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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
Court Of General Sessions
The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2024-000451

THE STATE,

Respondent,

v.

STEVE W. JONES,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the plea court abuse its discretion in determining Appellant was not entitled to probation under S.C. Code § 56-5-2945, which prohibits probation for any portion of the sentence?

STATEMENT OF THE CASE

A Berkeley County Grand Jury indicted Appellant Steve Jones for driving under the influence resulting in death. On March 7, 2024, he pled guilty before the Honorable Deadra Jefferson. Appellant was sentenced to a ten years' incarceration. A timely notice of appeal was filed. This appeal follows.

STATEMENT OF FACTS

On March 7, 2024, Appellant pled guilty to felony driving under the influence resulting in death. (Tr. p. 6). The incident occurred on June 24, 2020, in Berkeley County, South Carolina. (Tr. p. 8). When officers arrived, Appellant was pacing around the scene. (Tr. p. 8). The other vehicle involved sustained substantial damage to the driver's side door. (Tr. p. 8). The driver inside the vehicle was trapped and deceased before officers or emergency personnel arrived. (Tr. p. 8).

An eyewitness stated Appellant ran a red light and struck Victim's vehicle on the driver's door. (Tr. p. 8). Emergency personnel noticed an odor of alcohol on Appellant's person. (Tr. p. 8). Appellant told officers he was drinking earlier in the evening at a bowling alley. (Tr. p. 8-9). After refusing to do a field sobriety or breath test, a warrant was secured for a blood draw. (Tr. p. 9). At this point, a blood-alcohol test revealed Appellant had a blood-alcohol content of .123. (Tr. p. 9). Additionally, Appellant was recorded on surveillance video taking seven shots of tequila and drinking beer within a two-hour period. (Tr. p. 9).

At sentencing, Appellant asked for the one year minimum and five additional years of probation with alcohol monitoring. (Tr. p. 42). The court responded by stating the statute "says that no portion of his sentence can be suspended." (Tr. p. 43). Appellant argued that the mandatory minimum could not be suspended, but that anything beyond the minimum could be suspended. (Tr. p. 42). The court responded, "you're correct in your interpretation that no portion of the mandatory part of the sentence can be suspended", but insisted that probation was not permitted. (Tr. p. 44). Ultimately, the court sentenced Appellant to ten years' imprisonment without probation. (Tr. p. 46-7). The court imposed a \$10,100 fine, *which was suspended to* \$5,100. (Tr. p. 47).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). When reviewing a sentencing issue on appeal, an appellate court will only interfere with a circuit court judge's sentencing decision in rare and unusual circumstances in light of the broad discretion afforded to the circuit court judge on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952).

ARGUMENT

I. **The plea court acted within its discretion in sentencing and properly determined Appellant was not entitled to probation because S.C. Code § 56-5-2945 explicitly states probation should not be granted for any portion of the sentence imposed.**

In South Carolina, sentencing judges are vested with broad discretion to impose a sentence falling within the statutory limits upon an offender convicted of a crime. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974).

Where the terms of a statute are clear, the court must apply the statute according to its literal meaning. Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The statute must be given its ordinary meaning without resorting to subtle or forced construction to limit or expand its scope. Durham v. United Companies Financial Corp., 331 S.C. 600, 503 S.E.2d 465 (1998). The sentence should not be overturned absent an abuse of discretion; an abuse of discretion occurs when the court's sentence is based on an error of law. State v. Pogue, 430 S.C. 384, 386, 844 S.E.2d 397, 398 (Ct. App. 2020); State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 868 (Ct. App. 2005).

S.C. Code § 56-5-2945 provides:

(A) A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to another person, is guilty of the offense of felony driving under the influence, and, upon conviction, must be punished:

(1) by a mandatory fine of not less than five thousand one hundred dollars nor more than ten thousand one hundred dollars and mandatory imprisonment for not less than thirty days nor more than fifteen years when great bodily injury results;

(2) by a mandatory fine of not less than ten thousand one hundred dollars nor more than twenty-five thousand one hundred dollars and mandatory imprisonment for not less than one year nor more than twenty-five years when death results.

A part of the mandatory sentences required to be imposed by this section must not be suspended, *and probation must not be granted for any portion.*

(emphasis added)

Simply, Appellant was convicted of felony driving under the influence when a death results. Consequently, the statute required Appellant receive a sentence of mandatory imprisonment not less than one year and up to twenty-five years without the possibility of parole. The terms of the statute are clear, and consequently, the literal meaning should be applied. Notably, the prohibition of probation goes beyond the preceding phrase, concerning suspension, by emphasizing probation may not be granted “for any portion.” The court properly sentenced Appellant to ten years’ imprisonment. (Tr. p. 46-7).

Here, during the plea Appellant’s counsel explained to the court the position that the statute allowed for a suspension so long as the sentence satisfied the minimum requirements. (Tr. p. 43). The court responded by informing Appellant’s attorney that the interpretation was correct as it related to suspension. (Tr. p. 44). Importantly, the judge went so far as to suspend the fine to the minimum required amount. The judge agreed with Appellant’s interpretation of the suspension portion of the statute and even went so far as to apply that logic to the fine. Accordingly, because the court’s determination not to suspend the term of imprisonment was one of discretion and not a legal determination, the only issue before this court is whether the judge erred by finding probation was nondiscretionary.

The court noted that probation carried a minimal benefit in this instance because of the community supervision associated with this offense. (Tr. p. 44). Additionally, the court noted Appellant received a benefit by negotiating a plea, in that similar cases often result in fifteen to eighteen years as opposed to ten. (Tr. p. 46). The judge noted it was more than adequately reflective of the mitigation presented. (Tr. p. 46).

Secondary sources have similarly determined that probation may not be granted pursuant to S.C. Code § 56-5-2945. Felony driving under the influence; Felony DUI (F), Criminal Offenses in South Carolina § 5:6 (“no part of the mandatory minimum sentence of imprisonment can be suspended, nor can the defendant be put on probation”); Douglas S. Strickler South Carolina Criminal Offenses and Penalties 300 (Hirsch 2024) (“No Probation”).

Accordingly, the plea court properly determined it was without discretion in determining whether Appellant was entitled to parole based on the plain meaning of the statute.

This Court should affirm.

CONCLUSION

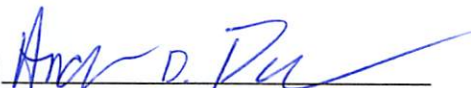
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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