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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LATOYA D. RIVERS,

APPELLANT

APPELLATE CASE NO. 2023-001235

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

Whether the circuit court erred in denying Appellant's motion to reconsider sentence where the court improperly considering a pending escape charge in denying the motion?

STATEMENT OF THE CASE

Appellant was indicted by the Richland County grand jury during its November 2021 term for one count of attempted murder. R. 13. On May 8, 2023, Appellant appeared before the Honorable Michael Nettles to enter a plea to the lesser included offense of assault and battery first degree. R. 1; R. 3. Appellant was represented by Robert Forney. The State was represented by Keith Taylor. R. 1.

The State informed the court that in exchange for the plea, it would remain silent as to sentencing and would be dismissing a felony DUI with great bodily injury charge. R. 4, ll. 4-9. The court ultimately sentenced Appellant to ten years imprisonment, suspended upon the service of six years with one year of probation to follow. R. 11, ll. 7-13.

Counsel Forney timely filed a motion to reconsider Appellant's sentence. R. 17. A hearing was held on the motion via WebEx on June 28, 2023. R. 19. At the conclusion of the hearing Judge Nettles took the matter under advisement. R. 40, ll. 16-18. An order denying the motion to reconsider was filed on July 24, 2023. R. 43.

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 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). 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).

ARGUMENT

The circuit court erred in denying Appellant's motion to reconsider sentence where the court improperly considering a pending escape charge in denying the motion.

Relevant Facts

On January 4, 2021, at approximately six in the morning Ruthie Campbell was at the apartment of Edrell Simmons performing a custody exchange. Campbell and Simmons have a child in common. Simmons also has a child in common with Appellant. As Campbell was placing a car seat in her vehicle, Appellant drove her vehicle forward and pinned Campbell between the two vehicles. Campbell pulled out a pistol and fired three shots at Appellant's vehicle, striking Appellant once in the face. R. 4, l. 13-R. 5, l. 19.

Medical records from the emergency room visit revealed that Campbell received a thigh contusion during the incident. R. 10, ll. 9-11; R. 27, ll. 14-20. At the plea hearing the State and Campbell alleged that she had undergone two major knee surgeries and had a third planned as a result of the incident. R. 8, ll. 16-19. Counsel Forney informed the court that he had not seen any records regarding the surgeries. R. 10, ll. 11-12. Counsel Forney argued that Appellant was the mother of five children, was eight months pregnant, and had a minimal prior record consisting of a DUI and a public disorderly conduct charge in 2017 which made her a good candidate for probation. R. 9, l. 23-R. 10, l. 3. Prior to sentencing the court inquired of the victim's advocate whether Campbell had indeed undergone surgeries. The victim's advocate responded that Campbell had confirmed the surgeries and had scars on her knees. R. 10, l. 18-R. 11, l. 2. Appellant was ultimately sentenced to active time in prison.

Counsel Forney moved to reconsider Appellant's sentence. R. 17. At the hearing on the motion the State argued that Appellant's sentence should remain in place because she had

escaped custody after being sentenced. The State alleged that after sentencing, Appellant was transported to the hospital complaining of stomach pains. The guard assigned to Appellant went to the restroom and while the guard was gone Appellant purportedly walked out of the hospital. The following afternoon, Appellant returned to the county jail. R. 24, l. 18-R. 25, l. 12. In discussing Campbell's medical records, the State confirmed that she had undergone two knee surgeries since the incident. Additionally, the State informed the court that Campbell had admitted to having knee problems prior to the incident but stated she did not require surgery until after the incident. R. 25, l. 13-R. 26, l. 11.

Counsel Forney argued that the knee surgeries were the result of degenerative changes and not any acute injuries. He stated that he did not believe the incident contributed to the knee injuries as Campbell's only diagnosis from the incident date was a thigh contusion. He also stated that Campbell's medical records noted that some of the weakness she experienced was from not doing the home exercises. R. 26, l. 20-R. 29, l. 7. When asked about the escape charge, Counsel Forney was "hesitant to discuss it" and felt it was "premature when the prosecutor himself says we don't have full discovery." R. 29, ll. 18-22. The court questioned whether the escape charge showed a "disregard for the law." Counsel Forney argued that Appellant's actions did not show a disregard for the law because she turned herself in the following day. He stated, "there is a difference between a moment of panic and a sincere desire to evade legal consequences. I think this is much closer to the former." R. 30, ll. 10-22.

Discussion

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). "A judge or other sentencing authority is to be accorded very wide discretion in

determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” Id. (internal citations omitted). A defendant's record of **previous criminal convictions** has always been deemed relevant in the imposition of sentences. State v. Gaskins, 284 S.C. 105, 127, 326 S.E.2d 132, 145 (1985), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (emphasis added). While a court is granted wide discretion in sentencing, “a defendant retains the rights not to be sentenced on the basis of an invalid premises.” State v. Rich, 269 S.C. 701, 704, 239 S.E.2d 731, 732 (1977).

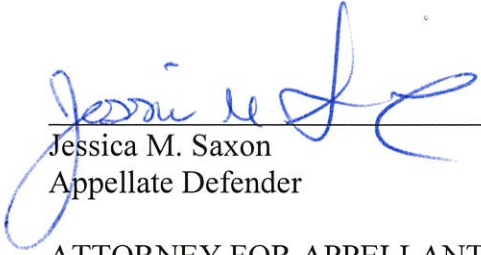
The only argument the State offered in support of Appellant’s sentence remaining unchanged was the escape charge. Juxtaposed against that was a presentation by Counsel Forney regarding Appellant’s children, including a newborn child, that would be in the care of her elderly mother during her prison term, a large showing of family support, evidence that Campbell’s injuries were not proximately caused by Appellant, testimony that Campbell was warned to move prior to the incident, and a reminder that Appellant was shot in the face as a result of the incident.

It was improper for the court to consider a pending charge, of which Appellant was presumed innocent, in reconsidering her sentence. It was also improper for the court to consider conduct that occurred after Appellant was originally sentenced as it had no bearing on her culpability for the offense that was before the court. Further, the evidence relating to the escape charge had not been fully developed and discovery had not been completed – thus the information given to the court about the charge could not be considered relevant, reliable, and trustworthy. See State v. Hutto, 356 S.C. 384, 389, 589 S.E.2d 202, 204 (Ct. App. 2003) (In

sentencing a convicted defendant a trial court is only limited by constitutional provisions that require the evidence to be relevant, reliable and trustworthy.)

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court remand her case to the General Sessions Court of Richland County for resentencing.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of April, 2024.

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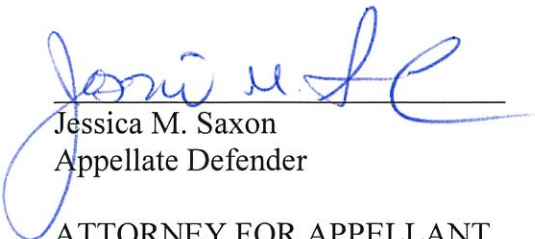
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Latoya D. Rivers 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 Michael G. Nettles, which was held on June 28, 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 Latoya D. Rivers.

Respectfully Submitted,


Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

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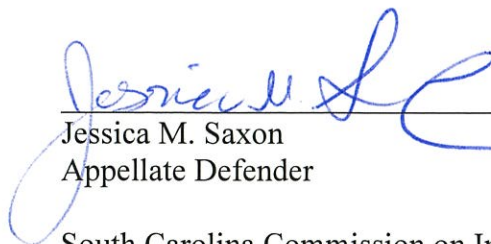
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s): 2021-GS-400-4393
- (2) Transcripts dated May 8, 2023, and June 28, 2023
- (3) Motion to Reconsider Sentence
- (4) Order Denying Motion to Reconsider Sentence

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



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This 17th day of April, 2024.

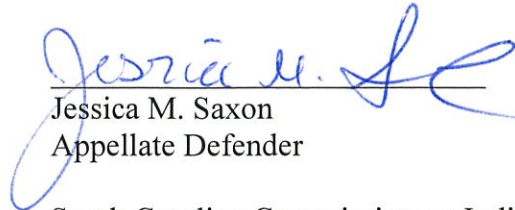
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CERTIFICATE OF COUNSEL

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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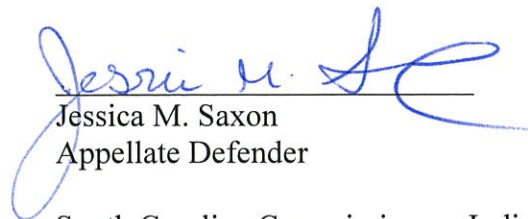
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APPELLANT

APPELLATE CASE NO. 2023-001235

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 Latoya D. Rivers, #390901, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 17th day of April, 2024.


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