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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable George M. McFaddin, Jr., Circuit Court Judge
Appellate Case No. 2023-001541

THE STATE,

Respondent,

vs.

CHARLES DAVENPORT, JR.,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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II.

"Whether South Carolina law regarding sentencing gives adequate notice to a criminal defendant what factors will be considered by the court in imposing a sentence. Within the context of South Carolina's indeterminate sentencing structure, does this result in a denial of due process?"

COUNTER-STATEMENT OF ISSUES ON CERTIORARI

I.

Did the Court of Appeals correctly conclude the plea judge did not abuse his broad sentencing discretion or commit some other error of law by sentencing Davenport to a twenty-five-year term of imprisonment that was suspended to twenty years' imprisonment and a fine after Davenport knowingly and voluntarily pled guilty to felony driving under the influence resulting in a death when the sentence imposed fell within the permissible statutory sentencing limits for Davenport's offense and nothing appearing in the record established it was imposed as the result of any partiality, prejudice, corrupt motive, or improper considerations on the part of the plea judge?

II.

Did the Court of Appeals correctly conclude Davenport's appellate claim South Carolina's sentencing structure somehow violated his due process rights was not properly preserved for appellate review when it was neither raised to nor ruled upon by the plea judge? Moreover, is the Court of Appeals's conclusion regarding Davenport's due process claim now the law of the case since Davenport has not challenged the propriety of that conclusion in his petition for a writ of certiorari?

STATEMENT OF THE CASE

Procedural History

In November of 2017, Petitioner Charles Davenport, Jr. was arrested following an investigation into a truck and moped collision that resulted in the death of the moped's driver. In February of 2018, the Richland County Grand Jury indicted Davenport for felony driving under the influence ("DUI") resulting in a death. On November 8, 2018, Davenport appeared in the Richland County Court of General Sessions and entered a guilty plea to the indicted offense before the Honorable George M. McFaddin, Jr., circuit court judge. During the course of the plea hearing, the plea judge accepted Davenport's guilty plea and sentenced him to a twenty-five-year term of imprisonment that was suspended upon the service of a twenty-year term of imprisonment and a fine of $10,100. Thereafter, Davenport filed both a motion and a supplemental motion seeking reconsideration of the sentence. Subsequently, through an order dated April 12, 2020, the plea judge declined to reconsider Davenport's sentence. Davenport then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing—issued an unpublished decision unanimously affirming Davenport's conviction and sentence. State v. Davenport, Op. No. 2023-UP-090 (S.C. Ct. App. filed Mar. 15, 2023). Thereafter, Davenport timely filed a petition for rehearing, and the petition was denied. Following that, the Court of Appeals issued the remittitur on June 12, 2023, because no petition for a writ of certiorari had been filed.

Subsequently, on September 20, 2023, Davenport filed a motion seeking for the remittitur to be recalled. Shortly after that, Davenport filed a petition for a writ of certiorari in the Supreme Court. Following that, the Court of Appeals issued an order recalling the remittitur on October 4, 2023.

Factual History

Around 7:25 p.m. on the evening of November 15, 2017, David Newell, a twenty-two-year-old college senior attending the University of South Carolina and a staunch advocate against drunk driving, was driving along on his moped in the right-hand lane of Rosewood Drive in the City of Columbia. (R. pp. 7-8; p. 28; pp. 33-34; pp. 39-41; pp. 51-54). At that same time, Davenport, a twenty-three-year-old college junior, was also travelling along Rosewood Drive in his father's full-size pickup truck just behind Newell. (R. p. 7; pp. 57-58). However, unlike Newell, Davenport was not merely lawfully operating a vehicle on the roadway. (R. p. 7). Instead, Davenport was driving at a speed of approximately seventy-six miles per hour, which was more than double the posted speed limit of thirty-five miles per hour, and had his vehicle's accelerator pedal essentially pressed all the way to the floorboard. (R. pp. 12-13). Furthermore, Davenport was grossly intoxicated, had consumed so much alcohol his blood alcohol concentration was 0.154 percent, was also under the influence of recently-used marijuana, and was potentially under the influence of Xanax. (R. pp. 10-12; pp. 15-16).

Tragically, due to his substantial level of impairment from multiple sources combined with his reckless driving, Davenport crashed his truck into the back of Newell's moped, which caused catastrophic injuries to Newell and ejected Newell's body into the left-hand lane of the roadway. (R. p. 8; p. 13). Davenport then lost control of his vehicle and—while dragging Newell's moped along—careened off the roadway into a tree. (R. p. 8; p. 13). Significantly, the collision with the tree brought Davenport's truck to a halt, but Davenport was still depressing the vehicle's accelerator pedal at the time of impact. (R. p. 13).

In the immediate aftermath of those terrible events, multiple witnesses to the collision quickly alerted authorities of what had occurred, emergency personnel rapidly responded to the

scene, and both Newell and Davenport were rushed to the hospital. (R. pp. 8-9). However, by that point, Newell was already unresponsive. (R. p. 9). As to why, Newell had sustained multiple spinal fractures and traumatic brain injuries from the collision, and those injuries were both irreparable and wholly incompatible with life. (R. p. 13; p. 54). Sadly, Newell's time of death was recorded at the hospital not long after the collision, and he was subsequently removed from a life support system that kept his body functioning long enough for his family to get to his side and for arrangements to be made consistent with his previously-expressed desire to be an organ donor. (R. p. 13; p. 33; pp. 36-37; pp. 46-49; p. 51; p. 332).

Meanwhile, blood samples were collected from Davenport at the hospital, and an analysis of those samples revealed the extreme extent of his intoxication along with the presence of the alcohol and other substances in his system. (R. pp. 10-12). Furthermore, law enforcement officers investigating the collision attempted to speak with Davenport once he regained consciousness. (R. pp. 9-10). However, aside from revealing he had been at a friend's house prior to the collision, Davenport declined to make any further statements. (R. p. 10).

Ultimately, as a result of law enforcement's investigation, Davenport was arrested and indicted for felony DUI resulting in a death, and he elected to plead guilty to that offense. (R. pp. 3-4; pp. 13-14; pp. 327-328). During the course of the ensuing plea hearing, Davenport acknowledged he was facing a sentence between one and twenty-five years based on his plea. (R. pp. 5-6). Davenport further agreed the solicitor's summary of his criminal actions was "substantially" correct, and he personally confirmed he was guilty as charged.[1] (R. pp. 7-16).

[1] Notably, the defense's only quibble with the solicitor's account of Davenport's crime was a belief the Xanax detected in Davenport's system "may" have been administered during medical treatment provided after the collision. (R. pp. 15-16). However, Davenport directly affirmed there was no dispute concerning his use of alcohol and marijuana around the time of the collision. (R. p. 16).

Following those remarks, the plea judge accepted Davenport's guilty plea as freely, knowingly, voluntarily, and intelligently entered. (R. p. 17).

After the plea was accepted, a number of Newell's family members and friends addressed the court and provided statements about their profound and lasting grief over the loss caused by Davenport's "indefensible" choices. (R. pp. 18-56). Many of those individuals also requested the imposition of the maximum punishment while pointing to its high potential to serve as a powerful deterrent to other potential offenders. (R. pp. 18-56). In addition to those remarks, Davenport personally addressed the court, indicated he was "truly sorry," and attributed what occurred to his efforts to "self-medicate." (R. p. 59). However, Davenport also denied "just" being "completely reckless." (R. p. 59). Furthermore, many of Davenport's family members and friends spoke on his behalf and discussed his positive attributes. (R. pp. 60-76). Finally, defense counsel addressed the court, affirmed he believed the plea judge was "uniquely equipped to be objective and to consider everything" he heard based on his past experiences, and explicitly called the plea judge's attention to the fact Davenport had no prior record. (R. pp. 76-79).

Thereafter, the plea judge took the matter under advisement for several hours. (R. p. 80). He then returned to the courtroom and confirmed he reviewed everything that had been presented before reaching his sentencing decision. (R. p. 80). As to the basis for that decision, the plea judge explained he recognized Davenport did not intend his victim's death but noted Davenport nonetheless did choose to operate a vehicle under the influence of multiple intoxicating substances. (R. p. 81). He further indicated he gave consideration to Davenport's lack of a prior record and apparent remorse. (R. p. 81). However, the plea judge also indicated he gave consideration to the multiple aggravating factors involved, which included Davenport's consumption of both marijuana and alcohol and the fact Davenport was driving around twice the

posted speed limit on a city street. (R. p. 81). The plea judge then imposed a twenty-five-year sentence that was suspended to a twenty-year term of imprisonment along with a mandated fine of $10,100. (R. pp. 81-82).

Subsequent to the plea hearing, defense counsel filed a motion seeking reconsideration of Davenport's sentence.[2] (R. pp. 86-94). In seeking such relief, defense counsel alleged Davenport's sentence was not just a "surprise" but a "shock" and argued it was purportedly: (1) greater than necessary to achieve the goals of sentencing; (2) disproportionate in comparison to the sentences imposed in the past upon similarly-situated defendants; and (3) "excessive given the facts of the case." (R. p. 86). As support for those claims, defense counsel referenced data compiled regarding sentences imposed on offenders in South Carolina between 2014 and 2018 and alleged Davenport's sentence was above the average sentence imposed for other offenders convicted of felony DUI resulting in a death during that limited time frame. (R. pp. 86-87). Defense counsel also identified several aggravating factors— "prior convictions for others offenses, prior convictions for similar offenses, general lawlessness, and diagnosed or ignored personality or addiction generated misconduct"—that purportedly were of particular significance while maintaining none of those self-selected aggravating factors were present in Davenport's case. (R. p. 88). Furthermore, defense counsel maintained Davenport's sentence was "excessive" due to the fact Davenport lacked a prior criminal record, had support in the community, had a lower likelihood to be a repeat offender based on his status as a first-time offender, and had a high potential for rehabilitation based on his lack of "prior DUI convictions or a repeated history of lawlessness." (R. pp. 90-93). For all those reasons, defense counsel

[2] In addition to the reconsideration motion, defense counsel also submitted a supplemental motion with a partial transcript attached that contained remarks a different plea judge made before sentencing an offender who pled guilty to one count of felony DUI resulting in great bodily injury and one count of felony DUI resulting in death. (R. pp. 308-320).

urged the plea judge to reconsider Davenport's sentence while noting Davenport had accepted responsibility for his actions and understood he would have to serve a "substantial" sentence as a consequence of them.[3] (R. p. 93).

Upon giving the matter due consideration, the plea judge declined to reconsider Davenport's sentence. (R. pp. 321-324). In declining to do so, the plea judge explained he listened to everyone who spoke during the plea hearing, considered what they said, and imposed Davenport's sentence after thoughtfully evaluating the matter. (R. pp. 321-322; p. 324). Additionally, the plea judge noted the sentence he imposed complied with and fell within the limits established by the legislature for Davenport's crime. (R. p. 322). Furthermore, the plea judge indicated he provided an explanation for the sentence when it was imposed and reiterated he considered the following factors to be particularly important to his sentencing decision: (1) Davenport was heavily intoxicated; (2) Davenport had consumed multiple intoxicating substances; (3) Davenport was driving at a speed more than double the speed limit on a city street at or shortly before the point he collided with his victim's vehicle; (4) Davenport's victim was driving lawfully on the roadway at the time of the collision; and (5) Davenport was knowingly engaging in unlawful acts on the roadway at that same time. (R. pp. 322-323). Beyond that, the plea judge noted he considered defense counsel's arguments from the reconsideration motion along with the anecdotal evidence provided. (R. p. 323). However, the plea judge found the sentence imposed was nonetheless warranted. (R. pp. 323-324). For all those reasons, the plea judge denied the reconsideration motion. (R. p. 324).

[3] Significantly, defense counsel did *not* allege at any point in the reconsideration motion Davenport's due process rights were violated by the manner in which he was sentenced or raise any arguments as to the adequacy of the notice Davenport had received in regard to sentencing. (R. pp. 86-94).

Thereafter, Davenport appealed, arguing: (1) the plea judge purportedly abused his discretion by imposing the sentence imposed because he supposedly failed to "meaningfully consider" the mitigation evidence that was presented; and (2) South Carolina's sentencing structure somehow violated his due process rights. (App'x pp. 2-18). On appeal, the Court of Appeals affirmed. (App'x pp. 59-60). In affirming, the Court of Appeals held the plea judge did not abuse his discretion by sentencing Davenport because the sentence imposed fell within the permissible statutory sentencing range for Davenport's offense and Davenport failed to show the sentence resulted from partiality, prejudice, oppression, or corrupt motive. (App'x p. 60). Likewise, the Court of Appeals held Davenport's due process claim was not properly preserved for appellate review because it was not raised to the plea judge. (App'x p. 60).

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."[4] 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.").

[4] Notably, that limited standard of review differentiates South Carolina appellate courts from some out-of-state appellate courts that have been expressly conferred with wider authority to review sentencing decisions. See, e.g., Ind. R. App. P. 7 (establishing the scope of appellate review of a criminal sentence and permitting Indiana appellate courts to "revise" a statutorily-authorized sentence on appeal "if, after due consideration of the trial court's decision, the [appellate] [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender"); 42 Pa. Stat. and Cons. Stat. Ann. § 9781(c) (establishing the parameters of appellate review of criminal sentences in Pennsylvania and permitting appellate courts to evaluate sentences for reasonableness pursuant to established guidelines).

ARGUMENT

I.

The Court of Appeals correctly concluded the plea judge did not abuse his broad sentencing discretion or commit some other error of law by sentencing Davenport to a twenty-five-year term of imprisonment that was suspended to twenty years' imprisonment and a fine after Davenport knowingly and voluntarily pled guilty to felony driving under the influence resulting in a death because the sentence imposed fell within the permissible statutory sentencing limits for Davenport's offense and nothing appearing in the record established it was imposed as the result of any partiality, prejudice, corrupt motive, or improper considerations on the part of the plea judge.

Once again, Davenport contends the plea judge reversibly erred by sentencing him to a twenty-five-year term of imprisonment that was suspended to twenty years' imprisonment and a fine after he knowingly and voluntarily pled guilty to felony DUI resulting in a death, which—by Davenport's own admission—was an offense punishable by a term of imprisonment of up to twenty-five years. In support of that claim, Davenport again alleges the plea judge abused his broad sentencing discretion by purportedly failing to "meaningfully" consider the "tremendous amount" of mitigating evidence presented and by imposing a sentence that was allegedly "too punitive" for the deadly crime committed. To the contrary, the plea judge did not commit any error whatsoever when sentencing Davenport—or when refusing to reconsider the sentence imposed—because he imposed a sentence that fell within the permissible statutory sentence limits for Davenport's terrible offense after considering *all* the evidence presented to him, and nothing appearing in the record established the plea judge imposed Davenport's statutorily-authorized sentence as the result of any partiality, prejudice, corrupt motive, or improper considerations. Under such circumstances, there was and is no proper basis upon which Davenport's sentence can be disturbed on appeal, and, resultantly, the Court of Appeals correctly affirmed. Davenport's petition for a writ of certiorari should be denied.

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). Amongst the information that may be considered, the sentencing judge can consider such factors as the conduct or demeanor the defendant and the "atmosphere" of the proceedings if applicable when determining what sentence to impose. See Scates, 212 S.C. at 155, 46 S.E.2d at 695 ("It must be remembered that the demeanor and conduct of the prisoner, and the atmosphere of the trial, are not truly reflected in a cold, written record."). Likewise, the sentencing judge is fully permitted to consider one or more of variety of legitimate penological justifications—including retribution, incapacitation, deterrence, and rehabilitation—in deciding what sentence is appropriate under the circumstances. See Ewing v. California, 538 U.S. 11, 25 (2003) (plurality opinion) (instructing "[a] sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation[,]" and explaining there is no constitutional mandate requiring adoption of any one penological theory); Jones v. United States, 463 U.S. 354, 368-369 (1983) ("A particular sentence of incarceration is chosen to reflect society's view of the proper response to commission of a particular criminal offense, based on a variety of considerations such as retribution, deterrence, and rehabilitation."). 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.[5] 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.").

Notably, in State v. White, 311 S.C. 289, 296, 428 S.E.2d 740, 744 (Ct. App. 1993), the Court of Appeals addressed a challenge to a twenty-one-year sentence imposed following a conviction for felony DUI resulting in a death. In that case, evidence was presented establishing White crashed his vehicle while driving at a speed of approximately seventy-five to eighty miles per hour on an *interstate* highway, and White's *passenger* was killed as a result of the crash. Id. at 293, 428 S.E.2d at 742. Further evidence was presented establishing White's blood alcohol concentration was .079 percent several hours after the crash, and the presence of benzodiazepine was also detected in White's urine. Id. at 292, 428 S.E.2d at 742. White was ultimately convicted of felony DUI in connection to the fatal crash, and the trial judge sentenced him to a twenty-one-year term of imprisonment.[6] Id. at 296, 428 S.E.2d at 744. Following his conviction, White appealed, arguing his sentence was "excessive as a matter of law." Id. at 296,

[5] Perhaps tellingly, aside from making a conclusory statement in the notice of appeal, Davenport has not attempted to argue his sentence constituted cruel and unusual punishment on appeal. (Pet. for Cert. pp. 1-16; R. pp. 333-334; App'x pp. 2-18).

[6] Notably, nothing contained in the opinion in White suggests White had any prior convictions that impacted the trial judge's sentencing decision. White, 311 S.C. at 296-297, 428 S.E.2d at 744.

428 S.E.2d at 744. However, on appeal, the Court of Appeals rejected White's sentencing challenge as having "no merit whatsoever." Id. As support for that conclusion, the Court of Appeals simply noted White's sentence fell squarely within the statutory sentencing range for White's offense and, based on that alone, affirmed White's sentence without need for further analysis or discussion. Id.

In the case sub judice, Davenport selfishly chose to operate a motor vehicle on a South Carolina roadway while grossly intoxicated, and that legally-and-morally indefensible choice resulted—predictably—in the death of a blameless victim who did nothing other than attempt to lawfully drive his own vehicle at a time of day in which countless other people routinely do the exact same thing. See State v. Long, 186 S.C. 439, __, 195 S.E. 624, 627 (1938) ("[T]he driving of an automobile upon the public highway by a person while intoxicated is not only malum prohibitum, but malum in se."); see also State v. Grant, 483 A.2d 411, 414 (N.J. Super. Ct. App. Div. 1984) (characterizing a drunk driver as "one of the chief instrumentalities of human catastrophe"). Additionally, Davenport's blood alcohol concentration was well above the legal limit at that time, and he had also consumed at least one other substance—marijuana—that cannot even be legally possessed in our state. See S.C. Code Ann. § 44-53-370 (outlawing—amongst other things—possession of marijuana); S.C. Code Ann. § 56-5-2933(A) ("It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or more."). Furthermore, Davenport was unlawfully operating his vehicle—a full-size pickup truck—on a *city* street located in the heart of South Carolina's capital at a speed—seventy-six miles per hour—more than double the posted speed limit and in excess of the permissible speed limit on *any* South Carolina roadway, including our interstate highways. See S.C. Code Ann. § 56-5-1520(B)(1) (setting the maximum speed limit

for interstate highways in South Carolina at seventy miles per hour). Undeniably, Davenport's actions were exceedingly wrongful and dangerous, which is perhaps best demonstrated by the fact similar actions have been recognized as being sufficiently culpable to warrant a conviction for *murder*. Cf. State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675 (1957) (concluding evidence establishing Mouzon struck and killed a pedestrian while intoxicated and driving a vehicle at a speed of seventy to eighty miles per hour in an area with a posted speed limit of thirty-five miles per hour in the small town of Alcolu supported Mouzon's conviction for murder along with its accompanying life sentence).

As a consequence of his unjustifiable and illegal actions, Davenport—just like the defendant in White—was convicted of felony DUI resulting in a death. Resultantly, Davenport was facing—as he personally acknowledged during the plea hearing—a mandatory term of imprisonment of no less than one year up to a maximum term of imprisonment of twenty-five years. See S.C. Code Ann. § 56-5-2945(A)(2) (mandating a person convicted of felony DUI be punished "by a mandatory fine of not less than ten thousand one hundred dollars nor more than twenty-five thousand one hundred dollars and mandatory imprisonment for not less than one year nor more than twenty-five years when death results"); 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 Davenport and Davenport's crime, the plea judge elected to impose a sentence that would require Davenport to effectively serve a twenty-year term of imprisonment unless he engages in some further misconduct and serve no more than twenty-five years' imprisonment at the most. See State v.

Picklesimer, 388 S.C. 264, 270, 695 S.E.2d 845, 848-849 (2010) ("[U]nder no circumstances shall a defendant be incarcerated, or forced to participate in mandatory CSP or residual probation, stemming from the same conviction, outside of the time given by the trial judge in the original sentence, which encompasses both the suspended and unsuspended portions of the sentence."). Thus, the sentence imposed by the plea judge fell squarely within the applicable sentencing limits for Davenport's offense, and nothing was presented—or even identified by Davenport—suggesting the sentence was imposed as the result of some partiality, prejudice, or corrupt motive on the part of the plea judge. S.C. Code Ann. § 56-5-2945(A)(2); 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—just like the sentencing judge in White—did not abuse his broad discretion or otherwise err when sentencing Davenport, and there was and 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, Davenport maintained and continues to maintain the plea judge erred by allegedly failing to "meaningfully" consider the mitigating evidence presented and by purportedly imposing a sentence that was both "disproportionate to his crime" and "too punitive." Importantly though, the plea judge—and not Davenport himself—was the one tasked with evaluating the evidence presented and selecting an appropriate sentence under the circumstances involved. 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."); see also Solem v. Helm, 463 U.S. 277, 290, n. 16 (1983) ("Absent specific authority, it is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence[.]"); Reina-Rodriguez v. United States, 655 F.3d 1182, 1193 (9th Cir. 2011) ("Appellate courts are not sentencing courts."). And, while Davenport may have preferred the plea judge focus exclusively on Davenport's purported potential for rehabilitation or past positive actions, the plea judge was *not* required to do so and, instead, was fully permitted to consider other penological goals, such as deterrence or incapacitation, when deciding upon an appropriate punishment for Davenport's offense.[7] See Jones, 463 U.S. at 369 ("The State may punish a person convicted of a crime even if satisfied that he is unlikely to commit further crimes."); Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51, 55 (1937) ("[A state] may inflict a deserved penalty merely to vindicate the law or to deter or to reform the offender or for all of these purposes."); State v. Fletcher, 322 S.C. 256, 260, 471 S.E.2d 702, 704 (Ct. App. 1996) (recognizing "punishment of the offender" is a proper motivation for a sentencing judge).

[7] Demonstrating the significant need for deterrence in DUI cases, Davenport candidly acknowledged—and continues to acknowledge—on appeal his deadly offense was one that is "all too common." (Pet. for Cert. p. 4; App'x p. 6). Likewise, at least one extensive DUI-focused study has recognized the potential value of imposing sentences on first-time DUI offenders that are sufficiently severe to discourage recidivism, which is a particularly rampant problem in the context of DUI offenses. See William J. Rauch et al., Risk of Alcohol-Impaired Driving Recidivism Among First Offenders and Multiple Offenders, 100 Am. J. Pub. Health 919, 921-922 (2010) (concluding from a study of more than *one-hundred million* driving records collected over a three-decade span of time "the rate of a subsequent [DUI] violation was increased 615% by the first violation," indicating the study's findings "call into question" the soundness of lenient sanctions being imposed upon first-time DUI offenders, explaining its findings "demonstrate the significance of any first arrest in terms of risk of recidivism," and noting surveyed offenders overwhelmingly reported "they would have been less likely to recidivate if their sanctions for a first offense had been more severe").

Critically, as demonstrated by the plea judge's thorough explanation for his sentence, the plea judge carried out his difficult sentencing task by carefully evaluating *everything* presented to him, and the sentence he elected to impose after doing so fell within the appropriate sentencing limits for Davenport's crime. Cf. State v. Harrison, 402 S.C. 288, 303, 741 S.E.2d 727, 735 (2013) ("The trial court's statements at sentencing are the very embodiment of proportionality, and the court performed the analysis envisioned by the statute's broad penalty provision and in sentencing [Harrison] based on the facts and circumstances of the case."); 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."). Beyond that, as reflected by the strikingly-similar sentence imposed in White for the exact same offense, the sentence imposed upon Davenport was *not* disproportionate—grossly or otherwise—to the seriousness of his highly-dangerous and reckless offense, which was one that resulted in irreparable harm in the form of the death of an innocent victim through extreme actions that were both totally unjustifiable and completely avoidable.[8] See Brooks v. State, 325 S.C. 269, 272,

[8] Notably, unless a sentence imposed is *grossly* disproportionate to the offense committed, it is unnecessary for purposes of a proportionality analysis to compare that sentence to the sentences imposed on other offenders convicted of similar crimes. Harrison, 402 S.C. at 299-300, 741 S.E.2d at 733; see also State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) ("The cruel

481 S.E.2d 712, 713 (1997) ("A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant."); see also Missouri v. McNeely, 569 U.S. 141, 160 (2013) (explaining drunk driving is a problem that "continues to exact a terrible toll on our society"); Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 451 (1990) ("No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it."); South Dakota v. Neville, 459 U.S. 553, 558 (1983) ("The situation underlying this case—that of the drunk driver—occurs with tragic frequency on our Nation's highways. The carnage caused by drunk drivers is well documented[.]"); Breithaupt v. Abram, 352 U.S. 432, 439 (1957) ("The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield."). As a result, the fact Davenport may have personally wished the plea judge evaluated the pertinent sentencing factors differently and in a way that resulted in a sentence more to his liking does not in any way support a conclusion the plea judge abused his discretion or otherwise erred by imposing the sentence he imposed. 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. People v. Cruz, 141 N.E.3d 1119, 1131 (Ill. App. Ct. 2019) ("[A]ll of the factors cited by [Cruz] on appeal were presented to the trial court and are presumed to have been considered appropriately. . . . [Cruz]'s argument is actually that the court did not weigh his potential for rehabilitation heavily enough. We decline to substitute our own judgment on the weight of such factors for that of the trial court. The trial court was not required to assign more weight to [Cruz]'s rehabilitative

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and unusual punishment clause requires the duration of a sentence not be *grossly* out of proportion with the severity of the crime." (emphasis added)).

potential than to the seriousness of the offense, which is the most important sentencing factor." (citations omitted)); State v. Helms, 40 P.3d 626, 630 (Utah 2002) ("[T]he fact that Helms views his situation differently than did the trial court does not prove that the trial court neglected to consider the [sentencing] factors listed in [a specific Utah statutory provision].").

Accordingly, since Davenport's sentence fell within the appropriate statutory sentencing limits for his grievous offense and nothing suggested it was imposed based on partiality, prejudice, oppression, corrupt motive, or any other improper considerations, the plea judge—just as the Court of Appeals correctly held—did not abuse his broad discretion or commit any other error of law when imposing a legislatively-sanctioned sentence for felony DUI resulting in a death, and there was and is no proper basis upon which to disturb Davenport's sentence on appeal. 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."); State v. Johnson, 159 S.C. 165, 170, 156 S.E. 353, 354 (1930) ("This Court has no jurisdiction on appeal to correct a sentence alleged to be excessive, when it is within the limits prescribed by law. The length of the prison sentence rests in the sound discretion of the trial Court unless partiality, prejudice, oppression, or corrupt motive is shown."). Davenport's petition for a writ of certiorari should be denied.

II.

The Court of Appeals correctly concluded Davenport's appellate claim South Carolina's sentencing structure somehow violated his due process rights was not properly preserved for appellate review because it was neither raised to nor ruled upon by the plea judge. Moreover, the Court of Appeals's conclusion regarding Davenport's due process claim has now become the law of the case because Davenport has not challenged the propriety of that conclusion in his petition for a writ of certiorari.

In his petition for a writ of certiorari, Davenport—like he did in the brief he submitted to the Court of Appeals—appears to be challenging his sentence on due process grounds. However, just as the Court of Appeals correctly recognized, Davenport neither raised any due process arguments to the plea judge nor asserted he had not received adequate notice as to sentencing, and the plea judge obviously did not rule on those arguments since they were never raised. As a result, Davenport's due process claim was—just as the Court of Appeals correctly found—not properly preserved for appellate review and, thus, could not and cannot appropriately be considered or addressed for the first time on appeal. Beyond that, Davenport has not in his petition for a writ of certiorari challenged—or even acknowledged—the Court of Appeals's conclusion the due process claim was not properly preserved for appellate review. Under such circumstances, that unappealed ruling—even if it could somehow have been wrong, which it decidedly was not—has now become the law of the case. Davenport's petition for a writ of certiorari should be denied.[9]

[9] Furthermore, even if Davenport's due process claim could somehow appropriately be considered for the first time on appeal, it was and is nonetheless—for reasons this Court has previously articulated—wrong on the merits. Cf. Harrison, 402 S.C. at 310, 741 S.E.2d at 739 (rejecting Harrison's request for the appellate court to direct the legislature to adopt "a sentencing structure in uniformity and harmony with an undefined number of states" due to the fact such a request would run contrary to the broad authority of the legislature to determine "the types and limits of punishments for crimes"). Demonstrating the wrongfulness of Davenport's due process claim, the plea judge ensured Davenport was fully aware of the sentencing range for his offense before accepting Davenport's guilty plea, and Davenport personally affirmed he understood he could be lawfully sentenced to a term of imprisonment of one to twenty-five

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the trial court is guaranteed a chance "to rule properly after it considered all relevant facts, law, and arguments[,]" and the appellate court is provided with everything needed to properly review whatever ruling is made within the limits of the applicable standard of review. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see State v. Stone, 376 S.C. 32, 36, 655 S.E.2d 487, 488-489 (2007) ("If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call."); Queen's Grant, 368 S.C. at 373, 628 S.E.2d at 919 ("The rationale for the [error preservation] rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error.").

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years. (R. pp. 5-6). Based on that, Davenport possessed all the notice to which he was entitled regarding sentencing, and he could validly and fairly be sentenced to a term of imprisonment falling within the permissible sentencing limits of which he was fully aware. See Beckles v. United States, 580 U.S. 256, 265-266 (2017) (recognizing a system of "unfettered" sentencing discretion is not unconstitutional and instructing "[a]ll of the notice required is provided by the applicable sentencing range, which establishes the permissible bounds of the court's sentencing discretion"); United States v. Booker, 543 U.S. 220, 233 (2005) ("We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range."). Therefore, notwithstanding the glaring issue preservation problems that exist in this case, the plea judge did not violate Davenport's due process rights by imposing a statutorily-authorized sentence for Davenport's crime even though the plea judge's discretion over the matter was somewhat broad in scope. See Beckles, 580 U.S. at 264 ("[O]ur cases have never suggested that a defendant can successfully challenge as vague a sentencing statute conferring discretion to select an appropriate sentence from within a statutory range, even when that discretion is unfettered."); Apprendi v. New Jersey, 530 U.S. 466, 481 (2000) (recognizing it is not impermissible for sentencing judges to "exercise discretion—taking into consideration various factors relating both to offense and offender—in imposing a judgment *within the range* prescribed by statute").

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Thus, based on those requirements, an issue—including a constitutional one—cannot ordinarily be raised or considered on appeal unless it was first presented to and ruled upon by the trial judge. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be reviewed[.]"); In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.").

In the case at bar, Davenport contended on appeal and continues to contend South Carolina's sentencing laws categorically result in a denial of due process because the broad sentencing discretion afforded to sentencing judges in our state purportedly does not give adequate notice to a defendant as to what factors will be considered during the sentencing process. Beyond that, Davenport maintained and continues to maintain principles of fundamental fairness demand "a criminal defendant should be allowed to plead guilty and be sentenced by a judge who is committed to meaningfully assessing all of the mitigation evidence he has marshalled on his behalf." Furthermore, Davenport chastised the Court of Appeals and now chastises this Court for somehow "abdicat[ing] its duty" to ensure "fairness in the system" by "not requiring judges to put their sentencing reasoning on the record to facilitate meaningful appellate review" of sentences. Davenport then urges this Court to remand his case for

resentencing while providing advisory guidance to the plea judge "as to what mitigating and aggravating factors the court should use to guide his discretion" when imposing a sentence.

Critically though, during the circuit court proceedings in Davenport's case, defense counsel did not: (1) argue Davenport did not have constitutionally-sufficient notice as to what factors would be considered during sentencing; (2) allege the broad discretion afforded to sentencing judges in South Carolina was violative of due process in some manner; (3) contend the plea judge failed to identify—adequately or otherwise—the reasons upon which he based his sentencing decision in Davenport's case; (4) ask the plea judge to provide a fuller explanation of why he imposed the sentence he imposed; or (5) even mention due process *at all*. See Patterson, 324 S.C. at 19, 482 S.E.2d at 767 (instructing an appellant is limited on appeal solely to the grounds raised at trial). Thus, *none* of the arguments currently being raised in support of Davenport's apparent due process challenge to his sentence were actually raised to or ruled upon by the plea judge.[10] See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."); cf. State v. Baker, 390 S.C. 56, 65, 700 S.E.2d 440, 444 (Ct. App. 2010) ("Baker cannot now add a constitutional claim on appeal because he cannot raise one ground to the trial court and a different ground on appeal.").

Accordingly, to the extent Davenport was—and still is—attempting to challenge his sentence on constitutional grounds for the first time on appeal, the Court of Appeals correctly rejected that challenge on issue preservation grounds because it was simply not properly preserved for appellate review pursuant to our well-established issue preservation requirements.

[10] Interestingly, the issue of due process was first referenced in the notice of appeal, which contained a statement indicating a due process argument "may" potentially be raised on appeal. (R. pp. 333-334).

Cf. State v. Charron, 351 S.C. 319, 328, 569 S.E.2d 388, 393 (Ct. App. 2002) (finding allegations of due process and equal protection violations were not preserved for appellate review when there was no indication those issues were raised to the trial judge). Moreover, since Davenport has *not* challenged in his petition for a writ of certiorari the propriety of the Court of Appeals's conclusion the due process claim was not properly preserved for appellate review, that unappealed ruling of the Court of Appeals has now become the law of the case. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case). Davenport's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted Petitioner's petition for a writ of certiorari should be denied.

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