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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM DORCHESTER
COUNTY
Court of General Session**

Maite Murphy, Circuit Court Judge

Appellate Case No. 2022-00412

The State,

Respondent,

v.

Anthony B. Morris,

Appellant.

AMENDED FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING IN FAILING TO GIVE ADEQUATE CONSIDERATION TO ALL OF THE MITIGATING CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO THE VICTIM'S REQUEST FOR LENIENCY IN IMPOSING A SENTENCE OF INCARCERATION.
2. DID THE TRIAL COURT ERR BOTH AT TRIAL AND ON MOTION FOR RECONSIDERATION OF SENTENCING, IN FAILING TO CONDUCT AN ADEQUATE AND ACCURATE REVIEW OF THE RECORD FOR MITIGATING CIRCUMSTANCES THAT WOULD HAVE SUPPORTED A FAR MORE LENIENT SENTENCE?

STATEMENT OF THE CASE

Appellant was tried by jury and found guilty of assault on a police officer on March 21, 2022. Immediately following the verdict, the trial court heard from the Appellant as well as the State and the victim regarding sentencing and, despite agreements and recommendations as to a more lenient sentence, sentenced Appellant to 7 years incarceration. Appellant subsequently filed a motion for reconsideration of sentencing. This motion was denied by Order dated January 30, 2023. This appeal followed.

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). A sentence will not be overturned absent an abuse of discretion. An abuse of discretion occurs “when the ruling is based on an error of law or factual conclusion without evidentiary support.” *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E. 2d 541, 542 (2010). A trial judge has broad discretion in sentencing without statutory limits.” A judge must be permitted to consider any and all information that reasonably might bear on the sentence for a particular defendant. *Id.*

FACTS

On January 22, 2019, off-duty Dorchester County Sheriff's Deputy, Cameron Abell, acting as a Courtesy Officer for the Kinneas Village Apartments in Summerville, South Carolina responded to a complaint of beer bottles being broken. (Tr. pg. 32 lines 24-25; Tr. pg. 33 lines 1-2). Courtesy Officer Abell was not on duty, was not dressed in his official police uniform, and was not wearing a body camera when he responded to the complaint. (Tr. pg. 33 lines 15-19; Tr. pg. 47 lines 2-5; Tr. pg. 62 lines 5-7).

Officer Victoria Lane Beaudoin responded to the same incident as directed by consolidated dispatch. (Tr. pg. 32 lines 20-24) When both Courtesy Officer Abell and Officer Beaudoin arrived on the scene, Mr. Morris was inside his apartment being boisterous but causing no problems. (Tr. pg. 34 lines 4-6; Tr. pg. 48 lines 13-25; Officer Beaudoin's Complaint pg. 6 line 13) Officer Beaudoin also learned when she arrived on the scene that Mr. Morris had also called dispatch because a gentleman was at his door asking for his name, and he wanted the North Charleston Police Department to respond to this issue. (Tr. pg. 34 lines 12-15) Based on the testimony given at trial, it is undetermined who had been knocking at Mr. Morris's door prior to Officer Beaudoin's arrival. Further, there were no body cameras to show what transpired between Courtesy Officer Abell and Mr. Morris before Officer Beaudoin's arrival. (Tr. pg. 33 lines 15-19; Tr. pg. 52 lines 15-17)

Officer Beaudoin investigated the incident and found that the glass beer bottles did not cause any damage. (Tr. pg. 34 lines 21-25; Tr. pg. 35 lines 1-3) Thereafter, Officer Beaudoin and Courtesy Officer Abell began to clear the scene. (Tr. pg. 34 lines 21-25; Tr. pg. 35 lines 1-3) During this time, Mr. Morris began speaking to both Officer Beaudoin and Courtesy Officer Abell

from his door to his patio. Courtesy Officer Abell was yelling at Mr. Morris and goading him to come outside and pick up the broken beer bottles. (Tr. pg. 48 lines 22-25; Tr. pg. 49 lines 1-6)

Officer Beaudoin advised Courtesy Officer Abell to handle the situation regarding the broken beer bottles with the apartment complex in the morning. However, Courtesy Officer Abell refused to listen to Officer Beaudoin's advice and continued to goad Mr. Morris to come out of his apartment and pick up the bottles. (Tr. pg.35 lines 24-25; Tr. pg. 36 lines 5-8) Thereafter, the incident with Courtesy Officer Abell and Mr. Morris escalated. Mr. Morris exited his apartment through his patio door while Courtesy Officer Abell was yelling at him. (Tr. pg. 37 lines 11-16;) Mr. Morris approached Courtesy Officer Abell, and they began bumping chests and busting at each other. (Officer Beaudoin's Complaint pg. 6 line 15). They pushed into each other, and a tussle ensued. Officer Beaudoin attempted to separate Mr. Morris and Courtesy Officer Abell as they fought each other, but to no avail.(Tr. pg. 37 lines 14-24; Officer Beaudoin's Complaint pg. 6 lines 16-17) During her attempts to separate Officer Abell and Mr. Morris, Officer Beaudoin was struck multiple times to the head and/or neck area. There is no video footage of the strike, but Officer Beaudoin had accused Mr. Morris of striking her during her trial testimony while trying to separate him and Courtesy Officer Abell. (Tr. pg. 38, lines 5-25; Tr. pg. 39 lines 2-5) Officer Beaudoin testified that Courtesy Officer Abell tackled Mr. Morris and assisted her in handcuffing him, even though the officer was just goading, shouting at, chest bumping and tussling with Mr. Morris over the broken beer bottles. (Tr., p. 39, lines 17-20)

Mr. Morris's trial was held on March 21, 2022. Officer Beaudoin testified at the trial, but Mr. Morris did not. Courtesy Officer Abell did not attend the trial. (Tr., p. 4, lines 1-3).

As a result of the incident that night, Mr. Morris was charged with the following offenses:

2019A1021000069 Assault on a Police Officer 35192GX

Breach of Peace 35193GX

Malicious Damage to City Property

(Tr., p. 5, line 25;Tr., p. 6, lines 10-15 Dorchester County Index)

Mr. Morris was found guilty of Assault on a Police Officer by a jury of his peers. The charges of Breach of Peace and Malicious Damage to City Property were dismissed and expunged from the public record. (Tr., p. 6, lines 10-15) Immediately after the jury returned a verdict, and was polled, all the parties to the case quickly discussed recommendations for sentencing. Assistant Solicitor Michael Spears advised the Court that the victim thought that multiple years “kind of” far exceeds the crime. (Tr., p. 93, lines 1-10) Mr. Spears also advised the Court that Ms. Beaudoin did not want to ruin Mr. Morris’s life, and in this specific scenario, the State would recommend some sort of split sentence, maybe a year followed by probation. (Tr., p. 93, lines 1-10)

The Defense team for Mr. Morris agreed with the recommendation by the State. It was expressed by Mr. Morris’s counsel that Mr. Morris had nothing in his criminal background as this was his first time in trouble with the law in his life. (Tr., p. 93, lines 20-21, 23-25; p. 94, lines 4-6) Mr. Morris was 34 years old at the time of the conviction. (Tr, p. 94, lines 7-10) He was also gainfully employed with a company that offers career opportunities and leads to a professional career. (Transcript, p. 94, lines 7-10)

Trial Judge Maite Murphy rejected the recommendations of Assistant Solicitor Spears and Mr. Morris’s counsel stating that Mr. Morris had not taken accountability for his actions as he had not said a word as far as apologizing to the officer for the incident. (Tr., p. 95, lines 18-25; p. 96,

lines 1-5) Thereafter, Mr. Morris was sentenced to the Department of Corrections for seven years. The offense carried a potential sentence of zero to ten years.(Tr., p. 96, lines 4-5)

A motion for reconsideration regarding the imposition of the seven-year sentence was filed on March 31, 2022, by Mr. Morris's counsel at trial. The purpose of the motion was to request that Mr. Morris's current sentence of seven years be reduced to a lower active sentence or probation. This motion was heard on December 5, 2022, and was argued by Mr. Morris's new counsel, Adrienne Turner of the Turner Law Firm and Reagan Singletary of The Singletary Group. (Motion for Reconsideration Tr. pg. 1) Mr. Morris, his mother Cynthia Morris, and his sister Miesha Morris were present at the hearing. (Motion for Reconsideration Tr. pg. 9 lines 2-25; Tr. pg. 10 lines 1-25; Tr. pg. 11 lines 1-19, lines 21-23 and 25; Tr. pg. 12 lines 1-16 and line 18) Assistant Solicitor Michael Spears attended the hearing. (Motion for Reconsideration Tr. pg. 1) Officer Beaudoin did not attend the hearing; however, Assistant Solicitor Spears spoke on her behalf, and asked that Mr. Morris's sentence remain the same. (Motion for Reconsideration Tr. pg. 4 lines 7-8; and lines 15-16).

During the hearing, Mr. Morris apologized to Officer Beaudoin for the injuries she sustained as a result of the incident between him and Courtesy Officer Abell. (Motion for Reconsideration Tr. pg. 8 lines 5-7). Mr. Morris also stated that he was sorry for any pain that she may have endured because of what happened and that it was never his intention for her to get hurt in any way. (Motion for Reconsideration Tr. pg. 8 lines 5-9) Mr. Morris's sister, Miesha Morris and his mother Cynthia Morris spoke regarding the character of Mr. Morris and the impact the sentencing of seven years has had on their family. (Motion for Reconsideration Tr. pg. 4 lines 7-8; lines 15-16; Tr. pg. 8 lines 22-24; Tr. pg. 9 lines 2-25; Tr. pg. 10 lines 1-25; Tr. pg. 11 lines 1-19,

lines 21-23 and 25; Tr. pg. 12 lines 1-16 and line 18)

Thereafter, Judge Murphy, before making a ruling, advised that she remembered Mr. Morris's father apologizing to the victim during trial before the sentencing, and that the video footage in this case "clearly showed" how Mr. Morris violently struck Officer Beaudoin. (Motion for Reconsideration Tr. pg. 15-19) Judge Murphy also stated that Mr. Abell's actions were taken into consideration as a mitigation and the fact that Mr. Morris did not have a prior record and was also taken into consideration. (Motion for Reconsideration Tr. pg. 13 lines 21-23) However, Judge Murphy was insistent that the video clearly showed how violently Mr. Morris struck Ms. Beaudoin, and as such was not inclined to change her sentence. (Motion for Reconsideration Tr. pg. 13 lines 23-24)

Judge Murphy filed an Order with Dorchester County Court on January 30, 2023, denying the request to reduce the sentencing. In the Order the Judge Murphy failed to include that Mr. Morris testified at the hearing and asked that his sentence be reduced. Judge Murphy also failed to include that Mr. Morris's sister, Miesha Morris, also asked the Court to reduce Mr. Morris's sentencing. Lastly, while Judge Murphy was insistent that video showed Mr. Morris hitting Officer Beaudoin, the record does not support that. The record also does not show family members speaking on Mr. Morris's behalf during the trial. In light of this, Mr. Morris is asking that this Court review the record and reverse Judge Murphy's decision not to change her sentence of seven years for Mr. Morris's conviction.

ARGUMENTS

- I. IN IMPOSING A SEVEN-YEAR SENTENCE OF INCARCERATION, THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FAILING TO GIVE ADEQUATE CONSIDERATION TO ALL OF THE MITIGATING CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO THE VICTIM'S REQUEST FOR LENIENCY.

After the jury's verdict, the trial judge immediately began the sentencing hearing for Mr. Morris. Assistant Solicitor Michael Spears advised the Court that the victim thought that multiple years "kind of" far exceeds the crime. Mr. Spears also advised the Court that Ms. Beaudoin did not want to ruin Mr. Morris's life, and in this specific scenario, the State would recommend some sort of split sentence, maybe a year followed by probation. In making and acquiescing in this recommendation, the State and Officer Beaudoin obviously recognized that Mr. Morris neither intentionally set out to injure Officer Beaudoin, nor was he solely at fault for the injuries Officer Beaudoin sustained, Mr. Morris's defense team agreed with the recommendation.

However, the trial Judge failed to give the sentencing recommendation from the State and Officer Beaudoin adequate consideration under the circumstances. The trial judge's failure in this regard, which went largely unexplained, renders the sentencing decision capricious at best. In fact, the near total disregard of all mitigating factors that the trial judge ostensibly considered in imposing the 7-year sentence suggests that the sentence was imposed arbitrarily and with motivation other than arriving at a sentence that would both afford a proper level of protection for society and serve the ends of justice by not imposing overly harsh sentences in situations that warrant a degree of mercy due to factors such as Appellate's spotless criminal

record until this single, life-altering event.

During the motion for reconsideration hearing, while Officer Beaudoin was not present, the Solicitor noted that she was now satisfied with the sentencing imposed. It is notable, however, that Officer Beaudoin's position is now polluted by events that have occurred after the initial sentence was imposed; specifically, she now has civil cases against both Mr. Morris and Officer Abell wherein she contends that both of them are responsible for the injuries she sustained as a result of the incident.¹ There can be no question but that Officer Beaudoin's recollection of the events at issue, and even her emotional reaction to those events, was far less tainted by subsequent developments at the time of trial than at the time the motion for reconsideration was heard. Accordingly, the impact of the trial judge's failure to give adequate consideration to Officer Beaudoin's initial position as to an appropriate sentence for the Appellate is unmistakable, unreasonable, and unsupportable under these circumstances.

II. BOTH AT TRIAL AND ON MOTION FOR RECONSIDERATION OF SENTENCING, THE TRIAL COURT ERRED AND ABUSE ITS DISCRETION IN FAILING TO CONDUCT AN ADEQUATE AND ACCURATE REVIEW OF THE RECORD FOR MITIGATING CIRCUMSTANCES THAT WOULD HAVE SUPPORTED A FAR MORE LENIENT SENTENCE.

On the motion for reconsideration hearing, the trial judge misremembered several events which would have been crucial to mitigating Mr. Morris's sentencing of seven years in this case.

¹ State v. Morris Trial Transcript, page 48, mentions the civil lawsuit. It is a civil filing and as such the lower court and the Court of Appeals should take judicial notice of its existence. Moreover, there was no objection made to the mention of the civil lawsuit nor was there an objection or ruling by the lower court that the information was improper. As such, to the extent the trial judge considered the officer's wishes with regard to sentencing the Defendant and refusing to reduce that sentencing, it was unquestionably within the lower court's purview to consider whether and to what extent the status of the officer's suit against the Defendant impacted the officer's opinion about sentencing. In fact, it would seem incumbent upon the trial judge to take the existence of the civil lawsuit into consideration in light of the officer changing her opinion when nothing had changed since the time of the original sentencing other than the Defendant taking the time to offer an apology at the motion for reconsideration hearing and the fact that civil lawsuit was still ongoing.

First, the trial judge failed to give an account for the fact that Mr. Morris did not have an opportunity to testify as he was instructed not to do so by his counsel. Even when Mr. Morris was provided an opportunity to express remorse during the motion for reconsideration hearing, it appeared that it was given little to no consideration as the judge failed to include this information in the Order denying his request for a lesser sentence. It was also apparent that only a cursory consideration of Officer Abell's instigation and further provocation of the circumstances was unjustified as she does not mention this information at all as a factor while determining Mr. Morris's sentencing in this case.

Lastly, it appears that the judge misremembered facts which were not in evidence when considering the viciousness of the incident. During the motion for reconsideration, the judge states that she remembers how Mr. Morris violently struck Officer Beaudoin from the video recordings introduced at trial. However, the recordings do not show Mr. Morris striking Officer Beaudoin.

It goes without saying that a trial judge cannot avoid arriving at an arbitrary or capricious decision when, in exercising its discretion, the trial judge misunderstands, misremembers, or misapprehends facts critical to rendering a just decision. Where, as here, significant mistakes are made regarding the facts considered at sentencing, the sentencing itself must be declared arbitrary or capricious.

CONCLUSION

For the reasons stated, this Court should reverse the sentence of seven years imposed by the trial court and grant Appellant's request to impose a lesser sentence of one year and probation.

Respectfully submitted,

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