

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT)

STATE OF SOUTH CAROLINA)

Indictment Nos. 2013GS07-00804, 00888, 00935

2013GS07-01081-01082, 01096

versus)

DAVID BOYD,)

Defendant.)

NOTICE OF MOTION AND MOTION
TO RECONSIDER SENTENCE

2013 SEP -4 AM 10:19
J. HENNING ROSENBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Defendant through counsel hereby moves this Court for a reconsideration of his sentence imposed by the Honorable Carmen T. Mullen on August 29, 2013.

Respectfully submitted,



Trasi Campbell
Attorney for Defendant

Beaufort, South Carolina

September 3, 2013

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OCT 29 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) INDICTMENT NO.:
2013GS0700804,888,935,1081,1082,1096

RECEIVED
OCT 29 2013

STATE OF SOUTH CAROLINA,)
versus)
DAVID BOYD,)
Defendant.)

DEFENDANT'S MEMORANDUM)
IN SUPPORT OF MOTION TO RECONSIDER)
AND REDUCE SENTENCE IMPOSED BY)
THIS HONORABLE COURT)

SC Court of Appeals
2013
SEP 9 AM 9:46
CLERK OF COURT

The Defendant, David Boyd, by and through his undersigned attorney hereby moves this Honorable Court for a reconsideration and reduction in his sentence based upon the following grounds.

The State of South Carolina and the Sentence Imposed Upon the Defendant violates the Defendant's Due Process Rights and Equal Protection Rights guaranteed to the Defendant by the United States Constitution and the South Carolina State Constitution.

David Boyd was arrested by the Beaufort County Sheriff's Department, prosecuted by Ben Shelton, Assistant State Solicitor for the Fourteenth Judicial Circuit in South Carolina, and pled guilty to all indictments with the assistance of his appointed counsel, Trasi Campbell, Beaufort County Chief Public Defender. This guilty plea and sentencing issue relates to Mr. Boyd's indictments issued by the Beaufort County Grand Jury for his role in two incidents involving Mr. Boyd threatening the use of an explosive in an attempt to rob a bank. These incidents at the Bank of America occurred on May 1, 2013 in Bluffton, SC and May 2, 2013 on Hilton Head Island, SC. Mr. Boyd was arrested on May 2, 2013. Mr. Boyd entered his guilty pleas on August 29, 2013, just shy of four months after his arrest.

At the guilty plea and sentencing hearing on August 29, 2013, the State of South Carolina placed upon the record of this case the rationale for Mr. Boyd being brought to State Court and not being taken to Federal Court where such cases are normally situated and prosecuted per federal law. The State indicated that they sought out Mr. Boyd's case and took a special interest in prosecuting this case in State Court. The State of South Carolina argued that the Federal government was too busy prosecuting terrorists to pursue the prosecution of Mr. Boyd and, in any event, the State of South Carolina wanted to hold on to Mr. Boyd for prosecution in State Court. Thus, as this information was revealed, Mr. Boyd argues that the State of South Carolina violated his due process rights and his equal protection rights by "cherry-picking" him out specifically to prosecute in State Court and seeking to punish him in excess of the sentence he would have received in federal court. This is particularly relevant and important in terms of the sentencing which was imposed upon Mr. Boyd by the Circuit Court. At sentencing, Mr. Boyd argued that he should be given a sentence that would be in line with the sentence he would have received in Federal Court had the State of South Carolina not reached in and grabbed him for special prosecution in Beaufort County. Mr. Boyd provided the Circuit Court with the rough worksheet for the federal guidelines and placed that report in the record. The State did not argue against the validity of the federal guidelines in terms of the maximum sentence Mr. Boyd faced in federal court. Even if Mr. Boyd was held accountable to the top level of criminal history and the maximum calculations on armed career criminal (which he likely does not qualify for), he would still be facing only a maximum of between 17.5 years and 21.5 years. Thus, the thirty

year sentence handed down by the Circuit Court exceeded his Federal Sentencing Guidelines by approximately ten to thirteen years.

The State of South Carolina and the Sentence Imposed Upon the Defendant violates the Defendant's protections guaranteed by the Eighth Amendment to the United States Constitution.

Mr. Boyd respectfully asserts that the sentence of thirty years, as imposed, concurrent for all indictments in State Court violates the proportionality requirement of the Eighth Amendment to the United States Constitution.

The Federal Government is the primary agency for the prosecution of cases involving bank robbery. And, the federal bank robbery statute has clearly established a comprehensive scheme for prosecuting and punishing persons who rob federally-insured banks. The Bank of America in Bluffton, SC and the Bank of America on Hilton Head are both FDIC institutions.

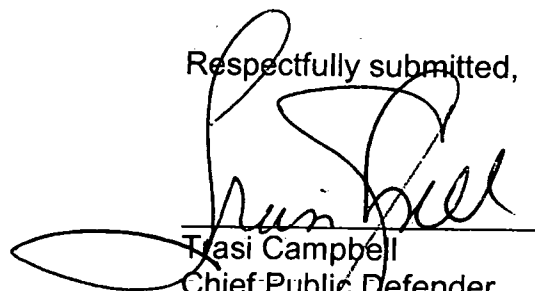
Conclusion

In support of his assertions in both arguments, the Defendant relies on United States v. Ringgold, ___ F.3d ___, No. 06-10492, 2009 WL 1927597 (9th Cir. July 7, 2009) which focused on a narrow but key issue in the Federal Court and State Court matters related to disparate sentences. The appeal in that case concerned the question whether, after United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), a district court abuses its discretion by declining to consider the disparity between a recommended Guidelines sentence and the maximum sentence a defendant would receive if convicted of the same conduct in state court. Under the circumstances presented by that case, the

appeals court held that the district court did not abuse its discretion or commit procedural error in declining to consider such a disparity. The difference in Mr. Boyd's case and the Ringgold case lies in the fact that the State of South Carolina actively sought to select Mr. Boyd out for special prosecution in State Court and this special selection creates a unique situation where Ringgold can be instructive for the Court bearing in mind that Mr. Boyd has the added layer of analysis of direct State action of "cherry-picking" him out for selective prosecution.

The Defendant, Mr. Boyd, hereby respectfully requests that he be given a sentence in State Court that is of the same proportionality as the sentence he would have received in Federal Court had the State of South Carolina not actively pursued him and specially selected him for prosecution in State Court.

Respectfully submitted,



Trasi Campbell
Chief Public Defender
Attorney for the Defendant

Beaufort, South Carolina

9/9, 2013



**COUNTY COUNCIL OF BEAUFORT COUNTY
OFFICE OF THE PUBLIC DEFENDER**

Human Services Building - 1905 Duke Street (Room 210) P.O. Box 525
Beaufort, South Carolina 29901-0525
Phone: (843) 255-5805 Fax: (843) 255-9494

October 24, 2013

The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: State v. David Boyd
Appellate Case No. 2013-002119

Dear Court of Appeals:

In response to your letters dated October 21, 2013 and your request for a "written explanation showing that there is an issue which can be reviewed upon appeal", I hereby enclose a copy of the Defendant's Memorandum in Support of Motion to Reduce Sentence and state the following: The Defendant pled guilty to his indictments and received a sentence that violated his United States and South Carolina rights to due process and equal protection and the Eighth Amendment to the United States Constitution.

I believe that the enclosed Memorandum that was filed and argued to the Court meets the requirements of the remaining elements requested in your letter. The Defendant's Motion was denied by the Court.

Should you need any additional information, please let me know.

Sincerely,


Traci Campbell
Chief Public Defender
Beaufort County

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OCT 29 2013
SC Court of Appeals



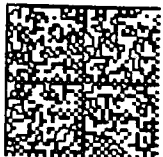
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SC Court of Appeals

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