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Nov 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.

JOSHUA WYTE KELLEY,

APPELLANT

APPELLATE CASE NO. 2023-000750

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in issuing a civil judgement, which was tantamount to an order of restitution, against appellant for payment of medical bills incurred by the prosecutrix because no hearing was held to document or confirm the actual amount owed in the matter.

STATEMENT OF THE CASE

Appellant Joshua Wyte Kelley was found guilty of criminal domestic violence of a high and aggravated nature per jury trial held during the April 2023 term of the Pickens County General Sessions Court before Judge Perry H. Gravely. Appellant was sentenced to imprisonment for a period of fifteen years. Richard Harold Warder represented appellant at trial, and Assistant Solicitor Sarah Christine Fowler prosecuted the case.

Appellant appealed his conviction and sentence. This brief follows.

STANDARD OF REVIEW

On appeal, the court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. State v. Sheldon, 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981). A judge or other sentencing authority is to be accorded with discretion in determining an appropriate sentence and must be permitted to consider any and all information that reasonably might bear on sentencing. Supra.

ARGUMENT

The trial judge erred in issuing a civil judgement, which was tantamount to an order of restitution, against appellant for payment of medical bills incurred by the prosecutrix because no hearing was held to document or confirm the actual amount owed in the matter.

State's witness Kelli Harris testified that she and appellant were living together when the event in question occurred on February 23, 2021. Harris stated that when she asked appellant to stop taking the parts of the engine from her vehicle in his attempt to fix it, he responded by "choking" and "punching" her. Harris suffered facial, neck, and jaw injuries as a result of what happened on that date. R. 55, 1.21-p. 78, 1.10. Appellant raised self-defense and testified at trial. Appellant explained that Harris attacked him with a skateboard, a wrench, a pipe, and a baseball bat; and that he had to push her away to escape. R. 137, 1.14-p. 150, 1.9.

At sentencing, the following colloquy took place:

Court: I have been presented with a sentencing sheet, permanent restraining order, and a civil judgement. R. 203, lines 15-16. What is the nature of the civil judgement. R. 204, lines 16-17.

Solicitor: The state is asking for a civil judgement in the amount of \$1,200...these are outstanding medical bills that Ms. Harris still has...I don't believe that she should have to pay for injuries and medical bills that were caused by the defendant. R. 204, 1.19-p. 205, 1.1

Court: [Defense Counsel]...what is your position on the civil judgement.

Defense Counsel: If you give him a judgement; I don't know what he can do to pay it. R. 205, 1.9-11.

The Court: Let me stop you. This is my feeling on civil judgement. Since nothing has been presented, either we can—it can be with consent or if they want to go forward with it, then we can have, I guess, a restitution hearing if needed. I mean, because otherwise, I haven't been presented with any bills or any – to make any

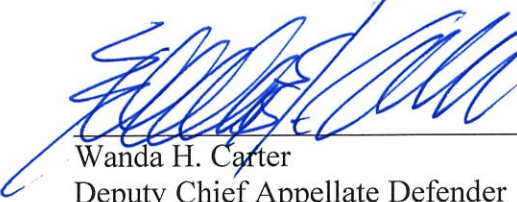
findings without more. I think as a practical matter, it probably doesn't make a difference. R. 205, lines 12-19.

The Court: Right. I mean, that's—yeah. That's – it will just be—it's not a restitution order. It's a judgement. So it will just be a judgement against his—any personal –I mean any real property. R. 205, l.23-p. 206, l.1.

Contrary to the trial judge's belief, the civil judgment was the equivalent of a restitution order issued in the case. When a defendant is convicted of a crime causing pecuniary damage or loss to a victim, then S.C. Code §17-25-322 requires the court hold a hearing to determine the amount of restitution due to the victim as a result of the acts. See State v. Morgan, 417 S.C. 338, 790 S.E.2d 27 (2006). See also S.C. Code Ann §16-3-1110(12). The restitution hearing is part of the sentencing hearing. State v. Gullledge, 323 S.C. 220, 487 S.E.2d 590 (1997). Our Court has held that before a judge can order reparations to a victim, it must hold a hearing to determine the actual amount of loss or damage incurred in a case. State v. Fussell 299 S.C. 162, 383 S.E.2d 1 (1989), citing to State v. Wilson, 274 S.C. 352, 264 S.E.2d 414 (1980). In the case at bar, the trial judge held no hearing or inquiry whatsoever regarding the amount of medical bills incurred by the prosecutrix in the case. No documentation was presented regarding the monetary loss in the matter. The solicitor stated an amount of \$1200.00 as an estimate of without any supporting evidence to authenticate and verify the same. There was no accounting for the actual amount owed for damages in the case. The trial judge erred in issuing a civil judgement, which was tantamount to an order of restitution without holding a hearing in the matter.

CONCLUSION

Based on the foregoing argument, counsel for appellant would ask that this court vacate the civil judgment order signed in the case.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2023.

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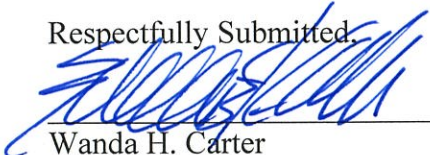
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joshua Wyte Kelley states:

1. She is Deputy Chief 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 April 26-27, 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 Joshua Wyte Kelley.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2023.

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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) Trial Transcript dated April 26-27, 2023
- (2) Indictment
- (3) Sentence Sheet
- (4) Civil Judgement Order

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



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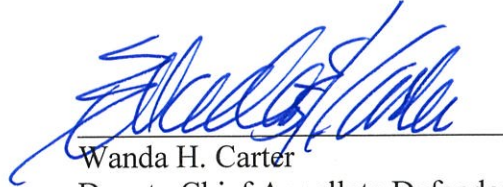
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CERTIFICATE OF COUNSEL

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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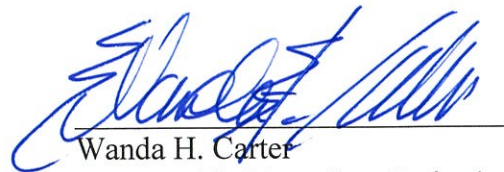
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CERTIFICATE OF SERVICE

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 Joshua Wyte Kelley, #390854, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067, this 13th day of November, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT