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Oct 13 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSE MARTIN GUZMAN-PLIEGO,

APPELLANT

APPELLATE CASE NO. 2023-000263

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

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

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STATEMENT OF ISSUE ON APPEAL

Did the plea court err in denying Appellant's motion to reconsider his sentence where the court failed to hold a hearing on the motion and did not articulate any basis for denying the motion?

STATEMENT OF THE CASE

Appellant was indicted by the Pickens County grand jury during its March 2022 term for two counts of driving under the influence resulting in death and two counts of driving of the influence resulting in great bodily injury. R. 27. On February 2, 2023, Appellant appeared before the Honorable Perry H. Gravely to plead guilty as indicted. The State was represented by Seth Johnson. Appellant was represented by Ryan James. R. 1. Judge Gravely sentenced Appellant to an aggregate term of imprisonment of thirty-six years on the DUI with death resulting charges and ten years each, concurrent, on the DUI with great bodily injury charges. R. 22; R. 35.

Counsel James filed a motion to reconsider the sentence on February 7, 2023. R. 24. No hearing was held on the motion. Judge Gravely denied the motion to reconsider by written order on February 16, 2023. R. 26.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Vick, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous.” Id. (quoting Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829). The authority to change a sentence rests 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). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

The plea court erred in denying Appellant's motion to reconsider his sentence where the court failed to hold a hearing on the motion and did not articulate any basis for denying the motion.

Relevant Facts

On November 4, 2021, at approximately 6:51 p.m., Appellant was driving home after drinking some alcoholic beverages when he rear-ended a vehicle being driven by Gladys Holbrooks. In the car with Holbrooks were two of her grandchildren, Barry Durham and Katherine Rhodes, and their children, six-year-old Cameron and four-year-old Kynsee. Tragically, Holbrooks and Cameron were killed in the accident. Durham suffered numerous injuries including a severe pelvic fracture. Both of Kynsee's legs were broken in the crash and she suffered a spinal injury causing partial paralysis. R. 7, ll. 6-25. Information gathered from the vehicle's computers revealed that Appellant was driving at 100 miles per hour at the time of the impact and never hit the brakes. Holbrooks was traveling at 50 miles per hour when the collision occurred. R. 8, ll. 2-7.

A search warrant was obtained for Appellant's blood. A blood draw that was taken at 10:29 p.m. revealed Appellant's alcohol content was .174. Prior to the plea, defense counsel filed a motion to suppress the blood evidence due to a defective chain of custody. However, Judge Gravely ruled that the motion was best heard by the trial judge. R. 8, ll. 11-25. The State expressed during the plea hearing that it believed it could cure any issues with the chain and had discussed that at length with defense counsel, which led to the plea. R. 8, l. 25-R. 9, l. 3.

Appellant's prior record consisted of two prior DUI offenses for which he was convicted and sentenced to pay a fine, and a driving under suspension conviction. The State informed the

plea court that Appellant was also under an ICE hold. R. 10, l. 13-R. 11, l. 2. The State asked that Appellant be sentenced to the maximum sentence under the law and that the sentences be run consecutively. R. 11, ll. 4-23. Defense counsel, after discussing the technical aspects of the crash and the merits of the suppression motion, requested concurrent sentences in the ten-to-twelve-year range on all the charges. R. 17, l. 11-R. 21, l. 9.

Judge Gravely sentence Appellant to eighteen years imprisonment on each DUI with death charge, sentences to run consecutively, and ten years imprisonment, to run concurrently, on each DUI with great bodily injury charge. Appellant was sentenced to an aggregate term of thirty-six years imprisonment. R. 22, ll. 8-14.

Defense counsel filed a motion to reconsider the sentence. Counsel argued that Appellant pled, in part, because Judge Gravely refused to hear the suppression motion. Counsel stated that had the court heard the motion and the blood had been suppressed that it could have positioned the defense to seek a plea to reckless vehicular homicide which carried a maximum penalty of ten years. Counsel additionally argued that the sentence was unduly harsh considering that Appellant's prior record only contained two DUI charges and no violent or serious offenses. Defense counsel requested a hearing be set on the motion. R. 24.

In a written order Judge Gravely determined that a hearing was not necessary to consider the motion and that Appellant had not submitted a sufficient basis for a reconsideration of his sentence. The order denying the motion to reconsider was signed on February 16, 2023. R. 26.

Discussion

While the authority to change a sentence rests solely within the discretion of the sentencing judge, the judge is required to articulate on what basis their discretion was exercised. In State v. Smith, Smith had been tried in his absence, and his sentence was sealed. Smith, 276

S.C. 494, 496, 280 S.E.2d 200, 201 (1981). After his sentence was published, Smith moved for reconsideration. Id. The judge denied Smith's motion, stating he lacked the jurisdiction to change the sentence. Id. at 497, 280 S.E.2d at 201. This Court held that the motion, although heard later, was "made within the term of court at which the sentence became the judgment of the court, to the sentencing judge," and he therefore had the jurisdiction to alter, amend or modify the sentence. Id. at 498, 280 S.E.2d at 202. This Court found that the judge did not exercise any discretion at all but based his ruling on an erroneous view of the law. Id. The Court stated

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. (emphasis added).

Rule 29(a) of the South Carolina Rules of Criminal Procedure provides:

The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action **for the purpose of hearing and disposing of the motion** if not heard and disposed of during the term. Except by consent of the parties, **argument on the motion shall be heard** in the circuit where the trial or hearing was held. **The motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument.**

Rule 29(a), SCRCrimP (emphasis added).

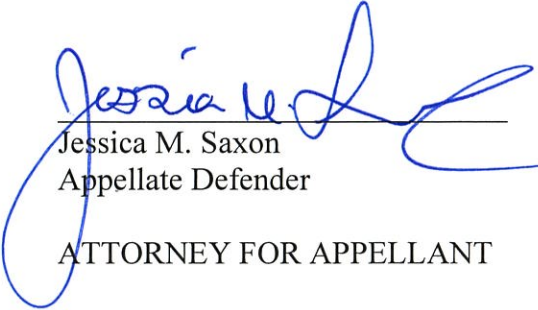
Under the plain language of Rule 29, SCRCrimP, when a party makes a post-trial motion, the judge shall hear the motion. Only when the parties file briefs may a decision of the court be made without oral argument. In the instant case, Appellant, through counsel, requested that a hearing be scheduled on the motion to reconsider. However, no hearing was held. Instead, in a

written order the plea judge found that “no hearing was necessary” but did not state any reasons supporting its determination. Further, while defense counsel filed a written motion, it was hardly a brief as it merely stated the grounds for the motion but did not argue them in a meaningful fashion. And at no point did the State file a response to the motion. Thus, the judge erred in failing to hold a hearing and failing to articulate any reasons for not holding a hearing.

The plea court further erred in failing to state why the grounds articulated by Appellant were not a “sufficient basis for a reconsideration of the sentence.” Without an articulated reason, this Court can only guess the motives of the sentencing court and therefore cannot determine if discretion was used. Here, the plea court made discretionary decisions without stating the basis of the decisions. Thus, the plea court failed to exercise its discretion in denying the motion and Appellant should have his case remanded for sentence reconsideration. See State v. Smith, supra.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this court remand the matter back to the Court of General Sessions of Pickens County for a hearing on the motion to reconsider.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 13th day of October, 2023.

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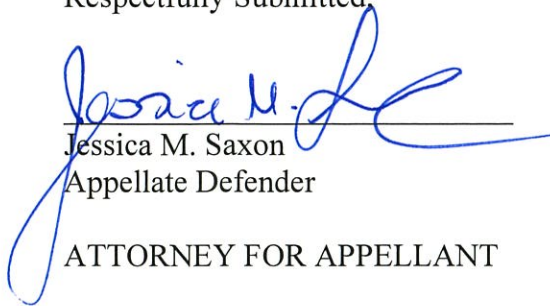
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jose Martin Guzman-Pliego states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Perry H. Gravely, which was held on February 2, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, she asks the Court to relieve her as counsel for Jose Martin Guzman-Pliego.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of October, 2023.

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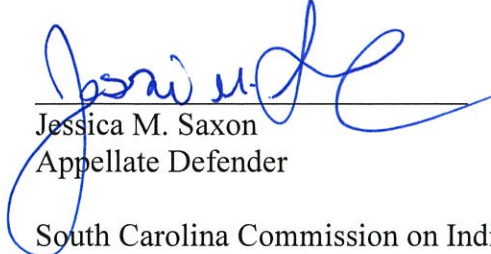
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Guilty plea transcript dated February 2, 2023;
- (2) Motion to reconsider sentence;
- (3) Order denying motion to reconsider sentence;
- (4) True-billed indictment(s); and
- (5) Sentence sheets

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



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This 13th day of October, 2023.

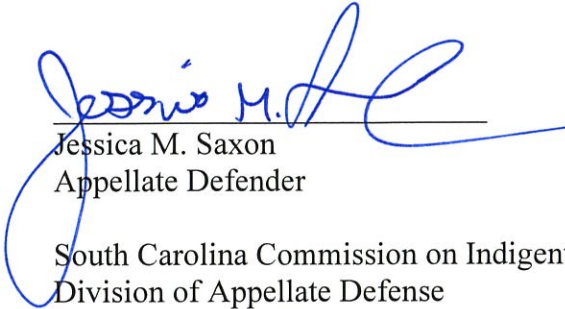
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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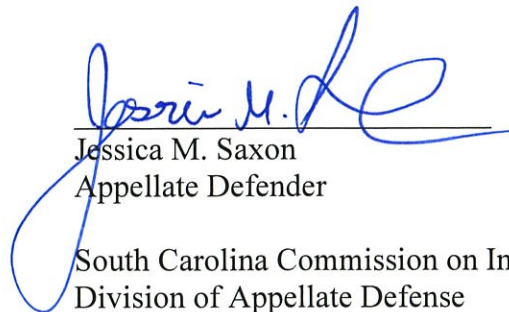
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APPELLATE CASE NO. 2023-000263

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jose Martin Guzman-Pliego, #390149, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 13th day of October, 2023.



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