

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

MAY 22 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FRANKIE BROOKS, JR.,

APPELLANT

APPELLATE CASE NO.2013-002352

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the court err by denying Appellant's motion to reconsider the sentence imposed at his guilty plea where the state presented evidence during the sentencing proceeding that Appellant was suspected of committing dozens of uncharged criminal offenses since this evidence was improper, should not have been considered by the court, and was unduly prejudicial?

STATEMENT OF THE CASE

An Anderson County Grand Jury indicted Appellant at the April 17, 2012 term of General Sessions for two counts of grand larceny and possession of a stolen vehicle; at the October 23, 2012 term for receiving stolen goods; at the January 22, 2013 term for carjacking; and at the February 19, 2013 term for failure to stop for a blue light. R. 59-70. Appellant pled guilty to all six indictments on July 15, 2013 before the Honorable R. Lawton McIntosh. R. 1; R. 10, l. 16 – 11, l. 10. Jennifer Johnson represented Appellant and Rame Campbell was the assistant solicitor. R. 1.

There was no sentence recommendation from the state except for the agreement that Appellant's sentence for each conviction would be served concurrently. R. 3, ll. 15-16. Judge McIntosh sentenced Appellant to twenty years imprisonment for carjacking, three years concurrent for failure to stop for a blue light, five years concurrent for possession of a stolen vehicle, five years concurrent for each count of grand larceny, and five years concurrent for receiving stolen goods. R. 44, l. 10 – 45, l. 6.

On October 22, 2013, a hearing was held before Judge McIntosh on Appellant's motion to reconsider the sentence. R. 47. Jennifer Johnson also represented Appellant at this hearing and Rame Campbell was the assistant solicitor. R. 47. Judge McIntosh denied Appellant's motion. R. 56, ll. 11-25.

This appeal follows.

ARGUMENT

The court erred by denying Appellant's motion to reconsider the sentence imposed at his guilty plea where the state presented evidence during the sentencing proceeding that Appellant was suspected of committing dozens of uncharged criminal offenses since this evidence was improper, should not have been considered by the court, and was unduly prejudicial.

Guilty Plea

After a routine colloquy, the court accepted Appellant's guilty plea "as freely, voluntarily, knowingly, and intelligently made" with the advice of counsel. R. 44, ll. 10-15; see also R. 5, l. 25 – 11, l. 10. The court also found a substantial factual basis for the plea. R. 44, ll. 14-15. Besides the solicitor, four officers from the Anderson County Sheriff's Office spoke to the court. Detective Wayne Mills told the court:

It's my job at the Sheriff's Office to run the Criminal Investigative Division at the Sheriff's Office. I have to read all these reports and go through them and assign them accordingly.

This morning I pulled up Mr. Brooks' name in our PD Manager, our report writing system that maintains all our reports. **I got 34 hits on Mr. Brooks** from 2009 alone where he is actually listed as the suspect in these cases. Out of those 34 hits 20 of them he was actually booked and charged with other cases.

Looking back from 2009 to 2012, during that time - - I have a staff of 19 detectives. Seven of those, seven different detectives have been assigned different cases involving Mr. Brooks. That's a third of my staff from the Sheriff's Office working on one individual.

For you to be a suspect in one case is, you know, one thing. **To be a suspect in 34 is another.** So I just wanted to bring that to your attention, sir. Thank you.

R. 22, l. 11 – 23, l. 3 (emphasis added).

Despite considerable mitigation evidence presented by plea counsel including evidence of Appellant's severe drug addiction and his family background, the court sentenced Appellant to twenty years imprisonment for carjacking, the maximum amount the charge carries. See S.C. Code § 16-03-1075(B)(1).

Motion to Reconsider Sentence

Johnson argued during the motion to reconsider sentence hearing that improper material was presented to the court during Appellant's guilty plea that should not have been considered by the court during sentencing. She argued that "it's hard to unring the bell" and "scrub that information that was inappropriately before the court . . . from the sentencing hearing." R. 50, l. 21 – 51, l. 1. Johnson explained that during the guilty plea proceeding Detective Wayne Mills of the Anderson County Sheriff's Office "spoke kind of generically on behalf of the Sheriff's office." She said:

One of the things that [Detective Mills] did, however - - and I was not presented with this material prior to the hearing, he had some sort of spread sheet or data base, some sort of printout that he had in hand - - and he said, 'You Honor, we have, I ran his name through our data base and we have, I think it was something like **thirty-two or thirty-four other cases where [Appellant] was listed as a person of interest.**' [Appellant] was never charged with those. There was not sufficient evidence for probable cause to even exist in those cases, and frankly, I think presenting that material - - I mean, it's one thing to say, 'We're dismissing charges that exist as part of a plea agreement.' That's an entirely different matter and that's appropriate to be before the court. However, to have law enforcement come up with no prior notice to me or my client - - and to this day, I still have not seen a copy of the spreadsheet. I don't know what kind of program they use or whether that information was accurate, but in any event, I think presenting that material was extremely prejudicial, it was inappropriate . . .

R. 49, l. 14 – 50, l. 18 (emphasis added).

After explaining the basis for the motion, Johnson requested the court to reconsider Appellant's sentence and grant any relief the court saw fit. R. 53, ll. 4-6.

The court ultimately ruled:

Number one, I am denying your motion. I'll tell you why I'm denying your motion. Number one, he was out on bond and he picked up these big charges, the use of a weapon, whether it was loaded or not. The sentence I gave him was in the range that was recommended to me at the time that he pled and that was explained to him at that point in time.

As to the person of interest information, number one, that didn't impact on my decision at all. You had a case where you had a guy who had multiple charges in the past. He was coming before the court on six indictments and thirteen were being dismissed and the charges were fairly heinous and so I felt like twenty years was the appropriate amount and I still think that is the appropriate amount of time and so I note your motion. I deny your motion.

R. 56, ll. 11-25.

Discussion

The court erred by denying Appellant's motion to reconsider the sentence imposed by the court during Appellant's guilty plea proceeding since the court considered improper and unduly prejudicial matters when he sentenced Appellant. Specifically, the court was presented with information from the sheriff's office that Appellant was **suspected** of committing dozens of **uncharged** criminal acts. It is extremely likely that law enforcement did not have probable cause to charge Appellant with these crimes. Presumably, if law enforcement did have probable cause to seek a warrant for Appellant's arrest for these acts, it would have done so. It was improper for the court to consider these uncharged offenses during sentencing, especially since there is absolutely no evidence Appellant committed the

crimes discussed by Detective Mills. Additionally, because plea counsel was not provided with the information allegedly obtained from the sheriff's office's database before the guilty plea proceeding, she had no way to verify the accuracy of Detective Mills' allegations.

The United States Supreme Court has made clear that a sentence cannot be predicated on false and improper information. Townsend v. Burke, 334 U.S. 736 (1948); see also State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976).

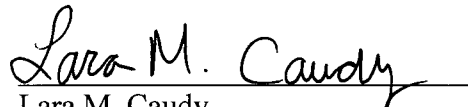
Furthermore, not only was it improper for the court to consider these allegations, but the allegations were unduly prejudicial and likely affected the court's decision to sentence Appellant to the maximum amount even though he pled guilty. See S.C. Code § 16-03-1075(B)(1). If the court had not been presented with this false information, it is likely Appellant would have been sentenced to less than twenty years imprisonment, especially given the mitigation evidence presented by plea counsel during his guilty plea.

Therefore, this Court should reverse Appellant's sentence and remand for a new sentencing proceeding.

CONCLUSION

Based on the foregoing argument, Appellant's sentence should be reversed and this case remanded to the Anderson County Court of General Sessions for a new sentencing hearing.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of May, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRANKIE BROOKS, JR.,

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APPELLATE CASE NO.2013-002352

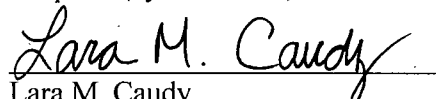
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Frankie Brooks, Jr. states:

1. She is an 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 guilty plea before the Honorable R. Lawton McIntosh, which was held on July 15, 2013, and the motion to reconsider sentence hearing, which was held on October 22, 2013, 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 Frankie Brooks, Jr..

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of May, 2014.

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IN THE COURT OF APPEALS

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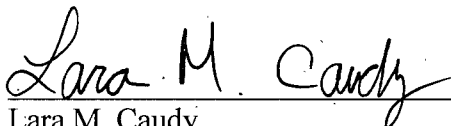
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments;
- (2) Entire guilty plea transcript dated July 15, 2013;
- (3) Entire motion to reconsider sentence hearing transcript dated October 22, 2013.

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

May 22, 2014



Lara M. Caudy
Appellate Defender

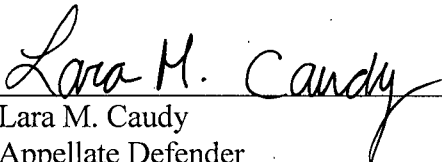
South Carolina Commission on Indigent Defense
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

May 22, 2014


Lara M. Caudy
Appellate Defender

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THE STATE,

RESPONDENT,

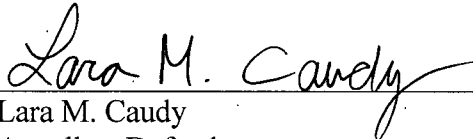
V.

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CERTIFICATE OF SERVICE

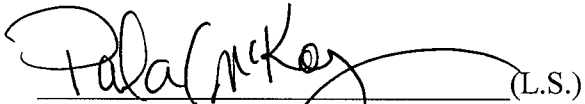
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Frankie Brooks, Jr., #332018 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 22nd day of May, 2014.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of May, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.