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Oct 04 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KWEISI NICKS,

APPELLANT.

APPELLATE CASE NO. 2024-000450

ANDERS BRIEF OF APPELLANT

SARAH E. SHIPE
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 lower court err denying appellant's motion to reconsider sentence where the court accepted law enforcement's imprudent invitation to "send a message to the community" by harshly sentencing appellant?

STATEMENT OF THE CASE

On February 17, 2023, a Newberry County grand jury indicted appellant for murder. R. 52-53. On March 9, 2023, appellant pled guilty to voluntary manslaughter before the Honorable Frank R. Addy. R. 1-22. Appellant was represented by Stanley Myers, and the state was represented by August Swarat, II. R. 1. Appellant pled guilty without recommendation or negotiation. R. 3, 8-9. On July 24, 2023, the Honorable Eugene Griffith sentenced petitioner to twenty-five years' imprisonment. R. 23; 47, l. 20-23; 54-55.

August 4, 2023, plea counsel filed a motion to reconsider appellant's sentence arguing the court should consider a lesser sentence based on the "length of sentence and mitigating facts presented." R. 49. Without a hearing the court denied appellant's motion by Form 4 order. R. 50-51.

This appeal follows.

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 reviewing court “does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court’s ruling is supported by any evidence.” *State v. Slocumb*, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). “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 lower court erred denying appellant's motion to reconsider sentence where the court accepted law enforcement's imprudent invitation to "send a message to the community" by harshly sentencing appellant.

Relevant facts

At appellant's guilty plea hearing, the state alleged on March 26, 2022, appellant attempted to shoot Marcal Good and instead shot and killed Jordan McMorris. R. 7, l. 4—8, l. 6. The solicitor explained to the court they had agreed to reduce the charge from murder to voluntary manslaughter because appellant had "imperfect" defenses to the charge of murder had the case proceeded to trial. R. 9, ll. 6-23.

At appellant's sentencing hearing, the solicitor recited the alleged facts again and declared that appellant had not "show[n] a lot of remorse." R. 27, ll. 8-16. Next, the court heard from several family members of the victim as well as Investigator Scottie Peay. R. 28-37. Mr. Peay was the investigator involved in this case and spoke on behalf of local law enforcement in Newberry. R. 36, ll. 20-21. Peay declared the senseless violence of late needed to end, he reiterated appellant had not been remorseful. R. 36, ll. 22-25. Peay further averred appellant "care[d] nothing about [the victim]" and only cared about himself. R. 37, ll. 2-6. He concluded by propositioning the court to "send a message to the community." R. 37, ll. 7-8.

In mitigation defense counsel offered appellant had been gainfully employed with the phone company before his arrest. Appellant turned himself over to authorities once he learned of his arrest warrant. Counsel told the court appellant had great family support. R. 38, l. 16—39, l. 25.

Counsel provided additional context for the accidental shooting of Mr. McMorris. Seven

months prior to this incident, appellant and Mr. Good had an altercation where Mr. Good shot appellant in the legs. Individuals informed appellant that Mr. Good intended to further harm him. On the evening of the shooting he saw Mr. Good and felt threatened. He walked away and then was again confronted by Mr. Good. Out of fear appellant fired the shot that hit McMorris. R. 40-41.

Discussion

The court erred in its denial of the motion to reconsider appellant's severe twenty-five year sentence where it failed to consider the significant mitigation offered at sentencing and instead accepted investigator Peay's improper invitation to make an example of appellant during sentencing.

"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) (citing *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "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.* (citing *Wasman v. United States*, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984)).

In a criminal prosecution, punishment of the offender is recognized as a proper motivation for a sentencing trial judge. *State v. Fletcher*, 322 S.C. 256, 471 S.E.2d 702 (Ct.App.1996). However, another legitimate interest at sentencing is the defendant's prospect for rehabilitation and restoration to a useful place in society. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996). *See also* 24 C.J.S. Criminal Law § 1460 (rehabilitation is considered to be one purpose of sentencing).

The sentencing court in this case had a bounty of information before it in determining a just sentence for appellant. Appellant chose to plead guilty in this case without any recommendation or negotiation from the state in order to take responsibility for his actions. It appears, however, the court ignored any mitigation presented on behalf of appellant and instead chose to make an example of appellant with a harsh sentence based on Investigator Peay's improper suggestion that the court send a message to the community in this case.

CONCLUSION

By reason of the foregoing argument, appellant's sentence should be vacated and his case remanded for resentencing.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of October, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kweisi Nicks 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 Eugene C. Griffith, which was held on , 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 Kweisi Nicks.

Respectfully Submitted,

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of October, 2024.

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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):
- (2) Guilty Plea Transcript
- (3) Sentencing Hearing Transcript
- (4) Motion for Reconsideration
- (5) Order Denying Motion for Reconsideration
- (6) Sentence Sheet

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



Sarah E. Shipe
Appellate Defender

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This 4th day of October, 2024.

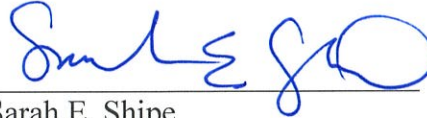
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CERTIFICATE OF COUNSEL

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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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 Kweisi Nicks, #374229, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 4th day of October, 2024.



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