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May 07 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2025-002150

THE STATE,

Respondent,

v.

ROBERT DOLAN FOSTER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court judge did not err by ordering Appellant to register as a sex offender as part of his sentence.

STATEMENT OF THE CASE

Appellant was arrested on November 12, 2019, and charged with two counts of third-degree criminal sexual conduct. Appellant agreed to plead guilty to one count of first-degree Assault and Battery with no recommendation.

On November 30, 2021, Appellant pled guilty in front of the Honorable Letitia H. Verdin. Appellant was sentenced to eight years in prison and ordered to register on the sex offender registry (Registry). Defense counsel objected to the registry requirement based on the evidence presented at the plea hearing.

On December 7, 2021, Appellant filed a motion to reconsider requesting the Court reconsider both his sentence and placement on the registry. After a series of communications between the parties and the Court, the motion was denied on June 17, 2025, and written notice of the Order was provided to counsel on October 14, 2025. Appellant filed a notice of appeal on October 22, 2025. This appeal follows.

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 trial judge's sentencing decisions in rare and unusual circumstances in light of the broad discretion afforded to trial judges 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. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come.").

Relatedly, an appellate court will not interfere with a trial judge's discretionary decision to order a criminal defendant to register as a sex offender absent an abuse of discretion. In re M.B.H., 387 S.C. 323, 327, 692 S.E.2d 541, 542-543 (2010); see State v. Fuller, 425 S.C. 468, 479, 822 S.E.2d 910, 916 (Ct. App. 2019) (recognizing an appellate court reviewing a discretionary decision regarding sex offender registration must apply a "deferential" standard of review). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

The circuit court judge did not err by ordering Appellant to register as a sex offender as part of his sentence.

On November 30, 2021, Robert Dolan Foster pled guilty to first-degree assault and battery in front of the Honorable Letitia H. Verdin. (Tr. 10). During the plea hearing the solicitor gave the following facts:

As to Mr. Foster, on 10/18/19 this 20-year-old defendant sexually assaulted the 18-year-old victim, who was sleeping in his sister's room in Greenville County.

The victim reported the defendant came into the room and asked if she wanted to have sex to which she said no several times. She stated he took off her pants in a forceful manner, digitally penetrated her vagina and then penetrated her vagina with his penis. The defendant ejaculated on her stomach. And she also reported that during this assault he held his hand over her throat. She said she was in shock and scared to move during the assault.

The defendant sent Snapchat messages to the victim the next morning that stated, sorry for raping you. Please don't tell on me to the police.

He did one day in jail, Your Honor. His record is a 2019 conditional discharge for a possession of marijuana pled down from a PWID and auto breaking.

And there is no recommendation in this case, Your Honor. It is a straight-up to assault and battery, first degree, as to sentence and also to the registry.

(Tr. 10-11). Judge Verdin asked how Appellant pled after hearing the stated facts and Appellant pled guilty. (Tr. 12).

The victim gave a statement on how her life had been impacted. (Tr. 11-12) She stated that she struggles with mental illness and PTSD since the assault. (Tr. 11). She stated that she suffers from self harm thoughts daily and it has created problems with sobriety for her. (Tr. 11-12). She stated that she is in constant mental and physical pain. (Tr. 12).

At the end of mitigation, Judge Verdin asked defense counsel if Appellant admitted to sending the Snapchat message the next day. (Tr. 17). Defense counsel stated that he did concede to sending the message, but that it was in the "grander scheme of the conversations going on that morning." (Tr. 17).

Defense counsel stated that they opposed the sex offender registry. (Tr. 16). A recess was taken and Judge Verdin stated:

I wanted to take a break to think about the facts that were presented by the State. I wanted to consider the witness statement. I wanted to consider the report. I wanted to consider what I had given in similar circumstances and look at that.

This is—I understand that the defendant doesn't agree with everything put forward by the State. It might have a different characterization of this. But this is simply not a case in which I could consider giving you probation on.

The facts in this case, the fact that the case has been reduced to an assault and battery in the first degree, I do take into account that there has been a reduction, and your attorney has certainly done you quite a service getting that reduced. And I take all the facts into consideration.

I take into consideration the fact that you have a fairly limited record, but you do have a record. I take into consideration, as I said, the egregious nature.

And the sentence of the court is eight years, credit for the day served. And with those facts, I simply have no other choice but to put you on the Sex Offender Registry.

(Tr. 18-19).

Appellant contends that the trial court erred by imposing sex offender registry sua sponte. Specifically, Appellant argues that Appellant's due process rights were violated by imposing the sex offender registry when the state produced no evidence to support the registry and Appellant produced evidence that he should not be on the registry. However, this argument lacks merit because the trial court did not abuse its broad discretion by ordering Appellant to register as a sex offender following Appellant's conviction for first-degree assault and battery because the facts and circumstances before her—including Appellant's entry of a guilty plea to an offense of a sexual nature—established a good cause basis to believe Appellant was a risk to sexually reoffend, and her ruling in that regard was supported by the evidence and testimony presented during the plea hearing. Under such circumstances, there is no proper basis upon which to disturb the circuit court judge's discretionary decision on appeal. Both Appellant's conviction and the order requiring sex offender registration should be affirmed.

Under Section 23-3-430(A), “Any person, regardless of age, residing in the State of South Carolina who is in this State has been convicted of, pled guilty or nolo contendere to an offense described below, or who has been convicted, pled guilty or nolo contendere, or found not guilty by reason of insanity in the United States federal courts of a similar offense, or who has been convicted of, pled guilty or nolo contendere or found not guilty by reason of insanity to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article. A person who has been found not guilty by reason of insanity shall not be required to register pursuant to the provisions of this article unless and until the person is declared to no longer be insane or is ordered to register by the trial judge.” S.C. Code Ann. § 23-3-430(A). see M.B.H., 387 S.C. at 327, 692 S.E.2d at 542 (“[A] finding of good cause in this context 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.”).

The section lists several offenses all somewhat sexual in nature that apply. In this case Appellant pled guilty to first-degree assault which are not specifically included in the list of offenses requiring mandatory registration upon conviction. However, section § 23-3-430(D) gives the judge discretion to order registration for a non-enumerated offense if good cause is shown by the solicitor. See S.C. Code § 23-3-340(D) (Upon conviction, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, 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).

By entering his guilty plea and admitting to the conduct he engaged in with victim, Appellant was guilty in the eyes of the law of the offense to which he pled, and that offense—as

directly acknowledged by Appellant during the plea proceedings—involved the non-consensual touching of Victim’s private parts with lewd and lascivious intent. Further, there was a Snapchat message sent by Appellant that he conceded to sending stating “sorry for raping you. Please don’t tell on me to the police.” (Tr. 11). Based on Appellant’s conviction for an offense of a sexual nature, the admittance to “raping” victim, and the residual effects on the victim, Judge Verdin had a legitimate basis upon which to find good cause had been shown by the solicitor to believe that Appellant was a risk to sexually reoffend, and, therefore, properly could and did order Appellant to register as a sex offender pursuant to South Carolina Law. S.C. Code Ann. § 23-3-430(D); see Fuller, 425 S.C. at 481, 822 S.E.2d at 917 (“[T]he trial court acted within its discretion in ordering Fuller to register as a sex offender because of evidence that the kidnapping charge of which he was convicted included an attempted criminal sexual offense”).

Furthermore, because the circuit court judge properly considered all the facts and circumstances before her and had factual support for her determination, the plea judge in no way abused her discretion or committed any other legal error by doing so. See M.B.H., 387 S.C. at 327, 692 S.E.2d at 542-543 (holding the family court judge did not abuse his discretion by discretionarily ordering M.B.H. to register as a sex offender when “[t]he judge relied on the professional findings and recommendations in [an evaluation] report in concluding good cause existed for placing [M.B.H.] on the registry” and “the judge considered all the facts and circumstances of [M.B.H.’s] case, both aggravating and mitigating, in determining that there is a risk of sexual reoffense”). Accordingly, her factually-supported discretionary decision was not erroneous simply because Appellant would have preferred a different outcome following his conviction for a sexual offense. See Fuller, 425 S.C. at 479, 822 S.E.2d at 916 (recognizing a circuit court judge’s discretionary decision regarding sex offender registration must be afforded

deference on appeal); cf. In re Care & Treatment of Kennedy, 353 S.C. 394, 398, 578 S.E.2d 27, 28-29 (Ct. App. 2003) (“While there may be some evidence supporting Kennedy’s claim that he is not a sexually violent predator, including a normal PPG test result, there is more than enough evidence to support the decision reached by the trial court. . . . [I]n light of our limited scope of review, we find the trial court did not err in concluding Kennedy was a sexually violent predator and in committing him to the DMH for treatment.”). Both Appellant’s conviction and the order requiring sex offender registration should be affirmed.

CONCLUSION

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



Respectfully submitted,

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