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May 02 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MACK ADAMS GAINES,

APPELLANT

APPELLATE CASE NO. 2022-000567

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to exercise discretion in the sentencing of Appellant?

STATEMENT OF THE CASE

In February of 2018, the Oconee County Grand Jury indicted Appellant, Mack Adams Gaines, for abuse or neglect of a vulnerable adult resulting in death, indictment #2018-GS-37-287. On April 18, 2022, Appellant proceeded with a jury trial before the Honorable R. Scott Sprouse. Fletcher N. Smith represented Appellant at trial. Jason Alderman and Brooke Ennis prosecuted the case. The jury returned a verdict of guilty. Judge Sprouse sentenced Appellant to twenty (20) years. A timely notice of intent to appeal was served on April 25, 2022. This appeal follows.

STANDARD OF REVIEW

“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 trial judge erred in failing to exercise discretion in the sentencing of Appellant.

The jury found Appellant guilty of neglecting his ninety-two year old mother eventually resulting in her death. S.C. Code Ann. § 43-35-85(F) provides, “A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.” At sentencing the judge stated, “Mr. Gaines, I am happy that you had turned your life around some, and it sounds like you had good people to help you, and you got out of jail and you got a job, but then this messed it all up, just messed it all up. And a great tragedy happened, **so I don’t have a choice**. You will be confined to the Department of Corrections for a term of 20 years. Good luck to you, sir.” (R. p. 265, line 23 – p. 266, lines 1-5) (emphasis added). The judge, however, did have a choice. The twenty-year sentence was not a mandatory minimum. The judge could have chosen to impose a sentence less than twenty years. The judge erred in failing to exercise discretion in sentencing.

“A trial judge has broad discretion in sentencing within statutory limits Brooks. v. State, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997).” In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). In State v. Smart, 433 S.C. 651, 657, 861 S.E.2d 383, 387 (Ct. App. 2021), cert. granted (May 17, 2022), the South Carolina Court of Appeals wrote, “This court will not overturn a sentence absent an abuse of discretion. In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). A trial court commits an abuse of discretion when it commits an error of law, makes a factual finding that lacks evidentiary support, or fails to exercise any of its vested discretion. See State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).”

In State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006), the South Carolina Supreme Court wrote:


An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987); S.E.C. v. TheStreet.Com, 273 F.3d 222, 229 n. 6 (2d Cir.2001).

“ ‘A failure to exercise discretion amounts to an abuse of that discretion.’ Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997) (citations omitted).” State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015)

The trial judge in the present case failed to exercise discretion by stating that he had no choice but to sentence Appellant to twenty years. It was within the judge’s discretion to sentence Appellant to less than a twenty-year sentence. The judge’s failure to exercise discretion amounts to an abuse of discretion. This Court should overturn the twenty-year sentence imposed.

CONCLUSION

Based on the above argument, this Court should reverse the sentence and remand for a new sentencing hearing.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of May, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mack Adams Gaines 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 R. Scott Sprouse, which was held on April 18 - 19, 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 Mack Adams Gaines.

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

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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 and sentencing sheet;
- (2) Trial transcript pages 1-267.

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



Kathrine H. Hudgins
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ATTORNEY FOR APPELLANT

This 2nd day of May, 2023.

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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