

RECEIVED

Jan 07 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

JACOB NATHANIEL LANCE,

APPELLANT

APPELLATE CASE NO. 2024-001225

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

JORDAN WAYBURN
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

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT

**The plea court erred by considering factors wholly irrelevant to
Lance's culpability.**.....4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL.....7

TABLE OF AUTHORITIES

Cases

<i>Davis v. State</i> , 288 S.C. 290, 342 S.E.2d 60 (1986)	2
<i>Garrett v. State</i> , 320 S.C. 353, 465 S.E.2d 349 (1995)	4
<i>In re M.B.H.</i> , 387 S.C. 323, 692 S.E.2d 541 (2010).....	3, 4
<i>State v. Hicks</i> , 377 S.C. 322, 659 S.E.2d 499 (Ct. App. 2008).....	4
<i>State v. Jacobs</i> , 393 S.C. 584, 713 S.E.2d 621 (2011)	3
<i>State v. Miller</i> , 187 S.C. 271, 197 S.E. 310 (1938)	4
<i>State v. Sidell</i> , 262 S.C. 397, 205 S.E.2d 2 (1974)	5
<i>State v. White</i> , 140 S.W. 1059 (Tenn. 1911)	5
<i>State v. Williams</i> , 386 S.C. 503, 690 S.E.2d 62 (2010)	3

Statutes

S.C. Code Ann. § 16-11-110(C)	5
S.C. Code Ann. § 16-11-311.....	5
S.C. Code Ann. § 16-3-50.....	5

Other Authorities

16 Corpus Juris, <i>Criminal Law</i> § 3024 (1918)	5
--	---

Rules

Rule 243(i), SCACR	2
--------------------------	---

STATEMENT OF ISSUE ON APPEAL

Whether the plea court sentenced appellant based on impermissible factors where it issued identical sentences to him and his co-defendant older brother?

STATEMENT OF THE CASE

On March 14, 2018, Jacob Lance pleaded guilty to voluntary manslaughter, first degree burglary, and two counts of third-degree arson. App. 10:2-20. Judge Lawton McIntosh took the plea, where appellant was represented by Kurt Tavernier. App. 1. Lauren Price represented the state. App. 1. On the same day, the plea court sentenced appellant's co-defendant and brother, Oscar Lance,¹ who is thirteen years older than appellant. App. 25:1-9, 29:24-30:7. Oscar previously pleaded guilty to the same charges and was awaiting sentencing while appellant's case proceeded. App. 3:11-19. The plea court issued appellant and Oscar Lance identical sentences: thirty years in prison for both voluntary manslaughter and burglary first, and fifteen years for each count of arson, all to run concurrently. App. 29:16-7.

Plea counsel did not file a timely notice of appeal, and he filed an application for post-conviction relief seeking, among other things, belated *White v. State* review because plea counsel failed to file and serve a timely notice of appeal. App. 64-66. The state ultimately consented to belated review, and the PCR court entered an order granting it. App. 113-14.

Pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (mem.) and Rule 243(i), SCACR, appellant now files this brief with his petition for a writ of certiorari.

¹ Oscar was represented at the hearing by Gregory Cole. App. 1.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011) (quoting *State v. Williams*, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). A sentence will be overturned if the lower court acted outside of its discretion, such as when the sentence is based on an error of law. *Id.* (citing *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010)).

ARGUMENT

The plea court erred by considering factors wholly irrelevant to Lance's culpability.

The plea court gave Lance and his older brother the exact same sentences, and by necessity that means it considered factors relevant to the brother that have no legal bearing on Lance's sentence. "A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a *particular* defendant." *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (emphasis added) (citing *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008)); *see also State v. Miller*, 187 S.C. 271, 197 S.E. 310, 311 (1938) ("Where left to his discretion by the law, the presiding judge, in the exercise of a wise judgment, determines what sentence, within the law, would be just and proper in any *particular* case." (emphasis added)). For a court to sentence one defendant based on its belief of a proper sentence for his co-defendant is improper.

In hearing final arguments prior to sentencing, the plea court improperly focused on its belief the brothers were "equally culpable" and "equally as guilty as the other one is." App. 28:12-17. The plea court proceeded to give them precisely identical sentences on all four charges. That fact indicates the court treated them as the same person and sentenced them according to the culpability of *both* defendants rather than as individuals. This was error because considering the factors weighing against Oscar very likely led the plea court to impose a heavier sentence on Lance than had it considered his culpability in isolation. Oscar Lance is thirteen years older than Lance. Lance was just nineteen at the time of the crime and had no prior record. App. 25:2-7, 80:24-81:17. Their different circumstances merited different sentences. Unfortunately, plea counsel nonetheless expected the court to "feed them both out of the same spoon." App. 91:23.

While the sentencing court "is allowed broad discretion in sentencing within statutory limits," *Garrett v. State*, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) (citing *State v. Sidell*, 262

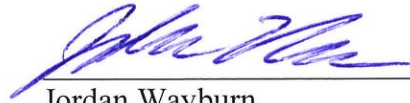
S.C. 397, 398, 205 S.E.2d 2, 3 (1974)), there are certain factors the court cannot consider—specifically, the culpability of a co-defendant. Every defendant is criminally liable as an individual and should be sentenced as such. *See* 16 Corpus Juris, *Criminal Law* § 3024, at 1277 n.75[a] (1918) (explaining the reason for the rule that criminal defendants cannot be sentenced jointly: "The guilt of one neither enhances nor mitigates that of the others. Every one is answerable for his own offense." (quoting *State v. White*, 140 S.W. 1059, 1060 (Tenn. 1911))). In sentencing both brothers identically, the plea court chose to disregard the individual circumstances of each defendant and instead evaluated them as a unit, something it cannot do because it necessarily means factors relevant to Oscar alone contributed to Lance's sentence.

Lance's sentences must be vacated because the "equal" treatment—and therefore impermissibility—was apparent: the court did indeed "feed them both out of the same spoon." Additionally, given that the plea court sentenced Lance to the maximum extent possible for three of the four charges (albeit to be served consecutively),² it is reasonable to conclude Lance could do better. Had the court properly considered Lance's culpability in isolation, give his age and lack of a prior record, there is a reasonable probability he would have received a shorter sentence.

² *See* S.C. Code Ann. § 16-11-110(C) (maximum sentence of fifteen years for third-degree arson); § 16-3-50 (maximum sentence of thirty years for manslaughter); § 16-11-311 (maximum sentence for first-degree burglary is life imprisonment).

CONCLUSION

Lance respectfully requests this Court vacate his sentences and remand for further proceedings.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2025.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

JACOB NATHANIEL LANCE,

APPELLANT

APPELLATE CASE NO. 2024-001225

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jacob Nathaniel Lance states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's plea hearing before Judge Perry H. Gravely, which was held on March 1, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 plea hearing.

Wherefore, he asks the Court to relieve him as counsel for Jacob Nathaniel Lance for purposes of his belated appeal.

Respectfully Submitted,



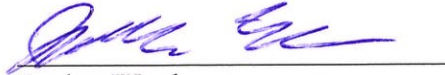
Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2025.

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.”



Jordan Wayburn
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

This 7th day of January, 2025.