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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2026-000484

THE STATE,

Respondent,

v.

JAMES ORIAN GREGORY,

Petitioner.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

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TABLE OF CONTENTS

STATEMENT OF ISSUE ON CERTIORARI..... 1

STATEMENT OF THE CASE..... 2

STANDARD OF REVIEW 7

ARGUMENT 8

I. The Court of Appeals properly held that plea court did not abuse its discretion by placing Petitioner on the sex offender registry because the plea court considered the facts and circumstances of the case before properly determining that good cause existed.8

CONCLUSION..... 10

STATEMENT OF ISSUE ON CERTIORARI

Petitioner's Issue Statement

Whether the Court of Appeals erred in holding the circuit court did not abuse its discretion in placing Petitioner on the sex offender registry where the State failed to make a showing of good cause because there is no evidence in the record showing that Petitioner was at risk to reoffend sexually and where the circuit court denied defense counsel's motion to allow for a psychosexual examination prior to Petitioner being placed on the registry to determine Petitioner's risk to reoffend?

Respondent's Counterstatement

Whether the plea court abused its discretion when it ordered Petitioner 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 Petitioner for first-degree criminal sexual conduct with a minor. (R. 18-19). On December 6, 2023, Petitioner proceeded to a plea hearing before the Honorable Perry H. Gravely. (R. 1).

At the plea hearing, the solicitor stated that Petitioner would be pleading to first-degree assault and battery. (R. 3). Petitioner 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). Petitioner 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). Petitioner 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). Petitioner 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 [Petitioner] had sexually assaulted her. She stated that this [Petitioner] 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).

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

Petitioner 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 Petitioner's plea pursuant to *Alford*, finding that Petitioner 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 Petitioner'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 Petitioner'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 [Petitioner] 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 Petitioner 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 [Petitioner] 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, [Petitioner] needs to be held accountable. [Petitioner] 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).

Petitioner 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). Petitioner 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). Petitioner 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 Petitioner credit for 1,398 days of time served. (R. 16). The plea court also issued a permanent restraining order. (R. 16). Regarding placing Petitioner 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 [Petitioner's] request

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

(R. 16).

Petitioner 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). Petitioner 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).

Petitioner 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 Petitioner'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 Petitioner to be placed on the registry and denied Petitioner's motion to reconsider. (R. 25).

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

Petitioner filed a timely notice of appeal with the Court of Appeals, which affirmed in an unpublished opinion the plea court's ruling for Petitioner to register as a sex offender because the record supported that the State made a showing of good cause for imposing registry. (App. 33-34).

This appeal followed.

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 Court of Appeals properly held that plea court did not abuse its discretion by placing Petitioner on the sex offender registry because the plea court considered the facts and circumstances of the case before properly determining that good cause existed.

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." This 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, this 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 Petitioner 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 relevant statute, the crime with which Petitioner was charged—first-degree criminal sexual conduct with a minor—is an offense requiring automatic inclusion on the sex offender registry. (R. 18-19). *See* S.C. Code Ann. § 23-3-430(C)(3)(a). Petitioner 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 Petitioner'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. Dep't of Just., Bureau of Just. Stat., Sex Offenses and Offenders 27 (1997); U.S. Dep't of Just., Bureau of Just. Stat., 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 Petitioner's risk to reoffend, it was in no way necessary for the plea court to order one. Moreover, Petitioner 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 Petitioner 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 Petitioner as a high risk of reoffending pursuant to section 23-3-400, the Court of Appeals correctly held that the plea court's determination that good cause existed is supported by the evidence in the record.


CONCLUSION

Based on the foregoing, the Court of Appeals properly held that the plea court did not abuse its discretion in placing Petitioner on the sex offender registry. Therefore, this Court should deny Petitioner's Petition for Writ of Certiorari.

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