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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

THE STATE,

RESPONDENT,

V.

RONALD LYONS,

APPELLANT

APPELLATE CASE NO. 2022-000169

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

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II.

Did the sentencing judge abuse his discretion in declining to reconsider Appellant's sentence because the judge believed he could only publish the sentence but did not have the authority to alter the sentence?

STATEMENT OF THE CASE

During its March 2021 term, the Hampton County grand jury indicted Appellant for one count of distribution of fentanyl, one count of trafficking heroin four to fourteen grams, and one count of trafficking methamphetamine ten to twenty-eight grams. R. 150. On November 15, 2021, the State, represented by Rachel Janowski, called the cases to trial before the Honorable Robert Bonds and a jury. Appellant was represented by Steve Plexico. R. 1.

Prior to the start of trial, the Court held a hearing on Appellant's motion for specific performance of a plea deal. R. 1, ll. 2-10. Judge Bonds denied the motion for specific performance, and the case proceeded to trial in Appellant's absence. R. 128, ll. 14-15. Appellant was ultimately convicted as indicted, and his sentences were sealed. R. 132, ll. 1-14.

On February 3, 2022, Appellant was brought before the Honorable Michael Nettles to have his sentences unsealed. R. 136. Appellant was sentenced to three concurrent terms of fifteen-years' imprisonment. R. 139-140. Counsel Plexico motioned for the court to reduce Appellant's sentence to the mandatory minimum sentence of seven years on each indictment which was denied. R. 140-147.

This appeal follows.

ARGUMENT

I.

The circuit court erred in denying Appellant's motion for specific performance of a promise made by SLED agents to not obtain warrants for Appellant's arrest if he assisted them in other investigations, where the Agents were acting within the scope of their authority in making the promise.

Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011) (citation omitted). "Appellate courts are bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law." State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993).

Relevant Facts

Prior to the start of trial, Appellant moved for specific performance of an agreement that he made with the State where, upon working for the SLED as a confidential informant, the State would not seek out warrants to prosecute him. Appellant asserted that he had "performed his duties and reasonably expected the State to perform their part of the bargain." R. 1. After jury selection, the trial court held a hearing on the motion. At the hearing, the trial court heard testimony from Appellant, Courtney Lane, Samantha Gore, Joanne Lyons, Randall Risher, and Jarrett Maffett.

Testimony of Appellant

On March 14, 2019, Appellant received a call from an individual he knew as "Hunter" asking to purchase drugs. Appellant, who had sold narcotics to "Hunter" on prior occasions, told the individual that knew he was a police officer and to come arrest him. "Hunter" was in fact

undercover SLED Agent Jarrett Maffett. With his cover blown, Maffett, along with SLED Agent Randall Risher and other members of law enforcement, met with Appellant in the woods behind his mother's home to discuss Appellant working with SLED as a confidential informant (CI). The agents told Appellant that they were targeting John Anderson, known as Big Mike, in the Hampton area. Appellant stated that he did not buy drugs from Big Mike but would help them bring in the person he did buy from in Florence, Anthony Melton, AKA "Amp." In return, the SLED agents told Appellant that they would not obtain warrants on him for the prior sales to Maffett and explicitly stated that no warrants had been taken out on him at that point in time. Appellant subsequently made several buys from Melton on behalf of SLED. R. 2, l. 6- 7, l. 16.

SLED then requested that Appellant make buys from an individual in the Hampton area known as "Mondo." Mondo was the boyfriend of a woman named Terri-Lynn who worked with Appellant's mother. Mondo was out of town, so Appellant made a buy for SELD from Terri-Lynn instead. Appellant stated that he also got the pill press being used on video for SLED, as requested. After he completed each buy, the agents would tell him he had done well and that he had made a good buy. R. 9, l. 14- 11, l. 25.

Appellant testified that when the SLED agents made the agreement with him on March 14, 2019, they did so in front of his mother, sister, and girlfriend. His mother was hysterical when SLED initially came to the house, worrying about Appellant going to jail. According to Appellant, Maffett told her that Appellant would not be charged if he worked with SLED to bring in a "big fish." R. 12, l. 18- 14, l. 12. Despite making several buys for SLED that resulted in a large quantity of narcotics being removed from the streets, SLED ultimately arrested Appellant on May 1, 2019. R. 14, ll. 13-20.

While being held in the Hampton County Detention Center, Appellant was assaulted by a family member of "Big Mike." He was blind-sided while walking to a door, knocked unconscious, and then repeatedly struck in the head. Appellant suffered intraparenchymal and subdural hemorrhages because of the attack. R. 18, l.16- 20, l. 1; R. 162. Prior to the assault, other individuals in jail called Appellant a "snitch." R. 26, ll. 10-20. From March 14, 2019, to May 1, 2019, anytime SLED called Appellant to make a buy, he did, all the while relying on the promises made to him by Maffett and the other officers that he would not go to jail or see any warrants. Relying on their assurances, he provided SLED with intelligence about drug dealings in South Carolina, made multiple drug deals in multiple counties, and purchased a large quantity of drugs each time he made a buy. R. 20, l. 16 - R. 21, l. 24; R. 28, ll. 1-6; R. 199.

On cross-examination, Appellant testified that the agents said if he cooperated that no charges would be filed, and the promises were made at his mother's house in front of his family members. He signed something to work with SLED, but admitted he never met with the solicitor's office about his work. When he asked about having an attorney, SLED told him CI work was confidential, and that was the reason they did not meet with the solicitor's office or have attorneys involved. He admitted he had overdosed two days before SLED came to him with the agreement, and he had used illegal substances during the time that he was a CI. R. 28, l. 25- 32, l. 11.

Testimony of Courtney Lane

Courtney Lane, Appellant's girlfriend, testified that she was present on March 14, 2019, when SLED Agents Maffett and Risher made the oral promise to not bring charges against

Appellant or her if they[1] cooperated with them. The agents did not tell them that warrants had already been taken out on Appellant, but they did tell them once warrants had been taken out, "there's no going back" and they would go to jail. As a result of the agreement, they went that same day to Florence to complete an undercover buy from Amp. Once Appellant had been sent to jail, Lane made buys for the SLED agents based on the agreement she believed they had made. While she was eventually charged, her cases were pled out to probationary sentences. Lane admitted to using drugs but stated she had been in drug rehabilitation for four months and was now sober. R. 35, l. 1- 43, l. 14.

Testimony of Samantha Gore

Samantha Gore, Appellant's sister, testified that she was present on March 14, 2019, when SLED Agent Maffett stated Appellant and Lane would not be going to jail and that no charges had been brought against them at that point in time. According to Gore, Maffett stated they would not go to jail if they worked for the agents to get a "big fish." She confirmed that Maffett told her mother that there were not any warrants pending for Appellant. Gore stated that both her and her mother were scared for their lives because of the undercover work Appellant had done. Her mother ultimately had to move to protect herself. R. 44, l. 21- 48, l. 5.

Testimony of Joanne Lyons

Joanne Lyons testified that she was working on March 14, 2019, when she received a call from her daughter telling her SLED agents were at her house. Lyons promptly returned home and had a conversation with Maffett. Maffett told her that if Appellant and Lane worked with them that they would not go to jail. Maffett also told her that nothing had "been put on paper" at that

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1 Both Appellant and Lane testified that any undercover work one did was supposed to benefit the other. R. 10, ll. 17-18; R. 38, ll. 20-25.

point in time. She knew that Appellant made buys for SLED because after he purchased narcotics from Tammi-Lynn, her co-worker, she no longer felt safe in Hampton and moved to Lake City, South Carolina. She reiterated that Maffett said as long they cooperated, they would not go to jail. R. 49, l. 14-R. 53, l. 13

Testimony of Randal Risher

In February of 2019, Risher was employed by SLED and was the case agent handling Appellant's cases. Risher was present when Appellant agreed to become a CI, but he claimed no promises were made to Appellant to induce him to work for SLED. Risher stated that Appellant was using narcotics while being a CI, was not reliable, and did not provide useful information to the investigation. He denied promising Appellant that he would not go to jail or that warrants would not be taken out for his arrest if he cooperated, and he stated that he does not have the authority to make such deals. R. 56, l. 13-58, l. 9.

On cross-examination, Risher claimed he could not recall if the testimony at Appellant's preliminary hearing was that he provided valuable information to the investigation. Risher was outside while Maffett was inside the home talking to Appellant about becoming a CI. However, he confirmed that Appellant was taken into the woods to discuss performing buys for SLED. Appellant did not make buys for Risher personally but did make buys for SLED. R. 58, l. 16-R. 61, l. 2.

Risher testified that law enforcement could not guarantee that a person would not go to jail, and what they told people is that if they worked with them, the officers would speak to the solicitor's office on their behalf. However, he did not speak to the solicitor's office on behalf of Appellant. Risher admitted that he held the warrants for Appellant's arrest from March 14 to May 1, 2019, despite the directive in the warrant to serve it forthwith, and during that time SLED had

Appellant making CI narcotic buys. He also conceded that law enforcement has the power to withdraw a warrant that has been issued. R. 61, l. 9- 66, l. 6.

During questioning, Risher often avoided answering defense counsel's question by stating that Appellant did not make any buys for him personally. Risher confirmed that SLED had a CI file on Appellant, and that the practice was to audio and visually record CI transactions. He also conceded that law enforcement has the discretion of whether to serve a warrant. R. 66, l. 15- 70, l. 20.

The trial court clarified that Risher was the case agent and that Appellant made buys for other SLED agents that reported directly to him. The court then requested to hear the audio from the preliminary hearing because the court found it "amazing" that Risher did not remember the testimony that Appellant provided valuable information. R. 70, l. 23- 74, l. 3. The tape[2] from the preliminary hearing was played, and Agent Maffett was heard testifying that Appellant provided valuable intelligence to SLED as a result of making the drug buys. R. (Unnumbered Ct Ex. - Preliminary hearing tape at 59 mins and 35 seconds).

Testimony of Jarrett Maffett

Maffett confirmed he was the undercover agent that worked with Appellant. He believed Appellant was under the influence at the time he agreed to be a CI because Appellant had overdosed a few days prior. Maffett asked Appellant to be a CI but claimed that he made no promises that Appellant would not go to jail or that warrants would not be taken out. He only told Appellant that they would talk to the solicitor's office about any help he provided in obtaining a

2 The tape from the preliminary hearing was moved into evidence without objection as a court's exhibit, however it was not labeled or included in the index of exhibits. The copy of the exhibit that is on file with this Court was obtained from the Hampton County Clerk of Court. R. 75, ll. 9-18

pill press. Maffett stated Appellant was not a reliable informant because he was under the influence, difficult to deal with, and did not get good video on any of the buys. He also stated Appellant failed to get the pill press. Maffett maintained he did not make an agreement with Appellant and that he did not have the authority to make an agreement with him. He also confirmed that he never spoke to the solicitor's office on Appellant's behalf. R. 79, l. 17- 84, l. 14.

On cross-examination, Maffett agreed that law enforcement had discretion over whether to serve a warrant on an individual and conceded that warrants were drawn up for Appellant on March 14, 2019, but not served on him until May 1. Maffett admitted that there were warrants drawn up on March 14, 2019, for Appellant's arrest, in case he refused to cooperate with SLED. R. 85, l. 4- 88, l. 23.

Maffett maintained that SLED's interest was in a single pill press and not the large quantity of narcotics Appellant had purchased as a CI. R. 89, l. 8- 90, l. 4. Maffett stated that when a buy is "not prosecutable" that agents do not write reports documenting the buy. Maffett admitted that the audio and visual recordings of the drug buys Appellant had made for them had been destroyed when he and his supervisor deemed the buys "non-prosecutable" and that the drugs had been put in for destruction but had not been destroyed at the time of the hearing. Maffett admitted that Amp was in prison based on a case made out by the Florence County Sheriff's Department after the buys that Appellant made on behalf of SLED. R. 93, l. 1- 94, l. 25.

Arguments by Counsel

Counsel Plexico argued that the "crux" of the motion for specific performance went to whether law enforcement had the authority to make a deal with a defendant to withhold warrants in return for cooperation. He posited that law enforcement officers are agents of the State with

prosecutorial powers, such as the ability to prosecute cases in magistrate and municipal courts, the discretion to bring charges, and the ability to determine when cases cannot be prosecuted, and thus those officers make promises and agreements that are binding on the State regarding the criminal prosecution of cases. Based on the testimony and evidence elicited during the hearing, Counsel Plexico asserted that the defense had shown there was a promise, that Appellant relied on that promise to his detriment, and that the SLED agents acted within their authority in making a binding promises not to obtain arrest warrants. R. 104-112; R. 121-123.

The State responded that there were three distinct questions before the court: 1) whether an agreement was made, 2) whether the offeror had the authority to make an agreement, and 3) whether there was detrimental reliance on the agreement. The State firmly denied that any agreement or promise had been made and argued that even if there had been a promise, the SLED agents had no authority to make any deals on behalf of the State. Further, the State contended that Appellant did not get to decide if the buys he made were good enough to show that detrimental reliance, and even though he did purchase drugs on behalf of SLED, he did not reach the ultimate goal of obtaining the pill press. Regarding the officer's testimony about not prosecuting a case, the State claimed that merely meant they made a probable cause determination. R. 112-121; 123.

Ruling by the Trial Court

The trial court began its ruling by finding the State's witnesses entirely incredible. The court stated,

> All right. Your witnesses are terrible. Your witnesses were not truthful. One of them was laughing at questions that Mr. Plexico was addressing. And while they were elementary questions, there's no need to be laughing and making googly faces.

How disrespectful. It's disrespectful to the officers of this court. It's disrespectful to this Court.

They said what they said. I have been haven't been on the bench long, but I practiced law a long time. I mean, the first gentleman was just deceitful in what he was saying, that he didn't recall. He's the lead investigator. Then to the fellow probably was your real lead investigator who was the guy who supervised all the buys wants to sit there and laugh. And then they don't want to prosecute this because they can't find a pill press. I believe you. They were after a pill press. Absolutely they were after a pill press. And he would have said anything and made any promise to get that pill press. That's what he wanted.

Then he walks in and the guy doesn't do a good job because he's hooked on drugs. They knew he was hooked on drugs. They walk in there, they know it. He was in the hospital the day before. I believe the day before, or two or three day before having OD'd. And they know he's a user, and then they're upset because he's not providing the type of information that they wanted, but he does go and buy what looks to me to be dozens, and dozens, and dozens of pills but they can't prosecute it because Amp gets picked up somewhere else, they just throw this aside. I absolutely believe that they made a promise to him.

R. 123, l. 19- 125, l. 3.

The trial court determined that the testimony of the defense witnesses was consistent, and their interpretation of the statements made by SLED as an agreement was reasonable under the circumstances. R. 125, ll. 4-13. The court further determined that the SLED agents put themselves forward as having the apparent authority to make deals on behalf of the State, did in fact make a promise to Appellant not to obtain warrants for his arrest, and that Appellant relied on that promise to his detriment. R. 126, ll. 10- 127, l. 5. However, the trial court denied the motion for specific performance, stating it was bound by the language in State v. Peake, 345 S.C. 72, 545 S.E.2d 840 (2001) and Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), that law enforcement does not have the authority to enter into an agreement on behalf of the State. R. 127, l. 19- 128, l. 15.

Discussion

An agreement made with a criminal defendant rest on contractual principles, and each party should receive the benefit of its bargain. However, the analysis of the agreement must be conducted at a more stringent level than a commercial contract because the rights involved are generally fundamental and constitutionally based. United States v. Ringling, 988 F. 2d 504, 506 (4th Cir. 1993). The enforcement of an agreement 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. State v. Peake at 77-78, 545 S.E.2d at 842-843. The inquiry of the court is threefold. The court must determine if a promise was made, if the defendant relied on the promise to his detriment, and whether the agent making the promise had the authority to do so.

"A defendant who seeks specifically to enforce a promise...contained in a freestanding cooperation agreement, must show ... that the promisor had actual authority to make the particular promise." United State v. Flemmi, 225 F.3d 78, 84 (1st Cir. 2000). When officers or agents are shown to have acted within the proper scope of their authority the State may be subject to estoppel. Goodwine v. Dorchester Dep't of Soc. Servs., 336 S.C. 413, 418–19, 519 S.E.2d 116, 118–19 (Ct.App.1999).

In Appellant's case, the trial court found that SLED had made a promise not to obtain arrest warrants for Appellant and that Appellant had relied on that promise to his detriment. The court denied the motion solely because it believed it was constrained by the language of Peake, which stated in a string cite that "law enforcement officers are utterly without power and authority to grant an accused immunity from arrest and prosecution for violating our criminal laws." Peake at 77-78, S.E.2d at 843 citing Yarber v. State, 375 So.2d 1212, 1227 (Ala.Crim.App.1977) *rev'd on other grounds*, 375 So.2d 1229 (Ala. 1978). Thus, the sole issue before this Court is whether the

SLED agents were acting within their authority when they promised not to obtain arrest warrants for Appellant.

Pursuant to S.C. Code Ann. § 22-5-110(B)(1) "[a]n arrest warrant may not be issued for the arrest of a person **unless sought by a law enforcement officer acting in their official capacity**." The statutory language is clear and unambiguous. See Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) (Under the "plain meaning rule," it is not the court's place to change the meaning of a clear and unambiguous statute; where statute's language is plain and unambiguous, and conveys a clear and definite meaning, rules of statutory interpretation are not needed, and the court has no right to impose another meaning). The authority to obtain an arrest warrant lies solely with law enforcement officers. From that authority flows the discretion to refrain from obtaining an arrest warrant. Therefore, when a law enforcement officer induces cooperation from a defendant through a promise not to obtain warrants for their arrest, the officer is acting within the proper scope of their authority.

That such a promise is within the scope of a law enforcement officers' authority is highlighted by the fact that law enforcement officers have other limited charging discretion in this state. Law enforcement officers prosecute, and decline to prosecute, cases in magistrate and municipal courts at the behest of the State. Law enforcement officers also regularly determine, without consulting with a solicitor's office, that a case cannot be prosecuted. They then proceed to dispose of evidence, body camera or other audio and visual recordings, and any narratives written about the case. Law enforcement officers regularly act with limited charging discretion in the exercising of their duties and authorities. While they may not be able to enter into an enforceable plea deal, they are certainly able to agree not to obtain arrest warrants for an individual in exchange for that person's cooperation.

The trial court ruled that the SLED officers were without authority to make a promise not to prosecute Appellant's case. However, the promise made in this case was not so broad. The promise was that the officers would not obtain arrest warrants for Appellant which was a discretionary decision within their authority to make. Based on the factual findings of the trial court and the authority of SLED to agree not to obtain warrants, Appellant was entitled to specific performance of the promise. Any warrants obtained against him from SLED should have been dismissed, and the case should not have proceeded to trial.

Lastly, even if this Court were to find that the SLED agents acted outside of their authority, fundamental fairness dictates that the promise made in this matter should be enforced. A narrow exception to the rule requiring actual authority to enter into an agreement exists when the government's noncompliance with an unauthorized promise would render a prosecution fundamentally unfair. Flemmi at 88 n.4. Admittedly, "if the fundamental-fairness exception is to truly operate as an *exception*—rather than as a nominal exception that proverbially swallows the rule—it must exclude from its ambit the mine-run (i.e., typical) case." United States v. Lilly, 810 F.3d 1205, 1216 (10th Cir. 2016).

Appellant's case is far from typical. As a direct result of the unenforced promise, Appellant was beaten while in jail and suffered a brain injury. He has permanent problems stemming from the incident. His mother was so in fear of her safety after Appellant was arrested and labeled a snitch, that she was compelled moved across the State. Additionally, SLED garnered valuable intelligence as a result of Appellant's CI work but could not use it because another agency made a case out on Amp first. Considering the sizeable quantity of drugs Appellant removed from the streets, the danger he and his family undertook in working with SLED, and the actual long lasting

physical injury he suffered, prosecution of the warrants that should never have been obtained was fundamentally unfair.

II.

The sentencing judge abused his discretion in declining to reconsider Appellant's sentence because the judge believed he could only publish the sentence but did not have the authority to alter the sentence.

Standard of Review

In criminal cases, the appellate court reviews only errors of law and is bound by the factual findings of the trial court unless the findings are clearly erroneous. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). The authority to change a sentence rest solely and exclusively within the discretion of the sentencing judge. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support. State v. Winkler, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010).

Relevant Facts

After the trial court denied Appellant's motion for specific performance, Appellant left the courthouse and did not return to trial. The trial proceeded in his absence, and a bench warrant was issued for his arrest. R. 129, l. 2- 130, l. 13. The jury ultimately found Appellant guilty as charged. Appellant's sentence was sealed until he could be brought before the court for sentencing. R. 133, ll. 12-18.

On February 3, 2022, Appellant was brought before the Honorable Michael Nettles to have his sentence published. R. 134. Solicitor Janowski represented the State, and Appellant was represented by Counsel Plexico. R. 134. When explaining the process of unsealing his sentence,

Judge Nettles stated "Judge Bonds sentenced you, and it is my duty and responsibility to publish the verdict. I – I can't change it, that's all – that's my responsibility here today." R. 137, l.22 - 138, l. 4. Prior to publishing the sentence, Counsel Plexico informed Judge Nettles that it was his belief that he could motion the court to amend the sentence after it was published. R. 139, ll. 7-10. Judge Nettles replied his understanding was that he could not change a verdict and suggested Appellant file an appeal. R. 139, ll. 11-14. Judge Nettles then published the sentence of the court, sentencing Appellant to concurrent terms of imprisonment for fifteen years on each indictment, with credit for any time served. R. 139, l. 20- 140, l. 17.

After the sentence was published, Counsel Plexico motioned the court to reduce Appellant's sentence to the mandatory minimum seven years on each indictment. Judge Nettles replied, "I'm – I'm not at liberty to do that. I'm here simply to publish." R. 140, ll. 18-24. Judge Nettles did allow Appellant's mother to address the court even though he would not reconsider Appellant's sentence. R. 142-147. After she finished speaking Judge Nettles stated

> All right, well, those are matters that can be addressed in appeal, and, Mr. Plexico, as 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 Order, which I don't think I could, I'm not inclined to do so, that would, specifically, sustain the sentence; however, all of those matters will be -- you'll be protected for appellate purposes.

R. 147, ll. 9-20.

Discussion

In State v. Smith, 276 S.C. 494, 280 S.E.2d 200, (1981), the defendant was tried in his absence and his sentence sealed. Upon having his sentence published, the defendant moved the court to modify or vacate his sentence. The sentencing court declined, believing he did not have jurisdiction to change the sentence. On appeal, our Supreme Court held that the authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercising

of his discretion. Our Court reiterated that "a sealed sentence does not become the judgment of the court until it is opened and read to the defendant." Id. *citing* Lytle v. Miller, 157 S.C. 332, 154 S.E. 225 (1930). The Court emphasized that, as long as the motion to alter, amend or modify a sentence was made during the term of court at which the sentence became the judgment of the court, the sentencing judge had jurisdiction to entertain the motion within his discretion.

In remanding the matter back to the circuit court for resentencing, the Smith Court wrote

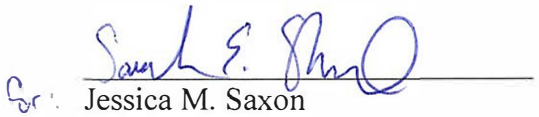
> It is apparent here the sentencing judge did not exercise any discretion but based his ruling on an erroneous view of the law. It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. We call to the attention of the bench and bar that the mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis the discretion was exercised.

Id. at 497–98, 280 S.E.2d at 201–02.

Appellant's case is analogous to Smith. Judge Nettles repeatedly stated that he was without authority to reconsider Appellant's sentence. However, Judge Nettles was the only individual who had the power to reconsider Appellant's sentence because, until he published the sentence, the judgment had not been entered and could not be modified. It is apparent from the record that Judge Nettles had an erroneous view of the law when he declined to entertain Appellant's motion to reconsider the sentence. Further, at the end of his ruling, Judge Nettles indicated that even *if* he had the authority to change the order of another circuit court judge, he was not inclined to do so. By making such a pronouncement, Judge Nettles refused to exercise his discretion and therefore abused his discretion. Based on the holding in Smith, Appellant respectfully requests this Court remand his case back to the Court of General Sessions for a hearing on his motion to reconsider his sentence.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests as to Issue I that this Court find the promise enforceable and remand the matter back to the lower court to dismiss the warrants. As to Issue II, Appellant respectfully requests this Court remand the matter to the lower court for a hearing on his motion to reconsider his sentence.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of October, 2023.