STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	WARRANT NO. 2013A2320501044 and 45
The State	)	
	)	
vs.	)	**ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL**
	)	
	)	
Walter Jacob Merka	)	

THIS MATTER comes before the Court on Defendant's Motion for a New Trial. On December 11, 2013, Defendant pled guilty to carjacking and assault and battery of a high and aggravated nature stemming from an August 11, 2013, incident, and this Court sentenced him to serve 8 years in the South Carolina Department of Corrections. On December 12, 2013, Defendant timely filed a Motion to Reconsider or Vacate Sentence, pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. Defendant argued his counsel was not aware, prior to the plea, of the victim's attempts to contact Defendant or of text messages the victim sent to a third party regarding her desire for Defendant to undergo counseling in lieu of serving an active sentence. Defendant further argued his family's absence at the plea inhibited him from presenting evidence to this Court of his "history of borderline intellectual functioning and maladaptive behavior patterns," of which his counsel was unaware, rendering counsel unable to present mitigating evidence for this Court to consider. In an order dated December 18, 2013, this Court declined to reconsider or vacate the sentence as imposed. Defendant then filed a Motion for a New Trial, for which a hearing was held on January 9, 2014.

Notably, Defendant does not argue his mental health history rendered him incompetent to plead guilty or that he did so involuntarily or unknowingly. *See Burnett v. State*, 352 S.C. 589,

576 S.E.2d 144 (2003) (discussing waivers of constitutional rights). At the hearing on this motion, this Court and counsel for Defendant acknowledged the plea colloquy did not include an inquiry as to whether or not Defendant had a history of mental illness. At the plea, counsel for Defendant did not raise any issues related to Defendant's competency or his ability to understand the plea colloquy, nor did this Court have any concerns about Defendant after observing him. *See Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992) (stating the test for a defendant's capacity to plead guilty). Regardless of whether this Court specifically asked Defendant about his mental health history, Defendant did not argue in his Motion to Reconsider or Vacate Sentence and is not arguing in this motion that the failure of the Court to make such an inquiry rendered his plea invalid or amounts to an error of law requiring a new trial.

At the hearing on this motion, Defendant argued his medical history —specifically the diagnosis of and treatment for Attention Deficit Hyperactivity Disorder (ADHD) and Bipolar Disorder many years prior — is mitigating evidence this Court should have been able to consider upon sentencing. The Defendant's father was present and informed the Court that the Defendant had been diagnosed with ADHD and Bipolar Disorder in the past, but the Defendant did not produce medical records to support his supposed history of mental illness. This Court held the matter in abeyance pending receipt of Defendant's medical records.

On April 2, 2014, Defendant provided this Court and the State with affidavits from his father, mother, and girlfriend with whom he has a minor child. Defendant provided copies of his prescription drug record from Walgreens, which shows he purchased Adderall and Vyvanse, both used to treat ADHD, in 2008, and a letter from Eric Faile, M.D., of Riverside Family Practice in Greenville, who prescribed Defendant the Adderall in May 2007 and the Vyvanse in May 2008. Defendant also submitted articles from the National Alliance on Mental Illness

(NAMI), the International Journal of Law and Psychiatry, and Medscape Education Psychiatry and Mental Health in support of his motion.

"The authority to change a sentence rests exclusively with the sentencing judge and is within . . . 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)). When determining an appropriate sentence, a judge enjoys very wide discretion and must be allowed to consider any information that "reasonably might bear on the proper sentence for the particular defendant, given the crime committed." *Id.*

All of the affidavits provided discuss Defendant's ADHD diagnosis and treatment during his adolescence and teenage years, but none contain any evidence that "reasonably might bear" on this Court's sentence — that Defendant still suffered from or was being treated for ADHD at the time of the incident or on the day of the plea. *Id.* The only evidence Defendant ever suffered from Bipolar Disorder came from his father's statement at the hearing and his affidavit that Defendant received such a diagnosis as a teenager. The father's affidavit states "there was never a time I believed [he was] not affected by this disorder." It is unclear from the affidavit whether this refers to ADHD or Bipolar Disorder, but assuming he is referring to Bipolar Disorder, there are no medical records provided to corroborate, nor is the father a medical professional whose opinion would support, the argument that Defendant suffered from Bipolar Disorder at the time of this incident or the time of the plea.

In his affidavit, Defendant's father cites his employment and the subsequent and frequent relocation of his family for the inability to produce any of Defendant's medical records to support Defendant's claims. This argument is not compelling. At the time of the incident and guilty plea,

the Defendant was an adult and no longer lived with his father. Defendant was able to recall where he lived in 2007 and 2008 in order to procure the prescription drug record from Walgreens and the letter from Dr. Faile. Surely he could recall where he lived and the location of his medical records from 2013, the relevant time period here. Aside from the obvious fact that a print-out from Walgreens showing Defendant purchased the medication is not proof he was taking it as prescribed, these records are irrelevant to this Court's consideration of Defendant's motion because they cover a period of time 5 years prior to the incident and plea dates. Dr. Faile's letter makes no mention of Bipolar Disorder and does nothing more to substantiate Defendant's claims than the Walgreens record.

The medical articles provided are not instructive and do not support the arguments Defendant made at the hearing on this motion —Defendant did not argue he committed the underlying acts because of "neglect, inappropriate, or inadequate treatment of" his undocumented Bipolar Disorder, as is the subject of the NAMI article; and he did not argue his untreated ADHD lead him to commit these acts, as inclusion of the Medscape article implies, but in fact argued the Court should have been made aware of the treatment he did receive for ADHD.

The Defendant has not provided any medical records to support his argument that at the time of the plea and sentencing, this Court lacked relevant information about the Defendant's mental health history. The Defendant has not substantiated his claims that he suffered from Bipolar Disorder, and the documentation of Defendant's ADHD diagnosis and treatment is too far removed in time to "reasonably bear" on this Court's decision to impose a sentence. *See Hicks*, 377 S.C. at 325, 659 S.E.2d at 500.

THEREFORE, Defendant's Motion for a New Trial is respectfully DENIED.

IT IS SO ORDERED.

Letitia H. Verdin, Circuit Court Judge

May 14, 2014
Greenville, South Carolina