RECEIVED
Apr 22 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2022-000412

THE STATE,

Respondent,

vs.

ANTHONY BERNARD MORRIS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Summerville, SC 29483
(843) 871-2640

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

STATEMENT OF ISSUES ON APPEAL

I.

Did the trial judge err by failing to give adequate consideration to all the mitigating circumstances, including but not limited to the victim's request for leniency, in imposing a sentence of incarceration?

II.

Did the trial judge err both at trial and on motion for reconsideration of sentencing by failing to conduct an adequate review of the record for mitigating circumstances that would have supported a far more lenient sentence?

COUNTER-STATEMENT OF ISSUE ON APPEAL

To the extent Appellant now contends for the first time on appeal the trial judge abused her discretion or otherwise erred when imposing the sentence, was that particular contention properly preserved for appellate review when it was neither raised to nor ruled upon by the trial judge? Furthermore, did the trial judge somehow abuse her broad sentencing discretion or otherwise err by sentencing Appellant to a seven-year term of imprisonment after Appellant was convicted of assaulting an officer while resisting arrest when the sentence imposed fell within the permissible statutory sentencing limits for Appellant's offense and nothing appearing in the record established it was imposed as the result of any partiality, prejudice, corrupt motive, or improper considerations on the part of the trial judge?

STATEMENT OF THE CASE

In January of 2019, Appellant Anthony Bernard Morris was arrested after he assaulted and injured an officer during the course of an incident that occurred at his apartment complex. In March of 2022, the Dorchester County Grand Jury indicted Appellant for assaulting an officer while resisting arrest. On March 21, 2022, a jury trial was commenced in the Dorchester County Court of General Sessions with the Honorable Maite Murphy, circuit court judge, presiding. At the conclusion of the one-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a seven-year term of imprisonment. Appellant then timely filed a notice of appeal. However, shortly after that, Appellant timely filed a motion seeking reconsideration of the sentence. Based on the pending motion, the Court of Appeals temporarily held the appeal in abeyance, and, on December 5, 2022, a hearing was held on the motion in the Dorchester County Court of General Session. At the conclusion of the hearing, the trial judge orally denied the motion, and that ruling was later confirmed through a written order filed on January 30, 2023. Subsequently, upon receiving the trial judge's order, the Court of Appeals permitted the appeal to proceed forward.

STATEMENT OF FACTS

On the night of January 22, 2019, Corporal Victoria Beaudoin of the North Charleston Police Department was dispatched to an apartment complex in response to a report of an ongoing disturbance at that location. (R. pp. 31-33; pp. 46-47). Specifically, the officer headed to the scene in response to a report from the apartment complex's courtesy officer—an individual identified as "Deputy Abell"—indicating someone was throwing glass bottles from a balcony.[1] (R. pp. 32-33).

Upon arriving there, Corporal Beaudoin observed glass bottles in the parking lot in front of Appellant's first-floor apartment. (R. p. 33). As a result, Corporal Beaudoin headed to Appellant's apartment, knocked on the door, identified herself as a law enforcement officer, and attempted to speak with him. (R. p. 34). However, instead of opening the door, Appellant responded by knocking on his own door, too, and childishly mimicking what the officer was saying. (R. p. 34).

After her attempts to make meaningful contact with Appellant proved fruitless, Corporal Beaudoin spoke with some of the residents whose vehicles were hit by the glass bottles flung into the parking lot. (R. pp. 34-35). However, no damage was found on the vehicles, so none of those individuals elected to file a formal report about the matter. (R. pp. 34-35).

At that point, Corporal Beaudoin alerted Deputy Abell there was nothing else she could do and suggested he speak with the complex's management about what had occurred. (R. p. 35). She then began walking back toward her patrol vehicle to leave. (R. pp. 35-36). When she did, Appellant opened his apartment's balcony door and demanded to know Corporal Beaudoin's name and badge number. (R. pp. 35-36; State's Ex. # 2 (Body Camera Recording)). In

[1] During trial, Deputy Abell was reported to be a deputy from the Dorchester County Sheriff's Office, but he was not on duty for that agency at the time of the incident. (R. p. 47).

response, Corporal Beaudoin immediately provided that requested information. (R. p. 36; State's Ex. # 2). Appellant followed that by making a comment about all of his cameras. (State's Ex. # 2). He then cackled and warned they "were going to fucking learn today." (State's Ex. # 2). Seconds later, he began again demanding Corporal Beaudoin's name despite it just having been provided, cackled some more, hooted, and began cursing at Deputy Abell. (State's Ex. # 2).

Believing her business was done, Corporal Beaudoin then once again began heading back toward her vehicle. (State's Ex. # 2). However, as she was walking away, Appellant jumped over his apartment's balcony railing and began aggressively approaching Deputy Abell, who was standing in the parking lot, while calling him a "dumbass" and warning he could not touch him. (R. p. 37; State's Ex. # 2). At that point, Corporal Beaudoin swiftly moved back toward the men to intervene and, as she did, Appellant bumped Deputy Abell with his chest before repeatedly stating: "What the fuck you going to do?" (R. p. 37; State's Ex. # 2). Within just moments of that, the men began shoving one another, and a scuffle broke out. (R. p. 37; State's Ex. # 2).

In the ensuing seconds, Appellant continued to taunt Deputy Abell while cackling and called him things such as "[his] fucking pet" and "bitch." (State's Ex. # 2). At one point, Appellant also exclaimed he was about to "drop" someone. (State's Ex. # 2). Meanwhile, as Appellant was engaging in that shocking and vexatious behavior, Corporal Beaudoin was continuously—and unsuccessfully—pleading for him to stop. (State's Ex. # 2). Nonetheless, despite the officer's best efforts, a physical scuffle again broke out, Appellant attempted to punch Deputy Abell, and then Appellant punched Corporal Beaudoin, who cried out upon being struck by the blow.[2] (R. p. 37; p. 50; State's Ex. # 2).

[2] At the same time Corporal Beaudoin could be heard crying out on her body camera recording of the incident, the footage violently shook as if she had been suddenly punched or knocked with considerable force. (State's Ex. # 2).

After being struck, Corporal Beaudoin quickly moved to subdue and arrest Appellant with Deputy Abell, and Appellant responded by punching Corporal Beaudoin several more times, which led her to audibly groan. (R. pp. 38-39; p. 50; State's Ex. # 2). Nonetheless, despite his resistance, Corporal Beaudoin and Deputy Abell were able to get Appellant—who was much larger than Corporal Beaudoin—to the ground, and they held him there until additional support arrived. (R. pp. 38-39; p. 56; State's Ex. # 2; State's Ex. # 3 (Body Camera Recording)). Those supporting officers then attempted to get Appellant secured inside a patrol car, and, as they did, Appellant taunted them, insulted them, cackled, barked at them like a dog, and attempted to wrestle himself free. (R. pp. 39-40; pp. 56-57; State's Ex. # 3). Eventually though, the combined efforts of five or six officers proved sufficient to get Appellant secured in a patrol car. (R. pp. 56-57; State's Ex. # 3). He did, however, continue to scream, cackle, and bark from inside the vehicle, and he damaged it from the inside by violently kicking its door. (R. p. 40; p. 57; State's Ex. # 3).

Subsequent to and as a result of that disturbing episode, Appellant was indicted for assaulting an officer while resisting arrest, and he elected to proceed forward to trial. (R. p. 5; pp. 122-123). During the course of trial, Deputy Beaudoin recounted what occurred on the date of the incident, and she identified Appellant as the individual who violently struck her multiple times that night. (R. pp. 31-50). Deputy Beaudoin further explained she suffered hearing loss, a collapsed tube in her ear, a dislocated jaw, and nerve damage as a result of Appellant's attack and had now been forced to use a hearing aid. (R. p. 41). In addition to that, Officer Andrew Brucker—one of the North Charleston Police Department officers who responded to the scene to assist—recounted how it took five or six officers to get Appellant, who was very combative, secured in a police vehicle after his arrest, and he confirmed Appellant damaged the vehicle after

that by kicking its door. (R. pp. 56-59). Furthermore, several body camera recordings captured on the date of the incident were admitted into evidence and played for the jury. (R. p. 42; pp. 58-59). Ultimately, after all that testimony and evidence was presented, the jury convicted Appellant as indicted. (R. p. 89).

Following the verdict, the trial judge proceeded forward to the matter of sentencing. (R. p. 93). During the sentencing discussions, the solicitor noted he had spoken with Corporal Beaudoin, who had conveyed to him she believed "multiple years kind of far exceed[ed] the crime" and who had expressed she merely wanted "accountability" for what Appellant had done to her. (R. p. 93). As a result, the solicitor suggested "some sort of split sentence" and proposed a year of imprisonment followed by probation. (R. p. 93). After those remarks, defense counsel spoke on Appellant's behalf, characterized the incident as an "isolated" one, noted Appellant had no prior criminal record, and indicated Appellant would lose his "two great jobs" if he received a sentence requiring any imprisonment. (R. pp. 93-94). Defense counsel further claimed Appellant "d[id] take accountability," was remorseful, and was someone deserving of mercy and another chance. (R. pp. 94-95).

Following that, the trial judge noted Appellant did not appear to have actually taken accountability because, instead of apologizing to Corporal Beaudoin for the harm caused, he punched her multiple times, laughed at her, and degraded her. (R. p. 95). Based on the circumstances of Appellant's offense, the trial judge then imposed a seven-year term of imprisonment. (R. p. 96).

Thereafter, defense counsel timely filed a motion seeking reconsideration of Appellant's sentence. (R. pp. 113-116). Through that motion, defense counsel identified the following reasons as grounds for reconsideration: (1) Appellant never "believed" he purposefully tried to

assault Corporal Beaudoin; (2) Appellant was armed with a firearm during the incident but never tried to brandish or present it; (3) Appellant's sentence was purportedly overly harsh, unjust, and financially burdensome; and (4) the "morally corrosive nature of prison life" could negatively impact a person like Appellant. (R. pp. 115-116). Defense counsel then asked trial judge to consider reducing Appellant's sentence to either a four-year term of probation or a two-year term of imprisonment to be followed by a two-year term of probation. (R. p. 116).

During the ensuing hearing on that motion, the solicitor conveyed both the State and the victim, who was unable to be present, wished for the trial judge to stand by her original sentencing decision. (R. pp. 100-101; p. 110). Conversely, defense counsel asked the trial judge to "reconsider" the imposition of the seven-year sentence. (R. p. 102). As support for that request, defense counsel explained Appellant's "perception" of the incident was he only left his apartment following continued goading from Abell, Abell was the one that became physical with him, and Corporal Beaudoin's intervention made him feel as if he would not be able to "protect himself" in his physical confrontation with Abell. (R. pp. 103-104). Likewise, defense counsel noted the trial judge had appeared to have "weighed heavily" the fact Appellant had not expressed remorse, indicated Appellant thought he did not have an opportunity to do so at the "point of sentencing," and asserted Appellant wished to do so now. (R. 104-105). Following those remarks, Appellant addressed the trial judge, affirmed he wished to apologize to the victim, and denied having any intention to hurt her. (R. p. 105). Appellant's mother and sister then spoke on Appellant's behalf and requested leniency for him. (R. pp. 106-109).

After considering everything presented, the trial judge confirmed she had taken into account Abell's actions and Appellant's lack of a prior criminal record when imposing the sentence. (R. p. 110). Nevertheless, the trial judge indicated she believed the recordings from

the incident reflected how violently Appellant struck Corporal Beaudoin, whom she described as "very diminutive" in comparison to Appellant. (R. pp. 110-111). The trial judge further noted Corporal Beaudoin was initially trying to help Appellant and he responded by violently beating her, which resulted in permanent hearing loss for the officer. (R. p. 111). Accordingly, based on her evaluation of all the mitigating and aggravating circumstances involved, the trial judge declined to alter Appellant's sentence, and she later confirmed that ruling through a written order.[3] (R. p. 111; p. 119).

[3] Notably, in the written order, the trial judge recounted the reconsideration hearing arguments as follows: "AT THE CALL of this case the State presented the factual background to this Court. The Victim was not present, but the State requested the sentence remain the same on the Victim's behalf. The Defense requested that the Sentence be amended to a lower active sentence or probation. During the Defense's argument the Defendant's Mother Spoke and requested the same." (R. p. 119). The trial judge further reaffirmed: "This Court finds that the Defendant's actions were severe enough to warrant the original sentencing and will therefore deny the Defendant[']s motion to reconsider sentencing." (R. p. 119).

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); see State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits."); see also State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("A trial judge generally has wide discretion in determining what sentence to impose."). Furthermore, appellate courts in South Carolina have "no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law in the discretion of the [sentencing] judge, and is not the result of partiality, prejudice, oppression or corrupt motive." State v. Scates, 212 S.C. 150, 154, 46 S.E.2d 693, 694 (1948); cf. State v. Davis, 88 S.C. 229, __, 70 S.E. 811, 814 (1911) ("It is excepted that imprisonment for five years in this case is excessive. We have repeatedly held that we have no jurisdiction to correct a sentence on this ground, provided it is within the limits prescribed by law for the discretion of the trial court, and is not the result of partiality, prejudice, oppression, or corrupt motive.").

ARGUMENT

To the extent Appellant now contends for the first time on appeal the trial judge abused her discretion or otherwise erred when imposing the sentence, that particular contention was not properly preserved for appellate review because it was neither raised to nor ruled upon by the trial judge. Furthermore, the trial judge did not abuse her broad sentencing discretion or otherwise err by sentencing Appellant to a seven-year term of imprisonment after Appellant was convicted of assaulting an officer while resisting arrest because the sentence imposed fell within the permissible statutory sentencing limits for Appellant's offense and nothing appearing in the record established it was imposed as the result of any partiality, prejudice, corrupt motive, or improper considerations on the part of the trial judge.

On appeal, Appellant appears to be contending the trial judge reversibly erred by sentencing him to a seven-year term of imprisonment after he was convicted of assaulting a police officer while resisting arrest, which was an offense punishable by a term of imprisonment of up to ten years.[4] As support for that contention, Appellant—while heavily focusing on initial sentencing *recommendations* provided by the solicitor and the victim—alleges the trial judge abused her broad sentencing discretion by purportedly failing to give "adequate considerations" to the mitigating circumstances that were present and by imposing a sentence that was allegedly

[4] Notably, as to the relief Appellant is currently seeking on appeal, Appellant does *not* ask this Court to remand for reconsideration of his sentence, which would be the appropriate relief *if* Appellant's appellate contentions were somehow accurate. See State v. Petty, 245 S.C. 40, 42, 138 S.E.2d 643, 645 (1964) ("In the case of an illegal sentence, the well settled practice in this jurisdiction is to affirm the conviction but set aside the sentence and remand the case to the trial court for the purpose of resentencing the defendant."). Instead, Appellant asks *this Court* to actually sentence him to a one-year term of imprisonment to be followed by some indeterminate period of probation. (App. Br. p. 9). Notwithstanding the fact Appellant's appellate contentions are incorrect *and* completely unsupported by any pertinent authority, Appellant's requested relief simply cannot properly be granted due to the nature and scope of appellate review in our state. See S.C. Const. art. V, § 5 (mandating appellate courts in South Carolina constitute courts "for the correction of errors at law under such regulations as the General Assembly may prescribe"); see also United States v. Johnson, 934 F.3d 498, 502 (6th Cir. 2019) ("Reasoned judgments about the appropriate length of a sentence are largely for trial courts, not appellate courts."); Reina-Rodriguez v. United States, 655 F.3d 1182, 1193 (9th Cir. 2011) ("Appellate courts are not sentencing courts."); cf. State v. Howard, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief *but not supported by authority*." (emphasis added)).

"capricious at best." Appellant further maintains the trial judge misunderstood, misapprehended, and misremembered facts critical to her sentencing decision. To the extent Appellant now contends on appeal the trial judge abused her discretion or otherwise erred when sentencing him, that particular contention was not properly preserved for appellate review because it was neither raised to nor ruled upon by the trial judge. Moreover, contrary to Appellant's current claims and notwithstanding any issue preservation concerns, the trial judge did not abuse her broad sentencing discretion when sentencing Appellant—or when refusing to reconsider the sentence imposed—because she imposed a sentence that fell within the permissible statutory sentence limits for Appellant's troubling offense after considering all the information presented to her, and nothing appearing in the record established the trial judge imposed Appellant's statutorily-authorized sentence as the result of any partiality, prejudice, corrupt motive, or improper considerations. Under such circumstances, there is no proper basis upon which Appellant's sentence can be disturbed on appeal. Appellant's conviction and sentence should be affirmed.

A. To the extent Appellant now contends on appeal the trial judge abused her discretion or otherwise erred when imposing the sentence imposed, that particular contention was not properly preserved for appellate review because it was neither raised to nor ruled upon by the trial judge.

In our state, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it considered all relevant facts, law, and *arguments*." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724

(2000) (emphasis added); cf. Unemployment Compensation Comm'n of Alaska v. Aragan, 329 U.S. 143, 155 (1946) ("A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and *deprives the Commission of an opportunity* to consider the matter, make its ruling, and state the reasons for its action." (emphasis added)).

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). If an issue is not presented to and ruled upon by the circuit court judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). Critically, on appeal, an appellant is limited solely to the grounds raised at trial. State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997); see State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

In the case at bar, Appellant—while asserting this Court "must" declare his sentence "arbitrary or capricious"—now appears to be contending the trial judge somehow abused her discretion or erred by sentencing him to a seven-year term of imprisonment. As support for that contention, Appellant maintains the trial judge misunderstood, misapprehended, and misremembered certain critical facts when rendering her sentencing decisions. More specifically, Appellant—amongst other things—accuses the trial judge of failing to give adequate consideration to Abell's supposed "instigation" and "provocation" throughout the incident and of misremembering what was shown on the recordings of the incident.

Importantly though, Appellant did *not* raise those particular allegations of error either during the sentencing hearing, through his motion for reconsideration, or during the post-trial hearing conducted on that motion. Instead, Appellant raised *no* objections of any kind after his sentence was imposed and then subsequently *asked*—and only asked—the trial judge to reconsider that sentence without ever actually raising any specific allegations of sentencing error to her. Cf. State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) ("No objection to sentencing was raised at trial and this issue is not properly before the court.").

Therefore, since a mere request to reconsider a discretionary decision was not and is not necessarily synonymous with an assertion of error, the trial judge—who, as reflected in her written order, accurately viewed Appellant's motion for reconsideration merely as a "request" for his sentence to be "amended to a lower active sentence or probation" as opposed to an allegation of error on her part—was wholly denied an opportunity to consider, address, or rule upon Appellant's newly-advanced claims of error when rendering her sentencing decisions in his case. See Queen's Grant, 368 S.C. at 372-373, 628 S.E.2d at 919 ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." (citations omitted)). As a result, Appellant's current contention was not properly preserved for appellate review and cannot appropriately be raised or addressed for the first time on appeal as it was never actually raised to or ruled upon by the trial judge. See State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review."); State v. Walker, 252 S.C. 325, 327-328, 166 S.E.2d 209, 210 (1969) (declining to address Walker's appellate contention the sentence he received could not have properly been imposed "on the

elementary ground that the question was not raised below"). Appellant's conviction and sentence should be affirmed.

B. The trial judge imposed an appropriate sentence that fell squarely within the permissible sentencing limits for Appellant's offense, and the fact Appellant disagreed—and continues to disagree—with the discretionary decision made by the trial judge did not mean the trial judge failed to appropriately consider the circumstances or otherwise erred when imposing Appellant's sentence.

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. Sidell, 262 S.C. at 398, 205 S.E.2d at 3. In exercising that broad sentencing authority, the sentencing judge must be accorded "very wide" discretion to determine the appropriate sentence and can properly consider "any and all information that reasonably might bear upon the proper sentence for the particular defendant, given the crime committed." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). Amongst the information that may be considered, the sentencing judge can consider such factors as the conduct or demeanor the defendant and the "atmosphere" of the proceedings if applicable when determining what sentence to impose. See Scates, 212 S.C. at 155, 46 S.E.2d at 695 ("It must be remembered that the demeanor and conduct of the prisoner, and the atmosphere of the trial, are not truly reflected in a cold, written record."). Likewise, the sentencing judge is fully permitted to consider one or more of variety of legitimate penological justifications—including retribution, incapacitation, deterrence, and rehabilitation—in deciding what sentence is appropriate under the circumstances. See Ewing v. California, 538 U.S. 11, 25 (2003) (plurality opinion) (instructing "[a] sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation[,]" and explaining there is no constitutional mandate requiring adoption of any one penological theory); Jones v. United States, 463 U.S. 354, 368-369 (1983) ("A particular sentence of incarceration is chosen to

reflect society's view of the proper response to commission of a particular criminal offense, based on a variety of considerations such as retribution, deterrence, and rehabilitation."). Importantly, so long as the sentence imposed falls within the permissible sentencing limits for an offender's crime, the sentencing judge's decision regarding the appropriate sentence will not be found to be improper unless it was somehow unconstitutional or resulted from partiality, prejudice, oppression, or corrupt motive.[5] See Garrett v. State, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) ("A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against respondent."); Wood v. State, 257 S.C. 179, 182, 184 S.E.2d 702, 703 (1971) ("It is well settled in this State that this Court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute itself violates the constitutional injunction . . . against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive.").

In the case sub judice, Appellant was convicted by a jury of his peers of assaulting a law enforcement officer while resisting arrest and, resultantly, was facing a term of imprisonment of up to ten years. See S.C. Code Ann. § 16-9-320(B) ("It is unlawful for a person to knowingly and wilfully assault, beat, or wound a law enforcement officer engaged in serving, executing, or attempting to serve or execute a legal writ or process or to assault, beat, or wound an officer when the person is resisting an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not less

[5] Notably, Appellant has *not* contended at trial or on appeal his sentence was in any way unconstitutional. See In re Care & Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.").

than one thousand dollars nor more than ten thousand dollars or imprisoned not more than ten years, or both."). Upon considering all the information presented to her concerning both Appellant and his crime, the trial judge—instead of imposing the maximum sentence she was authorized to impose by our legislature—elected to impose a seven-year term of imprisonment.[6] Thus, the sentence imposed by the trial judge fell squarely within the applicable sentencing limits for Appellant's offense, and nothing was presented suggesting the sentence was imposed as the result of any partiality, prejudice, or corrupt motive on the part of the trial judge. S.C. Code Ann. § 16-9-320(B); cf. Garrett, 320 S.C. at 356, 465 S.E.2d at 350 (reinstating a sentence originally imposed by a circuit court judge because "it was within the limits permitted by law" and Garrett did "not assert either a constitutional violation or that the sentencing judge acted with partiality, prejudice or pressure"). Under such circumstances, the trial judge did not abuse her broad discretion or otherwise err when sentencing Appellant, and there are simply no valid grounds upon which the trial judge's discretionary sentencing decision could be disturbed on appeal. See State v. Bass, 242 S.C. 193, 197, 130 S.E.2d 481, 483-484 (1963) ("This Court has no jurisdiction to correct a sentence alleged to be excessive when it is within the limits prescribed by law.").

In arguing to the contrary, Appellant maintains the trial judge erred by allegedly failing to "adequate[ly]" consider the mitigating evidence presented and by purportedly imposing a sentence that was both unreasonable and too punitive, particularly given the fact it was higher

[6] For what's it worth, Appellant's conviction was also for an offense that would allow him to be eligible for parole after serving only a fraction of that seven-year sentence. See S.C. Code Ann. § 24-21-610 (stating offenders convicted of crimes not classified as "violent" or "no parole" offenses are entitled to be considered for parole after serving one-fourth of their sentences); see also S.C. Code Ann. § 16-1-60 (identifying the offenses classified as "violent" without including assaulting a law enforcement officer while resisting arrest).

than the initial sentencing *recommendation* provided by the solicitor and the victim.[7] Importantly though, the trial judge—and not the solicitor, the victim, or Appellant himself—was the one tasked with evaluating the evidence presented and deciding upon an appropriate sentence under the circumstances involved. See 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."); see also Solem v. Helm, 463 U.S. 277, 290 n. 16 (1983) ("Absent specific authority, it is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence[.]"). And, while Appellant may have preferred for the trial judge to have weighed such factors as the various recommendations made or Appellant's lack of a prior criminal record more heavily in his favor, the trial judge was *not* required to do so and, instead, was fully permitted to consider other factors, such as the violent nature of Appellant's crime and the fact Appellant *continued* to taunt and degrade his much smaller victim

[7] As previously noted, the solicitor confirmed Corporal Beaudoin was in agreement with the sentence imposed by the time of the post-trial hearing on the motion for reconsideration. (R. pp. 100-101; p. 110). Now, on appeal, Appellant—as part of his current contention the trial judge's sentencing decisions were somehow unreasonable—alleges Corporal Beaudoin's position at that point in time was "polluted by events that . . . occurred since the initial sentence was imposed," and, as support for that, Appellant points to—and asks this Court to take judicial notice of—purported pending civil cases Corporal Beaudoin instituted against Appellant and Deputy Abell. (App. Br. p. 8). Critically though, Appellant did not raise any arguments to the trial judge concerning any pending civil cases during the circuit court proceedings in his case, and no evidence appears to have actually been presented to the trial judge concerning those alleged civil cases. (R. pp. 100-111). Resultantly, Appellant's new arguments related to the civil cases cannot now properly be considered for the first time on appeal. See Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 455, 211 S.E.2d 243, 244 (1975) ("[A] trial judge will not be reversed for failing to act on a matter that was not submitted to him."); see also South Carolina State Highway Dep't v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) ("[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record."); cf. Tant v. Guess, 37 S.C. 489, 512-513, 16 S.E. 472, 480 (1892) (" 'According to the practice of the Court of Chancery from its earliest history to the present time, *no paper not before the court below can be read on the hearing of an appeal*.' This court has, in numerous cases, recognized and affirmed this doctrine." (emphasis added)).

after he struck her instead of showing any remorse to her for what he had done, when deciding upon an appropriate punishment for Appellant's offense. See Jones, 463 U.S. at 369 ("The State may punish a person convicted of a crime even if satisfied that he is unlikely to commit further crimes."); Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51, 55 (1937) ("[A state] may inflict a deserved penalty merely to vindicate the law or to deter or to reform the offender or for all of these purposes."). As a result, the fact Appellant may have personally wished the trial judge evaluated the pertinent sentencing factors differently and in a way that resulted in a sentence more to his liking does not in any way support a conclusion the trial judge abused her discretion or otherwise erred by imposing the legislatively-sanctioned sentence she imposed. See State v. Sanders, 251 S.C. 431, 444, 163 S.E.2d 220, 228 (1968) (instructing the "established rule" in South Carolina is an appellate court will not reverse a sentence for being "excessive" if it falls within the statutory sentencing limits and was not imposed as the result of partiality, prejudice, oppression, or corrupt motive); cf. State v. Helms, 40 P.3d 626, 630 (Utah 2002) ("[T]he fact that Helms views his situation differently than did the trial court does not prove that the trial court neglected to consider the [sentencing] factors listed in [a specific Utah statutory provision].").

Accordingly, since Appellant's sentence fell within the appropriate statutory sentencing limits for his troubling offense and nothing suggested it was imposed based on partiality, prejudice, oppression, corrupt motive, or any other improper considerations, the trial judge did not abuse her broad discretion or otherwise err when imposing the permissible sentence she imposed for Appellant's assaulting a police officer while resisting arrest conviction, and there is no proper basis upon which to disturb Appellant's sentence on appeal. See State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) ("[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion."); State

v. Johnson, 159 S.C. 165, 170, 156 S.E. 353, 354 (1930) ("This Court has no jurisdiction on appeal to correct a sentence alleged to be excessive, when it is within the limits prescribed by law. The length of the prison sentence rests in the sound discretion of the trial Court unless partiality, prejudice, oppression, or corrupt motive is shown."); cf. Clark v. State, 259 S.C. 378, 382-383, 192 S.E.2d 209, 210-211 (1972) ("Appellant seeks to have his sentence set aside and be resentenced to a lesser term. His contentions in this respect require little comment. It has long been settled that this Court has no jurisdiction on appeal to correct an allegedly excessive sentence, which is within the limits prescribed by law for the discretion of the trial judge and which is not proved to be the result of partiality, prejudice, oppression or corrupt motive. We deem it unnecessary to cite or refer to the many authorities for this well settled proposition. The record here contains no suggestion, let alone evidence, of any partiality, prejudice, oppression or corrupt motive influencing or affecting the sentence."). Appellant's conviction and sentence should be affirmed.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY:_____
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

April 22, 2025

RECEIVED
Apr 22 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2022-000412

THE STATE,

Respondent,

vs.

ANTHONY BERNARD MORRIS,

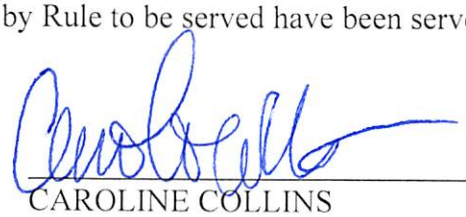
Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Final Brief of Respondent on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Reagan Singletary, Esquire
The Singletary Group, LLC
685 Highway 15 South
St. George, South Carolina 29377

I further certify all parties required by Rule to be served have been served.
This 22nd day of April, 2025.



CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General