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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 Spartanburg County
Honorable Grace Gilchrist Knie, Circuit Court Judge
Appellate Case No. 2024-000761

THE STATE,

Respondent,

vs.

MARK GILBERT,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

“Did the trial court err in failing to dismiss the four indictments because they were multiplicitous and unduly prejudiced Mark Gilbert by leading the jury to believe Mr. Gilbert was charged with four different crimes when they were actually just one crime?”

II.

“Did the trial court err in sentencing Mark Gilbert to a consecutive five year sentence on indictment № 19-GS-42-1035 when the sentence violated the double jeopardy provisions of the Fifth Amendment to the Constitution of the United States of America and Article I, § 12 of the Constitution of the State of South Carolina?”

COUNTER-STATEMENT OF ISSUES ON CERTIORARI

I.

Did the trial court somehow err by refusing to quash the four indictments when each alleged a separate and distinct crime?

II.

Did the trial court somehow err by sentencing Gilbert to a consecutive five-year term of imprisonment for one of his convictions?

STATEMENT OF THE CASE

Procedural History

Petitioner Mark Gilbert was arrested following an investigation into allegations he had repeatedly sexually abused his minor biological daughter over the course of several years. In February of 2019, the Spartanburg County Grand Jury indicted Gilbert for one count of second-degree criminal sexual conduct with a minor. In January of 2020, the Spartanburg County Grand Jury issued an amended indictment for second-degree criminal sexual conduct with a minor and also indicted Gilbert for three additional counts of that particular offense. On May 25, 2021, a jury trial was commenced in the Spartanburg County Court of General Sessions with the Honorable Grace Gilchrist Knie, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Gilbert as indicted. Following the verdict, the trial judge sentenced Gilbert to three concurrent twenty-year terms of imprisonment along with one consecutive five-year term of imprisonment for his offenses. Gilbert then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing¹—issued an unpublished decision unanimously affirming Gilbert’s convictions. State v. Gilbert, Op. No. 2024-UP-072 (S.C. Ct. App. filed Mar. 13, 2024). Thereafter, Gilbert filed a petition for rehearing, and that petition was denied. Gilbert then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Gilbert is the biological father of the victim (“Victim”). (R. pp. 148-149). At the time the sexual abuse began, Victim was around eleven or twelve years old and lived with Gilbert, her mother, and her siblings. (R. p. 147; p. 149). Victim had a nightmare and went to her parents’

¹ The State acknowledges the work of former Senior Assistant Deputy Attorney General William M. Blicht, Jr., who previously represented the State in Gilbert’s appeal and prepared the brief submitted to the Court of Appeals. (Resp. Br. pp. 1-16). In its Return to Petition for Writ of Certiorari, the State has now incorporated a substantial portion of that brief.

bedroom to spend the rest of the night. (R. p. 150). She was lying in between them, and, during the night, Gilbert—her father—reached over her and began touching her genitals both over and under her clothes. (R. pp. 150-151). Gilbert told his daughter he believed he was touching his wife even though she was a much larger woman than Victim and the two had been together for sixteen years by that time. (R. p. 152).

Within a matter of just weeks, Gilbert again sexually assaulted Victim, and those assaults were regularly repeated after that. (R. pp. 152-153; pp. 162-163). Specifically, regarding the abuse, he began by touching Victim “everywhere” which included her breasts, vagina, and buttocks. (R. p. 153). Later, Gilbert digitally penetrated Victim before moving on to inserting sex toys such as vibrators and dildos into Victim’s vagina. (R. p. 154).

As the assaults continued, Gilbert escalated the sexual abuse even more and proceeded to rape his twelve-year-old daughter. (R. p. 155). Victim indicated the rapes began when she was twelve and in the seventh grade. (R. p. 155). Gilbert would occasionally use a condom but not every time. (R. p. 155). Gilbert would also hold the Victim’s head and make her perform oral sex on him. (R. pp. 155-156). She indicated all the various types of sexual assault occurred more than one time. (R. p. 156). Victim also detailed how Gilbert would watch pornography and make her watch it with him. (R. p. 160). She would pretend to be asleep, but he would still make her watch. (R. p. 160). He also tried to make her do what was happening in the videos. (R. pp. 160-161). She indicated the abuse occurred multiple times a week. (R. pp. 162-163).

Eventually, Victim told her older brother what Gilbert was doing to her. (R. p. 164). Her brother confronted Gilbert about the sexual abuse in March 2018. (R. pp. 164-165). After the confrontation, Gilbert moved out of the house. (R. p. 165). Once he was gone, Victim finally disclosed to her mom what Gilbert had done to her. (R. pp. 165-166).

In June 2018, DSS came out to investigate the conditions of the home in which Victim, her brothers, and her mom lived. (R. p. 166). During the course of that investigation, a DSS caseworker asked Victim if she had been abused. (R. pp. 166-167). She responded no because she did not want to get taken away. (R. p. 167). However, in July 2018, DSS returned to ask about possible sexual abuse that was reported by Victim's aunt. (R. pp. 169-170). That time, Victim disclosed the abuse to the DSS caseworker. (R. pp. 167-170; p. 181).

Following that, Gilbert was arrested and indicted for four counts of second-degree criminal sexual conduct with a minor based on the numerous acts of sexual abuse he perpetrated upon Victim during a multi-year span of time. (R. pp. 517-524). Ultimately, Gilbert elected to proceed forward to trial and was convicted as indicted by a jury of his peers. (R. pp. 494-495).

Subsequently, Gilbert appealed, arguing the trial judge reversibly erred by: (1) refusing to quash his indictments as multiplicitous; and (2) sentencing him to a consecutive term of imprisonment for one conviction. (App. Br. pp. 1-14). On appeal, the Court of Appeals affirmed. State v. Gilbert, Op. No. 2024-UP-072 (S.C. Ct. App. filed Mar. 13, 2024). In affirming, the Court of Appeals concluded the indictments in Gilbert's case were not, in fact, multiplicitous because "each indictment described a different kind of sexual battery committed against the victim" and "the State presented evidence that Gilbert engaged in one form of sexual battery for a period of time before eventually engaging in another form of sexual battery." Id. Likewise, the Court of Appeals concluded the trial judge did not abuse her discretion when sentencing Gilbert because "[e]ach indictment alleged a separate, distinct instance of sexual battery." Id.

ARGUMENT

I.

The trial court properly refused to quash the four indictments because each alleged a separate and distinct crime.

On certiorari, Gilbert contends the trial court erred in failing to dismiss the four indictments because they purportedly were—“[a]s a matter of law”—mutliplicitous. As support for that contention, he asserts the indictments charged only one crime and not four separate crimes because they covered the same time period and only alleged a different means of sexual battery. However, just as the both the trial judge and the Court of Appeals aptly and correctly recognized, our legislature clearly intended to punish each sexual act committed by Gilbert upon his minor victim and not allow the absurd result that someone can only face one charge for sexual assaults when he commits those sexual assaults against a child numerous times and in numerous different ways before being caught. Gilbert’s petition for a writ of certiorari should be denied.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). “In appeals of pretrial rulings, [the appellate court] is ‘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.’ ” Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). Importantly, a trial judge’s ruling on a matter “will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion

occurs when the trial judge’s conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

Analysis

The Double Jeopardy Clause of the United States Constitution provides: “No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. South Carolina’s Constitution has a similar provision: “No person shall be subject for the same offense to be twice put in jeopardy of life or liberty” S.C. Const. art. I, § 12. Relevant to the consideration of Gilbert’s appeal, those provisions “protects against multiple punishments for the same offense.” North Carolina v. Pearce, 395 U.S. 711, 717 (1969); Ex parte Lange, 85 U.S. 163, 168 (1873) (“If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offence.”).

Multiplicity is defined as “[t]he improper charging of the same offense in more than one count of a single indictment.” Black’s Law Dictionary (11th ed. 2019). In the instant case, Gilbert contends the charging of four counts of second-degree criminal sexual conduct with a minor based on the four different types of sexual battery committed by him on his minor victim was and is impermissible as all four charge the same offense.

Under South Carolina law:

(B) A person is guilty of criminal sexual conduct with a minor in the second degree if:

(1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age[.]

S.C. Code Ann. § 16-3-655(B)(1). Sexual battery as used in the provision is defined as:

(h) “Sexual battery” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, except when such intrusion is

accomplished for medically recognized treatment or diagnostic purposes.

S.C. Code Ann. § 16-3-651. The question at issue is whether Gilbert could be charged with four separate counts of criminal sexual conduct when the evidence presented by Victim indicates that at different times Gilbert: 1) digitally penetrated Victim; 2) inserted an object into the twelve-year-old's vagina; 3) forced her to perform fellatio on him; and 4) had sexual intercourse with her.

A similar question was asked and answered in State v. Smith, 276 S.C. 484, 280 S.E.2d 56 (1981). The case arose after the appellant was charged and convicted based on two separate indictments for criminal sexual conduct in the first degree. “The indictments arose from an incident in which appellant sexually attacked the prosecutrix, forcibly performing an act of sexual intercourse upon her and then within minutes forcing her to accomplish the act of fellatio upon him.” Id. at 485, 280 S.E.2d at 56. The appellant argued the trial court erred in refusing to quash one of the two indictments because he was subjected to double punishment for a single act. He asserted the incident was “but a single violation of Section 16-3-652, Code of Laws of South Carolina (1976).” Id.

This Court began by noting: “The view is well settled that successive acts of rape are multiple crimes separately punishable.” Id. Citing the Supreme Court of Wisconsin, this Court instructed “with each intrusion upon the body of a victim in a sexual assault, ‘a different legislatively protected interest is invaded.’ ” Id. (quoting State v. Eisch, 291 N.W.2d 800, 806 (Wis. 1980)). The Court also explained: “Equally compelling is the logic of the California court on this point: ‘A defendant who attempts to achieve sexual gratification by committing a number of base criminal acts on his victim is substantially more culpable than a defendant who commits

only one such act.’ ” Smith, 276 S.C. at 485-486, 280 S.E.2d at 56-57 (quoting People v. Perez, 591 P.2d 63, 68 (Cal. 1979)).

Significantly, the appellant in Smith made a similar argument to the argument made in this case. The appellant maintained the fact section 16-3-651(h) brings numerous acts within the definition of “sexual battery” and first-degree criminal sexual conduct requires only proof of a “sexual battery” it acted as a “merger of otherwise distinct acts into a single criminal violation which cannot be separated for purposes of separate indictment.” Smith, 276 S.C. at 486, 280 S.E.2d at 57. The Supreme Court noted “[t]he argument is novel but neither persuasive nor based upon authority.” Id. After noting cases from around the country reaching a similar conclusion, the Court ultimately decided: “Under Section 16-3-651, et seq., Code of Laws of South Carolina (1976), successive acts of ‘sexual battery’, as therein defined, are properly chargeable as separate offenses.” Id.²

Other states have reached a similar decision and provide excellent analysis for why a person who commits multiple sexual assaults should be able to be held responsible for all of their acts. Many analyze similar statutory schemes to the ones in South Carolina where the various sex acts committed are listed in a definition of “sexual battery,” “sexual acts,” or “sexual intercourse.”

In finding separate acts of rape could be severally punishable, the Tennessee Court of Criminal Appeals explained:

[W]e do not agree that a man who has raped a woman once may again assault and ravish her with impunity, at another time and at another place, as was done here. An intent was formed to rape her again. The evidence of the second rape is entirely additional to that

² It should also be noted that Smith received consecutive sentences and this Court did not take issue with the propriety of his sentence. Smith, 276 S.C. at 485, 280 S.E.2d at 56.

of the first. . . . Certainly there was separate and additional fear, humiliation and danger to the victim.

Lillard v. State, 528 S.W.2d 207, 211 (Tenn. Crim. App. 1975). Certainly, the legislature, people of South Carolina, and courts of this state would agree that a defendant should not be able to continue to sexually assault the same victim time and time again and in any manner he desires with impunity. Each time Gilbert made the conscious decision to rape or sexually abuse his daughter, he should be accountable.

The Court of Appeals of Wisconsin in analyzing a similar prosecution stated:

Important here is the concern of the Lillard court and this court for the victim's safety. Repeated acts of forcible sexual intercourse are not to be construed as a roll of thunder, an echo of a single sound rebounding until attenuated. One should not be allowed to take advantage of the fact that he has already committed one sexual assault on the victim and thereby be permitted to commit further assaults on the same person with no risk of further punishment for each assault committed. Each act is a further denigration of the victim's integrity and a further danger to the victim.

Harrell v. State, 277 N.W.2d 462, 469 (Wis. Ct. App. 1979). The victim in this case suffered innumerable instances of harm, humiliation, and injury. She had sex toys designed for women inserted into her vagina. Gilbert held her head and forced her to perform oral sex on him. She was repeatedly raped by her father. Gilbert should be responsible for all of the damage caused and not escape liability because once he assaulted her he could no longer be held responsible.

The Missouri Court of Appeals explained: "Generally rape is not a continuing offense, but each act of intercourse constitutes a distinct and separate offense." State v. Dennis, 537 S.W.2d 652, 654 (Mo. Ct. App. 1976). The Court specifically found "germane to the question" of whether being charged with multiple charges of rape of the same woman violated double jeopardy "is the fact the defendant formed the intent to again assault the victim . . . and again

applied the force necessary to accomplish his purpose and thereupon completed a separate and distinct act.” Id. The Court rejected the claim that being charged for a second rape of the same victim constituted double jeopardy. Here, it is clear Gilbert repeatedly formed the intent to again assault his daughter, applied the force necessary to carry out his desires, and completed a separate and distinct act every time he sexually assaulted her in one of the four ways.

In determining two acts of sodomy constituted two separate crimes and were separately punishable, the Court of Appeals of Oregon found: “The victim was exposed to additional fear, humiliation and danger during the second sodomy. We see no reason why we should hold that a man who commits one sodomy may do so again and again to the same victim with impunity.” State v. Steele, 577 P.2d 524, 528 (Or. Ct. App. 1978).

In a very similar case that was relied on by this Court in Smith, the Supreme Court of Wisconsin considered whether four counts of second-degree sexual assault, each based on a different act listed within the definition of sexual intercourse, could be properly charged. The Court explained:

Initially, it should be noted that the acts of cunnilingus, fellatio, anal intercourse, and intrusion of an object into a genital opening are separately enumerated . . . as types of sexual intercourse encompassed It is apparent, therefore, that although the legislature concluded that these different acts were to be deemed to be the same in law, they were so different in fact that a specific incorporation in the definition of sexual intercourse was required to make them applicable to the substantive crime of second degree sexual assault. This legislative manifestation is, of course, no more than a recognition given to facts and circumstances as they are commonly known to exist. Each of these methods of bodily intrusion is different in nature and character.

State v. Eisch, 291 N.W.2d 800, 805 (Wis. 1980). The Court continued:

In addition to the fact that the crimes are different in nature, it is apparent that each requires a separate volitional act. The act of forced fellatio, forced anal intercourse, forced vaginal intercourse,

and forced intrusion of the bottle required a new volitional departure in the defendant's course of conduct.

Id.

In People v. Perez, 591 P.2d 63 (Cal. 1979), another case previously cited by this Court, the Supreme Court of California addressed whether a person can be charged, convicted, and punished for numerous sexual acts all arising out of forty-five minute brutal attack. During the attack, the defendant committed multiple acts of vaginal intercourse, cunnilingus, anal intercourse, fellatio, and forced an object into the victim's vagina. The California Court found:

Assertion of a sole intent and objective to achieve sexual gratification is akin to an assertion of a desire for wealth as the sole intent and objective in committing a series of separate thefts. To accept such a broad, overriding intent and objective to preclude punishment for otherwise clearly separate offenses would violate the statute's purpose to insure that a defendant's punishment will be commensurate with his culpability. It would reward the defendant who has the greater criminal ambition with a lesser punishment.

Id. at 68 (internal citations omitted). The Court continued: "None of the sex offenses was committed as a means of committing any other, none facilitated commission of any other, and none was incidental to the commission of any other." Id. at 69. As a result, the Court concluded California's statutory scheme does not preclude punishment for each of the sex offenses committed by the defendant. Id. Gilbert asks this Court to reward him for finding a victim he could repeatedly assault by only allowing him to be charged with one count of criminal sexual conduct with a minor no matter how many times he chooses to rape or otherwise assault that victim—his minor daughter.

The Eighth Circuit Court of Appeals addressed a question of "how many sex crimes a defendant commits when he inflicts a series of distinct sexual offenses on the victim during a single incident." United States v. Two Elk, 536 F.3d 890, 898 (8th Cir. 2008) (cleaned up). In

that case, the defendant committed both vaginal and anal intercourse. The Court analyzed the federal statutory scheme, which is very similar to this state's scheme listing multiple types of sexual acts under the definition of "sexual act" and premising the crime on knowingly engaging in "a sexual act." The Court found:

We conclude that § 2241(c)'s language confirms that aggravated sexual abuse is a separate-act offense. The plain language of § 2241(c) states that a person commits aggravated sexual abuse by "engag[ing] in a *sexual act* with another person." The statute does not say "sexual act or acts," or "sexual course of conduct." Each of the permutations enumerated in § 2246(2) constitutes a sexual act and they are linked in the disjunctive. It follows, then, that engaging in multiple sexual acts (as listed in § 2246(2)) would amount to multiple violations of § 2241(c) and would leave the perpetrator susceptible to multiple punishments thereunder.

Id. at 899 (emphasis in original).

The Court of Appeals of North Carolina considered an appeal when "[t]he jury convicted defendant of separate counts of indecent liberties for touching and sucking K.K.'s breasts, performing oral sex on her, and committing sexual intercourse with her." The appellant maintained he could not be convicted of each separately under double jeopardy because these convictions arose from the same assault. State v. James, 643 S.E.2d 34, 37 (N.C. Ct. App. 2007).

The Court found:

[M]ultiple sexual acts, even in a single encounter, may form the basis for multiple indictments for indecent liberties. Here, there was both touching and two distinct sexual acts in a single encounter. The indictments each spelled out a separate and distinct fact needed to be proven by the State in order to gain a conviction, and the three acts were distinct acts each constituting the crime of indecent liberties. The distinctive character of the acts is not altered because all three occurred within a short time span.

Id. at 38.

Clearly, other states have had no difficulty finding various sexual acts committed against the same victim, even when they occur all in one violent attack, can form the basis of multiple charges. This Court had no difficulty in Smith coming to the same conclusion. Here, Victim endured repeated sexual assaults of varying types. Gilbert digitally penetrated her vagina. He inserted sex toys into her vagina. He forced her to perform fellatio on him. Gilbert vaginally raped his twelve-year-old daughter. All of these acts occurred multiple times over the course of a little over two years.³ It is absurd to think the people of South Carolina and our legislature would intend for Gilbert to only face one charge for his repeated sexual assaults of Victim. The trial court in this case properly refused to quash any of the indictments because they each alleged a separate and distinct volitional act. Gilbert chose to repeatedly assault his daughter and was properly held accountable for each type of sexual battery he perpetrated against her. As a result, the trial court did not err in denying Gilbert's motion to quash the indictments, and the Court of Appeals correctly affirmed on appeal.⁴ Gilbert's petition for a writ of certiorari should be denied.

³ Gilbert seems to suggest it is significant that each indictment covers the same two-year time frame. However, as has been explained in our state, "[t]he stealth and repetitive nature of the alleged conduct compels identification of the broader time period. The victim is a young child, whom one cannot reasonably expect to recall the exact dates of the sexual abuse." State v. Tumbleston, 376 S.C. 90, 102, 654 S.E.2d 849, 855 (Ct. App. 2007).

⁴ There is no question the indictments were sufficient and provided the requisite notice required to Gilbert. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

II.

The trial court did not err by sentencing Gilbert to a consecutive five-year term of imprisonment for one of his convictions.

On certiorari, Gilbert maintains the trial court erred in sentencing him a consecutive term of imprisonment for one of his second-degree criminal sexual conduct with a minor convictions. As discussed in the preceding section of the State’s brief, Gilbert was, in fact, properly charged with and punished for multiple crimes committed against Victim. Accordingly, just as both the trial judge and Court of Appeals correctly recognized, the imposition of a consecutive sentence was legally-and-constitutionally appropriate in Gilbert’s case. Gilbert’s petition for a writ of certiorari should be denied.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only, including when reviewing a challenge to the constitutionality of a sentence. State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019). On appeal, an appellate court will only interfere with a trial judge’s sentencing decisions in rare and unusual circumstances in light of the broad discretion afforded to trial judges on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). Meanwhile, when reviewing a sentence to determine whether it is constitutionally proper, an appellate court will not disturb the sentencing judge’s findings “absent a manifest abuse of discretion” or the commission of an error of law. Finley, 427 S.C. at 423, 831 S.E.2d at 160.

Analysis

Much of Gilbert’s appellate challenge is premised on his argument he could not be prosecuted for separate charges in his case. However, as has already been explained, this Court concluded in Smith that prosecution and consecutive sentences are appropriate for multiple sex

acts committed against a single victim. The same analysis should be and is applicable in Gilbert's case, which meant Gilbert could properly be sentenced and punished for each of his four valid convictions.

In arguing to the contrary, Gilbert cites to cases such as Matthews v. State, 300 S.C. 238, 241, 387 S.E.2d 258, 259-260 (1990), a decision in which multiple sentences were found to be inappropriate. Importantly though, Matthews is distinguishable from Gilbert's case because the Court concluded there: "the legislature intended possession with intent to distribute to be a lesser-included offense of trafficking based upon possession." Id. at 241, 387 S.E.2d at 259-260. As a result, it was not appropriate for Matthews to be sentenced for convictions of both PWID and trafficking. Conversely, in Gilbert's case, each type of sexual act he committed against Victim properly resulted in a separate and distinct conviction. As a result, Gilbert's sentences were properly issued for each conviction and nothing in the legislative scheme indicates consecutive sentences are not appropriate.

Significantly, as the United States Supreme Court has explained:

The legislature remains free under the Double Jeopardy Clause to define crimes and fix punishments; but once the legislature has acted courts may not impose more than one punishment for the same offense and prosecutors ordinarily may not attempt to secure that punishment in more than one trial.

....

Where consecutive sentences are imposed at a single criminal trial, the role of the constitutional guarantee is limited to assuring that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense.

Brown v. Ohio, 432 U.S. 161, 165 (1977). As found in Smith, the legislature—for logical and obvious reasons—intended Gilbert to face multiple charges and multiple punishments for multiple distinct sexual batteries he perpetrated upon his minor victim. As a result, the trial court

did not abuse her discretion by imposing a consecutive sentence in Gilbert's case, and the Court of Appeals correctly affirmed on appeal. Gilbert's petition for a writ of certiorari should be denied.

CONCLUSION

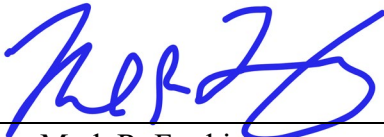
For all the foregoing reasons, it is respectfully submitted Petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted,

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