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Jul 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALE SMITH,

APPELLANT

APPELLATE CASE NO. 2024-001014

ANDERS BRIEF OF APPELLANT

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to rule on appellant's motion to reconsider sentence where the state made objectionable remarks during sentencing?

STATEMENT OF THE CASE

On June 13, 2023, a Richland County grand jury indicted appellant for domestic violence of a high and aggravated nature (DVHAN). R. 38-39. On June 6, 2024, appellant pled guilty to domestic violence, first degree before the Honorable G.D. Morgan, Jr. R. 1. Katherine Myers represented appellant, and Theresa Johns prosecuted for the state. R.1. Judge Morgan sentenced appellant to ten years' imprisonment and signed a permanent restraining order. R. 25, ll. 8-15.

On June 14, 2024, plea counsel filed a notice of appeal in appellant's case. R. 27. On July 31, 2024, this Court dismissed the appeal by order. R. 29. On August 6, 2024, plea counsel filed a motion with the circuit court to reconsider appellant's sentence in the circuit court. R. 30. On August 22, 2024, plea counsel filed a motion with this Court to reinstate appellant's appeal along with a guilty plea explanation pursuant to *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). R. 32. On September 30, 2024, this Court reinstated appellant's appeal ordering plea counsel to submit a guilty plea explanation within twenty days. R. 36. On October 21, 2024, plea counsel filed a guilty plea explanation stating the issues on appeal were: 1) the victim's brother was allowed to speak negatively about appellant during the plea hearing, 2) a victim's advocate spoke at the hearing giving bolstering testimony, and 3) appellant's motion to reconsider sentence was denied. R. 37.

This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Vick*, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009)(quoting *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous.” *Id.* (quoting *Wilson*, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court “does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court’s ruling is supported by any evidence.” *State v. Slocumb*, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). “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

The plea court erred in failing to rule on appellant's motion to reconsider sentence where the state made objectionable remarks during sentencing.

Relevant facts

At the guilty plea hearing the solicitor alleged appellant and his pregnant girlfriend Amber Murray were arguing and appellant slapped and choked Murray. R. 5—8. Ms. Murray spoke to the plea court and claimed appellant choked her until she was unconscious, threatened to kill her, and bit her. R. 11, ll. 4-23.

Appellant agreed with the facts set forth by the solicitor and pled guilty to domestic violence, first degree. R. 15, ll. 12-15; 16, ll. 4-12. Appellant apologized to Ms. Murray and his children and explained he was regretful even though he did not “agree with all that [she] said happened.” R. 17, ll. 5-16.

During sentencing the state responded to a statement made by appellant's father saying, “whatever happened that, you know, may have compelled [appellant] to think that this is the way that we treat a woman is probably coming directly from the family.” R. 23, ll. 17-20. Plea counsel objected and the solicitor moved on by inviting a speaker from the victim's ombudsman's office, Christie Tolar, to speak. R. 23, l. 21—24, l. 4.

Ms. Tolar told the court that strangulation is a [] factor in domestic violence and then stated, “I don't want to see Ms. Murray at next October's [] ceremony for domestic violence deaths.” R. 24, l. 22—25, l. 1. Right after that, the plea court sentenced appellant to the maximum term of ten years' imprisonment and signed a permanent restraining order. R. 25, ll. 9-15.

Discussion

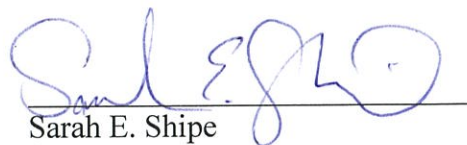
“The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion.” *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). “A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” *Id.* (citing *Wasman v. United States*, 468 U.S. 559, 563 (1984)).

In a criminal prosecution, punishment of the offender is recognized as a proper motivation for a sentencing trial judge. *State v. Fletcher*, 322 S.C. 256, 471 S.E.2d 702 (Ct.App.1996). However, another legitimate interest at sentencing is the defendant's prospect for rehabilitation and restoration to a useful place in society. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996). *See also* 24 C.J.S. Criminal Law § 1460 (rehabilitation is considered to be one purpose of sentencing).

The plea court erred in failing to reconsider appellant's sentence in this case. During the plea hearing appellant took responsibility and pled guilty to his offenses. The state then offered objectionable statements through Ms. Tolar which improperly affected appellant's sentence. Ms. Tolar improperly insinuated to the plea court that if appellant was not sentenced severely Ms. Murray would likely be dead at his hands. Ms. Murray and her family were properly allowed to speak and give victim impact statements which was their right. However, Ms. Tolar's unnecessary and over the top statement was improper for the court to consider and for that reason appellant's sentence should be reconsidered. *See State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).

CONCLUSION

By reason of the foregoing argument, appellant's sentence should be vacated, and this case remanded for resentencing.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of July, 2025.

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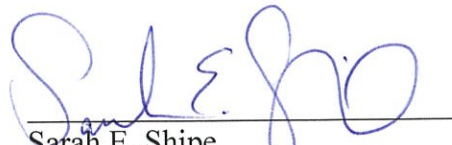
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dale Smith states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge G.D. Morgan, Jr., which was held on June 6, 2024, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 trial.

WHEREFORE, she asks the Court to relieve her as counsel for Dale Smith.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

This 28th day of July, 2025.

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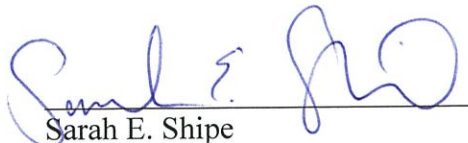
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire Guilty Plea Transcript dated June 6, 2024
- (2) Notice of Appeal
- (3) Order Dismissing Appeal (July 31, 2024)
- (4) Motion to Reconsider Sentence (August 6, 2024)
- (5) Motion to Reinstate Appeal (August 22, 2024)
- (6) Order of Reinstatement (September 30, 2024)
- (7) Guilty Plea Explanation
- (8) Indictment and Sentence Sheet

I certify that this designation contains no matter which is irrelevant to this appeal.



Sarah E. Shipe
Appellate Defender

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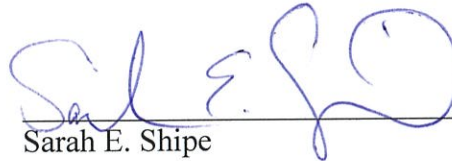
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CERTIFICATE OF COUNSEL

SC Court of Appeals

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."



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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Dale Smith, #347549, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 28th day of July, 2025.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT