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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000072

THE STATE,

Respondent,

v.

JAMES ORIAN GREGORY,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

Whether the circuit court abused its discretion by placing Appellant on the sex offender registry where the court denied defense counsel's motion to allow for a psycho-sexual examination prior to Appellant being placed on the registry to determine Appellant's risk to reoffend and where the State failed to make a showing of good cause because there is no evidence in the record showing that Appellant was a risk to reoffend sexually?

Respondent's Counterstatement

Whether the plea court abused its discretion when it ordered Appellant to be placed on the sex offender registry after the State showed good cause.

STATEMENT OF THE CASE

In July 2019, a Greenville County grand jury indicted Appellant for first-degree criminal sexual conduct with a minor. (R. 18-19). On December 6, 2023, Appellant proceeded to a plea hearing before the Honorable Perry H. Gravely. (R. 1).

At the plea hearing, the solicitor stated that Appellant would be pleading to first-degree assault and battery. (R. 3). Appellant indicated that he was 34 years old and was taking Effexor and Remeron, which did not affect his understanding of the proceedings. (R. 3-4). Appellant indicated that he understood his rights regarding trial, that he chose to waive those rights, and that he was pleading guilty pursuant to *Alford*.[1] (R. 5). Appellant stated that he was completely satisfied with his plea counsel's representation and that he understood first-degree assault and battery carried a maximum sentence of ten years' imprisonment. (R. 7). Appellant stated that he was promised credit for time served as part of the negotiated sentence. (R. 7).

The solicitor recited the facts of the case as follows:

> On September 5th, 2017, the victim in this case, who was nine at the time, disclosed to her cousins at a spend the night that this [Appellant] had sexually assaulted her. She stated that this [Appellant] had put his penis into her private—into her backside, Your Honor. And this was disclosed by reading her diary at her house during the spend the night.
>
> When the girls—her cousins were picked up, they spoke with the child's—excuse me, they spoke with their mother and told her about what they had learned from the diary. That's when the victim's mom in this case . . . was called by . . . her cousin. And that's when this case came to light.
>
> The victim was taken for a forensic interview. And that was, again, in 2017 when she was nine where she gave that forensic, Your Honor.

(R. 8-9).

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[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

Appellant believed a substantial risk existed that a jury would find him guilty based on the State's recitation of the facts. (R. 9). The plea court accepted Appellant's plea pursuant to *Alford*, finding that Appellant made the plea knowingly, intelligently, voluntarily, and with the advice of competent counsel. (R. 9). The plea court also determined that a substantial factual basis for the plea existed. (R. 10).

The solicitor confirmed that as part of the negotiated sentence, the State agreed to credit for time served, which was 1,398 days. (R. 10). The solicitor informed the plea court of Appellant's prior criminal record, which included (1) a 2008 conviction for unlawful carrying of a weapon; (2) a 2009 conviction for receiving stolen goods; (3) a 2010 conviction for first-degree domestic violence; and (4) a 2013 conviction for receiving stolen goods. (R. 10).

The solicitor stated that Appellant's case was five years old and had gone through "a lot of negotiations" involving numerous prosecutors and defense attorneys. (R. 10). The solicitor informed the plea court that the negotiated sentence before the court was a plea to first-degree assault and battery under *Alford*. (R. 10). The solicitor indicated that being placed on the sex offender registry was part of the negotiated sentence before stating that placement on the registry was up to the plea court. (R. 10-11). However, the solicitor stated that "the State has been very clear with Defense Counsel that we believe [Appellant] should be on the sex offender registry." (Tr. 11). The solicitor stated that there were issues with this case, which is why it was being resolved through a plea and not a trial, but did not indicate what those issues were except for the age of the case and other unspecified "things" that could come up on appeal. (R. 11).

The solicitor informed the plea court that the victim and her parents requested a permanent restraining order against Appellant so he could have no direct or indirect contact with the victim or her mother for the rest of his natural life. (R. 11-12).

The victim's mother addressed the plea court as follows:

> Today, I come to ask . . . that [Appellant] be placed on the sex offender registry.
>
> My daughter is almost 16 years old and has been through so much. She has had to relive what has happened to her every day. Her grades have suffered. Her innocence was taken. She had no choice in the matter.
>
> Before I see or hear of another little girl going through the same situation, [Appellant] needs to be held accountable. [Appellant] shouldn't have the opportunity of doing this to someone else.
>
> [The victim] has always, always had a sweetness about her. And he took that from her.
>
> Please put him on the registry so it will make it harder for him to have the opportunity again.

(R. 12-13).

Appellant asked the plea court to accept the seven-year negotiated sentence. (R. 13). He asked the plea court to delay any order regarding the registry until a psychological evaluation of his risk to reoffend could be conducted. (R. 14). Appellant informed the plea court that his preferred evaluator, Dr. Jeff McKey, could conduct the evaluation within two months of the plea hearing. (R. 14). He asked for a funding order and sixty days during which the evaluation could take place before the plea court determined whether he should be placed on the registry. (R. 14). Appellant consented to the plea court issuing the permanent restraining order. (R. 16).

The plea court accepted the negotiated sentence of seven years' imprisonment and gave Appellant credit for 1,398 days of time served. (R. 16). The plea court also issued the permanent restraining order. (R. 16). Regarding placing Appellant on the sex offender registry, the plea court stated:

> I am going to find that the sexual offender registry is appropriate. I'm not sure that a report from the doctor will change—would change my mind anyway. So I'm going to deny [Appellant's]

> request for any delay of time and find that he will be on the sex offender registry.

(R. 16).

Appellant filed a motion to reconsider, pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. (R. 22). He argued that section 23-3-430 of the South Carolina Code governs when a person may be placed on the sex offender registry, but because he pled guilty to first-degree assault and battery, which was not a specifically delineated offense under the statute, the determination of registration was left to the discretion of the plea court and was to be based on good cause shown by the State. (R. 23). Appellant contended that the State argued for his placement on the registry solely based on the allegations underlying the indictment. (R. 23). He argued that because he pled guilty pursuant to *Alford* and did not admit to any of the allegations in the indictment, the State failed to show good cause for his placement on the registry. (R. 23).

Appellant argued that his request to delay the determination of whether he should be placed on the registry would have allowed the plea court to consider the psychological evaluation and base its decision on that yet-to-be-produced evidence. (R. 23). He requested the plea court vacate its decision ordering him to register and hold the issue in abeyance pending the completion of a psychological evaluation assessing his risk to commit sex offenses. (R. 23-24).

In its order denying Appellant's motion to reconsider, the plea court noted that pursuant to *Herndon*,[2] a guilty plea pursuant to *Alford* is treated the same as any other guilty plea. (R. 25). The plea court found that the State presented good cause to require Appellant to be placed on the registry and denied Appellant's motion to reconsider. (R. 25).

This appeal followed.

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[2] *State v. Herndon*, 403 S.C. 84, 742 S.E.2d 375 (2013).

STANDARD OF REVIEW

"In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). A trial judge has broad discretion in sentencing within statutory limits. *Brooks v. State*, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997). A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant. *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). 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

I. The plea court did not abuse its discretion by placing Appellant on the sex offender registry because the plea court considered the facts and circumstances of the case before properly determining that good cause existed.[3]

Section 23-3-430(D) of the South Carolina Code provides that when a person is convicted or pleads guilty to an offense not listed in the statute, such as first-degree assault and battery, "the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the prosecution." Our Supreme Court has held that good cause "means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually." *In re M.B.H.*, 387 S.C. 323, 327, 692 S.E.2d 541, 542 (2010). Further, our Supreme Court has held that when a judge has considered all the facts and circumstances of a case, both aggravating and mitigating, in determining that a risk of sexual offense exists and such a determination is supported by the evidence in the record, then the judge has not abused their discretion. *Id.* at 327, 692 S.E.2d at 542-43.

Here, the State's recitation of the facts detailed the sexual assault for which Appellant pled guilty to first-degree assault and battery under *Alford.* (R. 9). *See State v. Fraley*, 437 S.C. 135, 136, 876 S.E.2d 703, 704 (Ct. App. 2022) ("While *Alford* affords defendants the right to plead guilty when they cannot or will not admit their guilt, a guilty plea entered pursuant to *Alford* carries the same effect as a 'regular' guilty plea or a guilty verdict."). While first-degree assault and battery is not an offense requiring automatic inclusion on the sex offender registry under the statute, the crime with which Appellant was charged—first-degree criminal sexual conduct with a minor—is an offense requiring automatic inclusion on the sex offender registry. (Indictment). *See*

[3] Appellant appealed only his placement on the sex offender registry and not his guilty plea pursuant to *Alford* or his associated seven-year sentence.

S.C. Code Ann. § 23-3-430(C)(3)(a). Appellant admitted during the plea hearing that he likely would have been convicted by a jury as indicted based on the facts presented by the State. (R. 9). *See In re M.B.H.*, 387 S.C. at 327, 692 S.E.2d at 542 ("[A] finding of good cause . . . means only that the judge must consider the facts and circumstances of the case to make the determination of whether or not the evidence indicates a risk to reoffend sexually."); *id.* at 327, 692 S.E.2d at 542-43 (holding that the sentencing court considered all of the facts and circumstances of the case in determining that a risk of sexual re-offense existed).

Regarding Appellant's likelihood to reoffend, section 23-3-400 of the South Carolina Code specifically states that "[s]tatistics show that sex offenders often pose a high risk of re-offending." *See also Smith v. Doe*, 538 U.S. 84, 103 (2003) ("The risk of recidivism posed by sex offenders is 'frightening and high.'" (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002))); *McKune*, 536 U.S. at 33 ("When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault." (citing U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 27 (1997); U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997))); *cf. In re Christopher H.*, 432 S.C. 600, 607, 854 S.E.2d 853, 856 (Ct. App. 2021) ("The only evidence of risk indicated a low risk, and the evidence overwhelmingly indicated registry in this case was not appropriate."); *State v. Davis*, 375 S.C. 12, 16, 649 S.E.2d 178, 180 (Ct. App. 2007) (holding that where both parties agreed that the defendant should not be included on the sex offender registry as part of a negotiated sentence, the State did not show good cause as to why the defendant should be placed on the registry during a probation revocation hearing). While a psychological evaluation may have assisted the plea court in determining Appellant's risk to reoffend, it was in no way necessary for

the plea court to order one. Moreover, Appellant has failed to point to any authority that requires a psychological evaluation before a court determines whether good cause exists.

The plea court considered all facts and circumstances in this case, namely the facts as recited by the State, under which Appellant agreed a jury would likely have found him guilty of first-degree criminal sexual conduct with a minor. (R. 9). Due to the sexual nature of the offense, which places Appellant as a high risk of reoffending under section 23-3-400, the plea court's determination that good cause existed is supported by the evidence in the record; thus, the plea court did not abuse its discretion in ordering Appellant to be placed on the sex offender registry.

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's placement on the sex offender registry.

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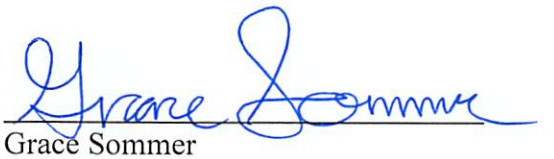
PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Final Brief of Respondent on Jessica M. Saxon, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 7th day of March 2025.



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