

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Jul 10 2023
SC Court of Appeals

Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge

Opinion No. 2023-UP-161

THE STATE,

RESPONDENT,

V.

TERRELL DENARD KNIGHTNER,

APPELLANT

APPELLATE CASE NO. 2020-001018

Second Petition for Rehearing

Pursuant to Rule 221(a), SCACR, Terrell Denard Knightner requests that this Court grant rehearing. On April 1, 2023, this Court affirmed Appellant's conviction for assault and battery in the first degree. State v. Knightner, 2023-UP-161 (S.C. Ct. App. filed April 26, 2023). This Court found that, ". . . because Knightner did not appeal the plea court's sentencing order stating he would not be placed on the sex offender registry unless he violated the conditions of his probation, the order is the law of the case." On May 11, 2023, a timely petition for rehearing was filed. On June 28, 2023, this Court denied the petition for rehearing but withdrew the previous opinion and refiled a substituted opinion. State v. Knightner, 2023-UP-161 (S.C. Ct.

App. filed April 26, 2023, Withdrawn, Substituted and Refiled June 28, 2023). The substituted opinion did not make any substantive changes. The only change appears to be the placement of quotation marks in the language inside the parenthetical following Smith v. State, 413 S.C. 194, 196, 775 S.E.2d 696, 607 (2015), in the second paragraph of the opinion. Counsel understands that a second petition for rehearing must be filed because the first opinion was withdrawn and a substituted opinion refiled. This second petition for rehearing contains no substantive changes from the first petition for rehearing.

Counsel respectfully submits that this Court may have overlooked the fact that the sentencing order was conditional and did not become final until Appellant was ordered to register as a sex offender on February 7, 2020. An appeal of the conditional order which did not require Appellant to register as a sex offender, unless he violated probation, would have been dismissed as not yet ripe for review. Appellant timely challenged the sex offender registry requirement when it was ordered on February 7, 2020, after a finding that Appellant violated the conditions of his probation. The State failed to show good cause to require Appellant to register as a sex offender. The violation of probation is not sufficient to show good cause. The order placing Appellant on the sex offender registry on February 7, 2020, without a finding of good cause, was timely appealed. Counsel respectfully seeks rehearing and an order removing the requirement of sex offender registry for Appellant when there was no showing of good cause as required by the statute.

After the finding of a probation violation by another judge, the sentencing judge erred in requiring sex offender registry without a showing of good cause.

On December 13, 2016, Appellant pled guilty to assault and battery first degree before the Honorable L. Casey Manning. The prosecutor told the judge, "He is pleading guilty

today to assault and battery in the first degree, and the State is recommending sex offender counseling. And if he successfully completes that counseling, he would not have to register as a sex offender.” (R. p. 5, line 25 – p. 6, lines 1-4). The prosecutor explained that Appellant and the complaining witness were in a brief relationship and had consensual sex. R. p. 17, lines 1-4). The sexual relationship ended but the two remained friends. One night she went to Appellant’s house where they watched television and talked. (R. p. 17, lines 8-10). According to the prosecutor, when she decided to leave Appellant asked her not to leave, “ [a]nd there was a sexual assault of some sort that occurred.” (R. p. 17, lines 13-21). The prosecutor also told the judge that the complaining witness now lived in Maine and was not interested in returning to South Carolina to prosecute the case. (R. p. 18, lines 10-14). Judge Manning sentenced Appellant to three years suspended with three years of probation. (R. p. 25). The judge also ordered that Appellant abide by all sex offender conditions; that he be supervised by a sex offender agent; that he not be required to be monitored by GPS; **that he not be placed on the sex offender registry unless there is a violation of these terms**; and that probation may terminate upon completion of sex offender counseling. (R. p. 26). Defense counsel advised the judge that the sex offender counseling classes requested by the State typically lasted from eighteen to twenty-four months. (R. p. 20, lines 12-13). Appellant did not appeal the probationary sentencing order that did not require sex offender registry.

On August 30, 2018, about twenty months after the plea¹, a probation violation arrest warrant was obtained. (R. pp. 27-28). On May 31, 2019, a probation revocation hearing was held before the Honorable DeAndrea G. Benjamin. (R. pp. 31-47). The agent told Judge Benjamin that Appellant violated his probation by accessing Snapchat on social media, viewing

¹ Judge Manning ordered that probation may terminate upon the completion of sex offender counseling.

pornography, deleting information from his phone and having contact with his minor niece and nephew². (R. p. 33, line 15 – p. 34, lines 1-6). Appellant only had four classes left of the sex offender counseling before he was terminated from class for the violations unrelated to counseling. (R. p. 35, line 18 – p. 36, lines 1-16). Judge Benjamin found Appellant violated conditions of probation. Judge Benjamin revoked 60 days, to be served on weekends, and ordered sex offender registry. (R. p. 54).

On June 7, 2019, counsel for Appellant filed a motion to reconsider placement on the sex offender registry. (R. pp. 55-59). On June 27, 2019, a hearing on the motion to reconsider was held before Judge Manning. (R. pp. 60- 63). Counsel for Appellant told the judge, “So, we’re here to ask that Mr. Knightner be removed from the sex offender registry. Pursuant to the statute, they have to place good cause on the record to put someone on the sex offender registry.” (R. p. 61, lines 10- 14). On June 27, 2019, the same day as the hearing, Judge Manning signed an order granting, without prejudice, the motion to remove Appellant from the sex offender registry. (R. p. 64).

On July 3, 2019, the State filed a motion to reconsider. (R. pp. 65-66). The State asserted that the Solicitor’s Office was not notified of the June 27, 2019, hearing on the motion to reconsider placement of Appellant on the sex offender registry and asked to be heard on the issue. On January 14, 2020, a hearing was held before Judge Manning on the issue of sex offender registry. (R. pp. 67-83). Counsel for Appellant argued that the violations of probation did not provide good cause for Appellant to be placed on the sex offender registry. (R. p. 78, lines 11-16). The judge asked both sides for proposed orders as to the sex offender registry. (R. p. 80, line 23 – p. 81, line 1; lines 18-25).

² The underlying charge did not involve minors.

On February 7, 2020, Judge Manning signed an order granting the State's motion to reconsider. (R. pp. 84-85). In the order Judge Manning wrote, "The order signed on June 27, 2019 by this Court shall hereby be rescinded and Judge Benjamin's order of May 31, 2019 placing the Defendant Terrell Knightner onto the sex offender registry due to a violation of his bond [probation] conditions shall be reinstated." (R. p. 85). The violations of probation did not provide good cause to require sex offender registry. The judge erred.

On July 20, 2020, Appellant filed a timely notice of appeal from Judge Manning's order requiring Appellant to register as a sex offender. Judge Manning's conditional order at the time of sentencing in December of 2016, did not become final until February 7, 2020, when Appellant was ordered to register as a sex offender. The December 2016 sentencing order stating Appellant would not be placed on the sex offender registry unless he violated the conditions of his probation could not have been appealed until Appellant was ordered to register as a sex offender in February of 2020.

Ripeness

In Joseph v. S.C. Dep't of Lab., Licensing & Regul., 417 S.C. 436, 466, 790 S.E.2d 763, 779 (2016), the South Carolina Supreme Court wrote:

"Before any action can be maintained, a justiciable controversy must be present." Sloan v. Geenville Cnty., 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character." Id. "The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing." Id. at 547, 590 S.E.2d at 546.

Judge Manning's sentencing order with regard to the sex offender registry was contingent upon the finding of a probation violation. No justiciable controversy existed until there was a probation violation. The controversy with regard to the sex offender registry did not become ripe until there was a probation violation and Appellant was ordered to register as a sex offender.

The sentencing order did not become final until February 7, 2020, when Judge Manning ordered Appellant to register as a sex offender. See also In Int. of Francis Richard G., 296 S.C. 185, 371 S.E.2d 520 (1988) (holding Department of Youth Services' retention of custody over a juvenile, who was found guilty of murder and sentenced to Department for indeterminate period not to exceed 30 years, was not mandatory but discretionary and juvenile could be released at time of his twenty-first birthday and thus, his claim on appeal that family court lacked jurisdiction to sentence a juvenile to an indeterminate sentence pursuant to a statute did not present a justiciable controversy and the issues raised were not ripe for judicial determination); State v. Tucker, 376 S.C. 412, 656 S.E.2d 403 (Ct. App. 2008) (finding that challenge to plea agreement waiving post-conviction relief claims was not ripe for review because Tucker had not yet filed for post-conviction relief).

Respectfully, in finding that the unappealed sentencing order from December of 2016, was the law of the case, this Court overlooked the fact that the sex offender requirement was contingent upon a violation of probation. As a result, the sentencing order did not become final until February 7, 2020, when Appellant was ordered to register as a sex offender as a result of the probation violation. Appellant timely challenged the sex offender registry requirement and asks this Court to address the merits and find that the State failed to show good cause.

Good Cause

S.C. Code Ann. § 23-3-430(D) provides, “Upon conviction, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the prosecution.” Assault and battery first degree, the charge to which Appellant pled

guilty, is not a listed offense. As a result, the State was required to show good cause. The State failed to show good cause.

Once the order became final on February 7, 2020, and the sex offender registry issue became ripe for litigation, Judge Manning held two hearings on the motions to reconsider filed by both Appellant and the State. During the January 14, 2020, hearing on the State's motion to reconsider the State failed to show good cause for Appellant to be required to register as a sex offender. During this hearing the judge gave the State the opportunity to submit a proposed order stating, "You can submit a proposed order as to why he should go on, and I'll consider it." (R. p. 80, line 25 – p. 81, line 1). The order that Judge Manning signed does not include a finding of good cause. (R. pp. 84-85).

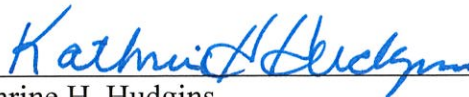
In State v. Fraley, 437 S.C. 135, 138, 876 S.E.2d 703, 705 (Ct. App. 2022), this Court wrote, "Our supreme court has determined good cause under the statute 'means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually.' In re M.B.H., 387 S.C. at 327, 692 S.E.2d at 542." In the present case the judge failed to make a determination that Appellant was at risk to reoffend sexually. The State failed to present evidence to indicate a risk to reoffend sexually. The violations of probation including accessing Snapchat on social media, viewing pornography, deleting information from his phone and having contact with his minor niece and nephew, are not sufficient to indicate a risk to reoffend sexually.

"Our standard of review is abuse of discretion. See In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (reviewing registration under this standard)." State v. Fraley, 437 S.C. 135, 137, 876 S.E.2d 703, 704 (Ct. App. 2022). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual

conclusions, is without evidentiary support.” State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016).” The sentencing judge’s finding as to the sex offender registry is without evidentiary support. The sentencing judge abused his discretion in requiring sex offender registry without a showing of good cause by the State.

Counsel respectfully seeks rehearing to address the requirement of sex offender registry that is properly before this Court as an appeal from the sentencing judge’s final order on February 7, 2020, and to find the sentencing judge abused his discretion in requiring Appellant to register as a sex offender.

Respectfully submitted,



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ATTORNEY FOR APPELLANT

This 10th day of July, 2023.

STATE OF SOUTH CAROLINA
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Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

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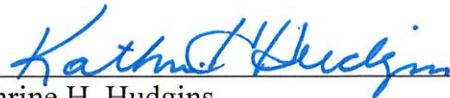
TERRELL DENARD KNIGHTNER,

APPELLANT

APPELLATE CASE NO. 2020-001018

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Second Petition for Rehearing 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 Terrell Denard Knightner, at 7817 Crestbrook Road, Columbia, SC 29223, this 10th day of July, 2023.



Kathrine H. Hudgins
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ATTORNEY FOR APPELLANT

From: [Stock, Chris](#)
To: [SC - BLITCH WILLIAM](#); [SC - COLLINS CAROLINE](#)
Cc: [Hudgins, Kathrine](#)
Subject: Knightner, T. - Second Petition for Rehearing - 2020-001018
Date: Monday, July 10, 2023 10:43:00 AM
Attachments: [Knightner, T. - Second Petition for Rehearing - 2020-001018.pdf](#)
[Knightner, T. - Second Petition for Rehearing - 2020-001018 - AG Cover Letter.pdf](#)

Mr. Blitch,

Please find attached for service the Second Petition for Rehearing for Terrell Denard Knightner's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock
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