to Appellant because: (1) no credit could properly be awarded for any of the time Appellant served on unmonitored house arrest since such credit was not authorized by any provision of South Carolina law; and (2) it was entirely within the plea judge's discretion as to whether to award any credit for the time Appellant served on monitored house arrest, and, thus, it was not an abuse of discretion for him to choose not to grant such credit when structuring Appellant's sentence within the permissible sentencing limits.

Through his first two appellate issues, Appellant contends the time he spent on both unmonitored and monitored house arrest should be credited toward the sentence he received following his entry of a guilty plea. In support of that contention, Appellant does not—at least expressly—contend the plea judge abused his discretion or otherwise erred. Instead, Appellant simply notes credit *may* be given in South Carolina for time spent pre-trial on monitored house arrest, alleges it is "not unusual" for such credit to be awarded, and then follows that by making a conclusory assertion he personally should now be given credit for all the time he spent on house arrest—both monitored and unmonitored—without identifying any specific error committed in his case as far as time served credit is concerned.[2] To the extent Appellant's expression of a self-serving desire to receive credit for time served on unmonitored and monitored house arrest

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[2] Because Appellant's appellate arguments related to credit for time served have been raised in a conclusory fashion and contain no actual allegation of error on the part of the plea judge, those arguments should be rejected as abandoned on appeal. See State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding an argument to be abandoned where it raised in a conclusory manner); Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691-692 (Ct. App. 2001) (holding an argument raised on appeal in a conclusory fashion without citation to authority was abandoned for appellate purposes and noting "South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review"); see also Thomasko v. Poole, 349 S.C. 7, 17, 561 S.E.2d 597, 602 (2002) ("It is well established that an appellant seeking reversal of a decision by the trial court must show both error and prejudice.").

could be construed as a claim of error, the plea judge did not abuse his broad sentencing discretion or otherwise err by declining to award such credit to Appellant because: (1) no credit could properly be awarded for any of the time Appellant served on non-monitored house arrest since such credit is not authorized by any provision of South Carolina law; and (2) it was entirely within the plea judge's discretion as to whether to award any credit for the time Appellant served on monitored house arrest, and, thus, it was not an abuse of discretion for him to choose not to grant such credit when structuring Appellant's sentence within the permissible sentencing limits. Accordingly, notwithstanding the fact Appellant's appellate claim related to credit for time served has not been framed as an actual assertion of error, there are no proper grounds upon which to disturb the plea judge's sentencing decisions concerning credit for time served on appeal. Appellant's conviction and sentence should be affirmed.

In South Carolina, entitlement to credit for "time served" toward a criminal sentence is controlled by statute. S.C. Code Ann. § 24-13-40. Pursuant to the relevant statutory provision, prisoners are entitled to sentencing credit for time served pre-trial in limited circumstances. Id. Specifically, unless one of a few enunciated exceptions apply, prisoners *must* be given credit for time served in incarceration prior to trial and *may* be given credit for time spent "under monitored house arrest." Id.; see Allen v. State, 339 S.C. 393, 395, 529 S.E.2d 541, 542 (2000) (explaining a criminal defendant must be given credit for time served prior to trial "unless one of two exceptions exist: 1) either the prisoner was an escapee or 2) the prisoner was already serving a sentence on one offense"). Thus, sentencing judges in our state are—based on the plain language of the applicable statute—vested with complete discretion as to whether to award credit toward a sentence to an individual awaiting trial while on *monitored* house arrest. S.C. Code

Ann. § 24-13-40; see Franklin, 267 S.C. at 246, 226 S.E.2d at 898 (recognizing circuit court judges in South Carolina ordinarily have wide sentencing discretion).

In the case sub judice, Appellant—subsequent to his arrest and prior to his entry of a guilty plea—was released on bond under the condition he was required to remain on monitored house arrest, and he spent several months complying with that condition following his release from pre-trial incarceration. Following that, the terms of Appellant's bond were modified less than five months later, and, at his express request, the electronic monitoring requirement was eliminated. Resultantly, before he entered his guilty plea, Appellant spent some time in pre-trial incarceration, a few months on monitored house arrest, and the remaining period of time on unmonitored house arrest.

Pursuant to South Carolina law, Appellant was entitled to credit for the time he spent in pre-trial incarceration, and, as reflected in his statements during the plea hearing and on Appellant's sentencing sheet, the plea judge correctly awarded such credit to Appellant as statutorily required. S.C. Code Ann. § 24-13-40; see State v. Boggs, 388 S.C. 314, 316, 696 S.E.2d 597, 598 (Ct. App. 2010) (explaining credit for time served in pre-trial incarceration is mandatory). Meanwhile, pursuant to South Carolina law, Appellant was not entitled to credit for the time he spent on unmonitored house arrest and was only entitled to credit for the time he spent on monitored house arrest *if* the plea judge decided in his discretion to award such credit. S.C. Code Ann. § 24-13-40. Upon considering the circumstances of Appellant's crime along with the other information presented to him, the plea judge decided to impose a term of incarceration that fell squarely within the permissible sentencing limits for the offense *and* below the maximum sentence that could have been imposed. See S.C. Code Ann. § 16-3-600(C)(2) (mandating a person convicted of first-degree assault and battery "must be imprisoned for not

more than ten years"). However, in structuring Appellant's sentence, the plea judge elected *not* to award non-mandatory credit for the time Appellant spent on monitored house arrest, which was a decision fully consistent with the discretion afforded to him by our state's legislature. See S.C. Code Ann. § 24-13-40 (instructing time served credit "may be given for any time spent under monitored house arrest").

Because Appellant's sentence—including the credit for time served awarded and *not* awarded—fell squarely within the permissible sentencing limits for Appellant's offense, the plea judge did not abuse his broad sentencing discretion by imposing Appellant's statutorily-authorized sentence in the manner he did, including by electing not to award non-mandatory time served credit. See State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) ("[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion."). Furthermore, because South Carolina law only allows discretionary credit for time spent on monitored house arrest, the plea judge obviously did not abuse his discretion or otherwise err by refusing to award credit he did not have any discretion to award for the time Appellant spent on unmonitored house.[3] S.C. Code Ann. § 24-13-40. Under such circumstances, there are no valid grounds upon which the plea judge's discretionary sentencing decisions in Appellant's case could be disturbed on appeal. See State v. Dozier, 263 S.C. 267, 271, 210 S.E.2d 225, 226 (1974) (explaining a South Carolina appellate court "has no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by statute"). Appellant's conviction and sentence should be affirmed.

[3] In fact, the plea judge would have committed an error of law if he did award credit for the time Appellant spent on unmonitored house arrest since no provision of South Carolina law allows for such credit to be awarded. Cf. State v. Taub, 336 S.C. 310, 318, 519 S.E.2d 797, 802 (Ct. App. 1999) (reversing Taub's sentence and remanding for resentencing because his sentence fell below the mandatory minimum sentencing limits established for his offense).

II.

The plea judge did not abuse his broad sentencing discretion or commit any other error of law by sentencing Appellant, who sexually assaulted an incapacitated teenager incapable of providing consent, to an eight-year term of imprisonment after Appellant knowingly and voluntarily pled guilty to first-degree assault and battery because the sentence imposed fell within the permissible statutory sentencing limits for Appellant's offense and nothing appearing in the record established it was imposed as the result of any partiality, prejudice, corrupt motive, or improper considerations.

Through his third appellate issue, Appellant contends the plea judge reversibly erred by sentencing him to an eight-year term of imprisonment after he knowingly and voluntarily pled guilty to first-degree assault and battery, which—by Appellant's own acknowledgement—was an offense punishable by a term of imprisonment up to two years longer than the one actually imposed. As support for that claim, Appellant, who sexually assaulted an incapacitated teenager that—by Appellant's own admission—was too intoxicated to provide consent, alleges his sentence was "grossly disproportionate" to his offense because he had no prior criminal record and it purportedly was not in proportion to the sentences of other individuals sentenced on the same date as him. To the contrary, the plea judge did not commit any error whatsoever when sentencing Appellant because he imposed a sentence that fell within the permissible statutory sentencing limits for Appellant's crime after considering all the evidence and information presented to him, and nothing appearing in the record established the plea judge imposed Appellant's statutorily-authorized sentence as the result of any partiality, prejudice, corrupt motive, or improper considerations. Under such circumstances, there is no proper basis upon which Appellant's sentence can be disturbed on appeal. Appellant's conviction and sentence should be affirmed.

In South Carolina, sentencing judges are vested with broad discretion to impose a sentence falling within the statutory limits upon an offender convicted of a crime. Sidell, 262

S.C. at 398, 205 S.E.2d at 3. In exercising that broad sentencing authority, the sentencing judge must be accorded "very wide" discretion to determine the appropriate sentence and can properly consider "any and all information that reasonably might bear upon the proper sentence for the particular defendant, given the crime committed." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). Importantly, so long as the sentence imposed falls within the permissible sentencing limits for an offender's crime, the sentencing judge's decision regarding the appropriate sentence will not be found to be improper unless it violated the constitutional prohibition against cruel and unusual punishment or resulted from partiality, prejudice, oppression, or corrupt motive. See Garrett v. State, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) ("A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against respondent."); Wood v. State, 257 S.C. 179, 182, 184 S.E.2d 702, 703 (1971) ("It is well settled in this State that this Court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute itself violates the constitutional injunction . . . against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive.").

In the case at bar, Appellant—after locking the bedroom door—engaged in non-consensual sexual intercourse with an intoxicated teenager who had passed out after a heavy night of drinking and was in no condition to provide consent even if she had conceivably wished to do so. As a consequence of those disturbing and indefensible actions, Appellant was indicted for third-degree criminal sexual conduct and ultimately pled guilty to first-degree assault and battery. Resultantly, Appellant was facing—as he personally acknowledged during the plea hearing—a term of imprisonment of up to ten years. See S.C. Code Ann. § 16-3-600(C)(2) ("A

person who violates this subsection [defining first-degree assault and battery] is guilty of a felony, and, upon conviction, must be imprisoned for not more than ten years."); see also Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

Upon considering all the information presented to him concerning both Appellant and Appellant's crime, the plea judge elected to impose an eight-year sentence, which—favorably for Appellant—was a sentence two years short of the maximum one that could have permissibly been imposed. S.C. Code Ann. § 16-3-600(C)(2). Thus, the sentence imposed by the plea judge fell squarely within the applicable sentencing limits for Appellant's offense, and nothing was presented suggesting the sentence was imposed as the result of any partiality, prejudice, or corrupt motive on the part of the plea judge. Id.; cf. Garrett, 320 S.C. at 356, 465 S.E.2d at 350 (reinstating a sentence originally imposed by a plea judge because "it was within the limits permitted by law" and Garrett did "not assert either a constitutional violation or that the sentencing judge acted with partiality, prejudice or pressure"). Under such circumstances, the plea judge did not abuse his broad discretion or otherwise err when sentencing Appellant, and there is simply no proper basis upon which the plea judge's discretionary sentencing decision could be disturbed on appeal. See State v. Bass, 242 S.C. 193, 197, 130 S.E.2d 481, 483-484 (1963) ("This Court has no jurisdiction to correct a sentence alleged to be excessive when it is within the limits prescribed by law.").

In arguing to the contrary, Appellant maintains the sentence imposed by the plea judge was "grossly disproportionate" to his offense based on his lack of a prior criminal record coupled

with the fact shorter sentences were imposed on other unrelated offenders around the same time he was sentenced. Importantly though, the plea judge—and not Appellant himself—was the one tasked with evaluating the information presented and selecting an appropriate sentence under the circumstances involved, and the plea judge did just that with a full awareness of Appellant's lack of a prior criminal record, which was *not* a fact that unyielding restricted the plea judge's sentencing authority in any way. See State v. Miller, 187 S.C. 271, __, 197 S.E. 310, 311 (1938) ("Where left to his discretion by the law, the presiding judge, in the exercise of a wise judgment, determines what sentence, within the law, would be just and proper in any particular case."); State v. Crosby, 160 S.C. 301, __, 158 S.E. 685, 687 (1931) (explaining an appellate court "has no power to reduce the sentence or to reverse the judgment" based on a claim the trial judge should have imposed a lighter sentence because the term of the sentence imposed falls within the authority and discretion of the trial judge); cf. United States v. Dunn, 728 F.3d 1151, 1159 (9th Cir. 2013) ("While reasonable jurists might disagree as to whether Dunn's positive factors warranted a reduced sentence, mere disagreement does not amount to an abuse of discretion."); United States v. Fisher, 478 F. App'x 836, 838 (5th Cir. 2012) ("Fisher's disagreement with the district court's assessment of an appropriate sentence does not establish abuse of discretion."). Meanwhile, notwithstanding the fact the solicitor explained why the unrelated cases Appellant identified for comparative purposes were not truly similar to Appellant's, a sentencing judge is *not* precluded from imposing a sentence for one defendant convicted of a certain offense that is higher than the sentence imposed on another defendant convicted of the same offense so long as the decision to do so is not arbitrary or unreasonable, and that is true even in a case involving actual co-defendants and accomplices.[4] See State v. Follin, 352 S.C. 235, 257, 573 S.E.2d 812,

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[4] Moreover, unless a sentence imposed is *grossly* disproportionate to the offense committed, it is

824 (Ct. App. 2002) ("[W]hen the record clearly reflects an appropriate basis for a disparate sentence, the sentencing judge may impose a different sentence on a co-defendant in a criminal trial."); see also State v. Fleming, 228 S.C. 129, 133-134, 89 S.E.2d 104, 106 (1955) (rejecting the appellants challenge to their sentences despite the fact those sentences were over eight years longer than the sentence an accomplice received). Therefore, the fact other unrelated offenders may have received sentences different from Appellant's in no way established the plea judge, who imposed a sentence falling squarely within the permissible sentencing limits for Appellant's crime, erred when deciding upon the appropriate sentence under the particular facts and circumstances of Appellant's case. See State v. Brewington, 267 S.C. 97, 103, 226 S.E.2d 249, 251 (1976) (explaining the sentences imposed upon others for similar offenses "may"—but *not* must—properly be considered in determining an appropriate sentence for an offender); see also United States v. Rauhoff, 525 F.2d 1170, 1178-1179 (7th Cir. 1975) ("As a general rule, so long as a sentence is within the statutory maximum, the court will not exercise its supervisory powers to inquire into the propriety of a sentence, even when that sentence creates a disparity with the sentences of *co-defendants*." (emphasis added)); State v. Garris, 144 S.E.2d 901, 902 (N.C. 1965) ("There is no requirement of law that defendants charged with similar offenses be given the same punishment. The punishment imposed in a particular case, if within statutory limits, is

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unnecessary for purposes of a proportionality analysis to compare that sentence to the sentences imposed on other offenders convicted of similar crimes. See State v. Harrison, 402 S.C. 288, 299-300, 741 S.E.2d 727, 733 (2013) ("[I]n analyzing proportionality under the Eight[h] Amendment outside the capital context, South Carolina courts shall first determine whether a comparison between the sentence and the crime committed gives rise to an inference of gross disproportionality. If no such inference is present, the analysis ends. In the *rare* instance that this threshold comparison gives rise to such an inference, intrajurisdictional and interjurisdictional analysis is appropriate. Courts may then look to whether more serious crimes carry the same penalty, or more serious penalties, and the sentences imposed for commission of the same crime in other jurisdictions. Courts should use this comparative analysis to confirm the gross disproportionality inference, and not to develop an inference when one did not initially exist." (emphasis added)).

within the sound discretion of the presiding judge."); cf. Dozier, 263 S.C. at 271-272, 210 S.E.2d at 226 (finding no abuse of discretion in the trial judge's issuance of a greater sentence to Dozier than to his co-defendants for the same offenses where the trial judge concluded Dozier's co-defendants "were not tainted with the same degree of guilt" as Dozier).

Accordingly, since Appellant's sentence fell within the appropriate statutory sentencing limits for his troubling offense and nothing suggested that sentence was imposed based on partiality, prejudice, oppression, corrupt motive, or any other improper considerations, the plea judge did not abuse his broad sentencing discretion or commit any other error of law when imposing a legislatively-sanctioned eight-year sentence for Appellant's crime, and there is no proper basis upon which to disturb Appellant's sentence on appeal. See State v. Sanders, 251 S.C. 431, 444, 163 S.E.2d 220, 228 (1968) (instructing the "established rule" in South Carolina is an appellate court will not reverse a sentence for being "excessive" if it falls within the statutory sentencing limits and was not imposed as the result of partiality, prejudice, oppression, or corrupt motive); cf. Clark v. State, 259 S.C. 378, 382-383, 192 S.E.2d 209, 210-211 (1972) ("Appellant seeks to have his sentence set aside and be resentenced to a lesser term. His contentions in this respect require little comment. It has long been settled that this Court has no jurisdiction on appeal to correct an allegedly excessive sentence, which is within the limits prescribed by law for the discretion of the trial judge and which is not proved to be the result of partiality, prejudice, oppression or corrupt motive. We deem it unnecessary to cite or refer to the many authorities for this well settled proposition. The record here contains no suggestion, let alone evidence, of any partiality, prejudice, oppression or corrupt motive influencing or affecting the sentence."). Appellant's conviction and sentence should be affirmed.

CONCLUSION

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

Respectfully submitted,

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February 21, 2023

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2022-000624

THE STATE,

Respondent,

vs.

SOLOMON TADESSE YEMAME,

Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

S. Jahue Moore, Esquire
jake@mbmlawsc.com

I further certify all parties required by Rule to be served have been served.
This 21st day of February, 2023.

LEIGH ANN STONE
Legal Assistant
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Leigh Ann Stone

From: Leigh Ann Stone
Sent: Tuesday, February 21, 2023 12:41 PM
To: jake@mbmlawsc.com
Cc: Mark Farthing; William Blitch; gill@mbmlawsc.com
Subject: State v. Solomon Tadesse Yemame (2022-000624)
Attachments: Yemame.IBOR (03225172xD2C78).PDF

Good Afternoon Mr. Moore and Mr. Bell,

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter in The State v. Solomon Tadesse Yemame (2022-000624). This brief will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you,

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