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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County
Honorable Robert J. Bonds, Circuit Court Judge
Appellate Case No. 2022-000169

The State, Respondent,

vs.

Ronald Lyons, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General
S.C. Bar No. 76901

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

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court did not err in denying specific performance. Further, a grant of specific performance of an agreement not to obtain arrest warrants would not provide Appellant with any relief on appeal because the prosecution could still go forward without an arrest warrant once the Hampton County Grand Jury true-billed an indictment.

II. While the sentencing judge indicated he did not believe he had authority to reconsider the sentence imposed, he found even if he had the authority then he would not change the sentence. As a result, Appellant's motion was properly considered and ruled upon. Even if error, Appellant is only entitled to a remand to address his motion to reconsider sentence.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The circuit court did not err in denying specific performance. Further, a grant of specific performance of an agreement not to obtain arrest warrants would not provide Appellant with any relief on appeal because the prosecution could still go forward without an arrest warrant once the Hampton County Grand Jury true-billed an indictment.

Appellant contends the trial court erred in denying his motion for specific performance and in finding the agents did not have authority to make any promises not to prosecute Appellant or to provide immunity as found by the trial court. Further, on appeal Appellant frames the issue as whether the agents had authority to promise not to obtain arrest warrants; however, even if they could promise not to obtain arrest warrants it would not prevent prosecution because the Hampton County Grand Jury issued a proper true-billed indictment and prosecution can continue without the SLED agents ever obtaining an arrest warrant. As a result, there is no relief which can be given to Appellant.

Immunity from Prosecution

Initially, the trial court ruled the SLED agents did not have authority to make a promise of immunity from arrest or prosecution. The South Carolina Supreme Court has explained:

> Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands. The Attorney General as the State's chief prosecutor may decide when and where to present an indictment, and may even decide whether an indictment should be sought. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.

State v. Thrift, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994) (footnotes omitted). The Courts of this State have recognized the power to grant immunity from prosecution rests solely

with the prosecutors. As prosecution decisions rest solely with the Attorney General and the Solicitors, the decision to grant immunity also rests with the Attorney General and the Solicitors. See State v. Blackburn, 271 S.C. 324, 330, 247 S.E.2d 334, 338 (1978) ("The granting of immunity from prosecution is a matter within the solicitor's discretion."). In State v. Peake, this Court recognized law enforcement does not have authority to grant immunity, and it was this holding relied upon by the trial court in this case. State v. Peake, 345 S.C. 72, 77–78, 545 S.E.2d 840, 843 (Ct. App. 2001) (citing Yarber v. State, 375 So.2d 1212, 1227 (Ala.Crim.App.1977) (stating that "law enforcement officers are utterly without power and authority to grant an accused immunity from arrest and prosecution for violating our criminal laws"), rev'd on other grounds, 375 So.2d 1229 (Ala.1978); Green v. State, 857 P.2d 1197, 1199 (Alaska Ct. App. 1993) ("We base our decision to deny defendant specific performance on the fact that the police lacked the authority to make a binding promise of immunity or not to prosecute.")).

The SLED agents did not have authority to bind prosecutors to an offer of immunity for Appellant. As this Court explained: "[E]nforcement of an agreement not to prosecute is subject to two conditions: (1) the agent must be authorized to make the promise; and (2) the defendant must rely to his detriment on the promise." Peake, 345 S.C. at 77, 545 S.E.2d at 842. The circuit court clearly found Appellant relied on a promise. However, as the circuit court also found and as discussed above, the SLED agents could not bind prosecutors in any promise not to arrest or prosecute Appellant. As a result, the circuit court properly denied his motion for specific performance.

Promise Not to Seek Arrest Warrant

On appeal, Appellant frames the issue as the SLED agents promised not to seek arrest warrants. Even if the issue is framed as Appellant indicates that SLED agents could promise not

to obtain arrest warrants, Appellant can get no relief because the arrest warrants are unnecessary for prosecution to proceed.

It has long been the law of this State that a county grand jury may issue an indictment on any crime not within the exclusive jurisdiction of the magistrate court, and it may do so whether or not an arrest warrant—or even when an invalid arrest warrant—has been issued. In State v. Bowman, 43 S.C. 108, 20 S.E. 1010, 1011 (1895), the Court found grand jury proceedings may be instituted upon the motion of the solicitor without any action by a magistrate, the defendant was arrested on a bench warrant after the issuance of a true-billed indictment, and the defendant was not entitled to discharge or habeas corpus relief. In a case in which the defendant sought a directed verdict arguing prosecution could not proceed because his arrest was unlawful, the Supreme Court explained: "Even assuming that his arrest and detention without a warrant were unlawful, such would not entitle him to a directed verdict." State v. Swilling, 246 S.C. 144, 148, 142 S.E.2d 864, 866 (1965).

In another case, the defendant was originally arrested and charged with statutory rape. At the preliminary hearing, a question arose regarding the age of the victim. The parties agreed the defendant would be charged with the crime of bastardy, which was presented to the grand jury. Upon indictment, Appellant moved to quash the indictment arguing no arrest warrant had been issued for the charge of bastardy. The Supreme Court articulated: "[A] grand jury may indict for any crime, certainly any which is not within the exclusive jurisdiction of a magistrate or other inferior court, whether or not there has been a prior proceeding before a magistrate and an arrest warrant issued. . . ." State v. Walker, 232 S.C. 290, 295–96, 101 S.E.2d 826, 829 (1958). Walker's conviction was ultimately affirmed.

The case law above clearly indicates that upon a true-billed indictment, even one that occurs without any arrest warrant being issued for the crime, a defendant can be called to answer for his crimes at a trial in the Court of General Sessions. In this case, even if the SLED agents had the power to promise that they would not seek arrest warrants for Appellant, that promise would not impact a future prosecution based on a true-billed indictments for the charges. As a result, there is no relief which can be granted Appellant because the circuit court properly proceeded to trial based on the true-billed indictments in this case.

II. While the sentencing judge indicated he did not believe he had authority to reconsider the sentence imposed, he found even if he had the authority then he would not change the sentence. As a result, Appellant's motion was properly considered and ruled upon. Even if error, Appellant is only entitled to a remand to address his motion to reconsider sentence.

Appellant maintains the sentencing court abused its discretion by refusing to consider his motion to reconsider sentence made when the previously sealed sentence was read. The court did reconsider the sentence and declined to alter the sentence. If this Court finds the sentencing court did not properly reconsider the sentence, then the remedy would be to remand for consideration of the motion to reconsider and the evidence presented at the sentencing hearing on February 3, 2022.

At the sentencing hearing, the court explained Appellant's sentence was sealed by Judge Bonds after his conviction. He incorrectly[1] indicated that he could not change the sentence and that his only responsibility was to publish the sealed sentence. (2/3T. 4-5; R.137-138). Appellant's attorney indicated his belief that he could ask the sentencing court to amend or reconsider the sentence, and his attorney asked that the court sentence Appellant to the minimum sentence. Again, the circuit court incorrectly indicated he was "here simply to publish." (2/3T.7; R.140). The sentencing court did agree to hear from family members who wished to speak on the sentence. (2/3T.9; R.142). After hearing from family, as well as the various arguments of counsel regarding the nature of the crimes and the repercussions to Appellant for helping law enforcement, the sentencing court explained:

> [A]s I've explained to you, my -- it's my understanding of the law under receiving the sentence, I -- my duty is simply to publish the verdict, but to the extent, if I could change another Circuit Court's

[1] "A sealed sentence does not become the judgment of the court until it is opened and read to the defendant. . . . We hold the authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." State v. Smith, 276 S.C. 494, 497–98, 280 S.E.2d 200, 201–02 (1981).

> Order, which I don't think I could, **I'm not inclined to do so, that would, specifically, sustain the sentence.**

(2/3T.14; R.147) (emphasis added).

While the court repeatedly stated incorrectly that it could not alter or reconsider the sentence, the sentencing court ultimately ruled on the issue. After hearing the basis for reconsideration from Appellant's counsel, Appellant's own pleas, and Appellant's family member's request, the sentencing court found it would sustain the sentence and would not change the sentence. As a result, Appellant received the consideration he sought on his motion to reconsider and there is nothing further to remand to the circuit court.

Even if this Court finds that the consideration by the sentencing court was insufficient or somehow tainted by his incorrect belief that he could not alter the sentence, the sole remedy is to remand for consideration of the motion to reconsider sentence in light of the arguments presented by counsel and the statements made by Appellant and his family members. See State v. Jackson, 290 S.C. 435, 437, 351 S.E.2d 167, 167 (1986) ("[W]e reiterate for the benefit of the trial bench our holding in State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981), that when a sealed sentence is opened and read, the judge has the authority to consider a motion for reduction of sentence.").

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

MARK R. FARTHING
Senior Assistant Deputy Attorney General
S.C. Bar No. 76901

BY: ______________________________
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

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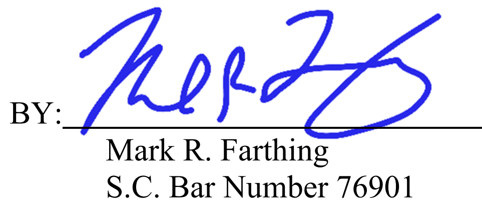
CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit



BY:______________________
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

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