

WITNESSES

SPARTANBURG COUNTY

REPORT MADE

CARD PULLED

INDEXED

CHECKED WARRANT

CHECKED SIGNATURE

ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

M751483 (Count One)

M751457 (Count Two)

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

MAR 25 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO

11-GS-42-1414

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

Charvus Tarrel Nesbitt

Indictment for

COUNT ONE-MURDER, COUNT TWO-
POSSESSION OF WEAPON DURING
VIOLENT CRIME

SC Code 16-03-0010, 0020, 16-23-490

CDR Code 116, 549

Class FEL-EXM

MAR 29 AM 9:23

M. HOPE BLACKLEY

2013 MAR 27 AM 10:50
M. HOPE BLACKLEY

N^o Count 2 pursuant to
Court Order dated May 24, 2012
by Judge Couch

3/27/13 Det B. Bulba

CERTIFIED COPIES OF THE FOLLOWING SENTENCE WERE ACCEPTED BY:

J Gray
DATED 3-27-13

OF THE SPARTANBURG COUNTY JAIL.
ON Charles Nesbitt

WARRANT, TICKET, INDICTMENT NUMBER AND/OR PROBATION 11-1414A

No1 pns

2011-1414

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
State of South Carolina,)
vs.)
Charvus Tarrel Nesbitt,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

ORDER

Case Numbers: 2011-GS-42-1414
2011-GS-42-1415
2012-GS-42-0349

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAY 24 PM 4:12
M. HOPE BLANCHARD

This matter came before the Court on the Defendant's Motion to Reconsider his sentence received on February 13, 2012. The State of South Carolina was represented by Derrick Balsa and the Defendant represented by Fletcher Smith at the plea hearing. The Honorable Roger L. Couch sentenced Defendant to forty (40) years for murder, thirty (30) years for attempted murder, twenty (20) years for attempted armed robbery, and five (5) years for possessing a weapon during the commission of a violate crime. The Court ran the sentences for attempted murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime concurrent with the forty (40) year sentence for murder.

On February 23, 2012, Defendant filed a Motion to Reconsider his sentence. A hearing was held in Spartanburg, South Carolina on April 26, 2012. The State was represented by Derrick Balsa and Defendant was represented by Kenneth Shabel. Having considered the Motion and oral arguments of both parties, the Court makes the following findings:

1. The Defendant was removed from the Courtroom prior to the discussion of the charge of possession of a weapon during the commission of a violent crime. Tr. at 28:24.
2. The Court overlooked the charge of possession of a weapon during the commission of a violent crime and was reminded by the Solicitor following the Defendant's exit of the Courtroom. Tr. at 29:2-9.
3. The Defendant's attorney at the plea, Fletcher Smith, did not waive the Defendant's presence with regards to the discussion of that particular charge. Tr. at 29:11-13.
4. The Defendant was never questioned by the Court about his plea to the offense of possession of a weapon during the commission of a violent crime.
5. The plea deal that Defendant agreed to on the record was forty (40) years for murder, attempted

Bl
P1

murder, and attempted armed robbery.

Pursuant to South Carolina case law, "all plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement." *State v. Thrift*, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994). In other words, a plea agreement is made up of only that which a defendant agrees to on the record, regardless of communications prior to the hearing. In the case at bar, the Court only discussed three charges with the Defendant on the record- murder, attempted murder, and attempted armed robbery. The plea transcript indicates that the Court inquired as to whether the Defendant's plea under *North Carolina v. Alford* was on these particular charges. (Tr. at 9:10-11). The Defendant answered the Court in the affirmative. (Tr. at 9:12). The Court did not, however, question the Defendant about his plea to the offense of possession of a weapon during the commission of a violent crime. Consequently, the forty (40) year plea agreement was made up of only the murder, attempted murder, and attempted armed robbery charges. See *Thrift*, 312 S.C. at 296, 440 S.E.2d at 349.

Based on the foregoing, the Court hereby invalidates the five (5) year sentence that was imposed on the Defendant for the offense of possession of a weapon during the commission of a violent crime. Accordingly, that charge, Count Two of indictment number 2011-GS-42-1414, was not a part of the negotiated plea and is hereby reopened and subject to prosecution by the State. This decision has no bearing on the validity of the plea given by the Defendant on the other three charges. See *Phillips v. State*, 281 S.C. 41, 314 S.E.2d 313 (1984) (the invalidation of a defendant's guilty plea on one charge does not affect the validity of a guilty plea for a different charge taken at the same hearing).

Therefore, Defendant's Motion to Reconsider is granted in that the five (5) year sentence issued by this Court on the charge of possession of a weapon during the commission of a violent crime is hereby invalidated. The sentences imposed by the Court on the charges of murder, attempted murder, and attempted armed robbery are hereby affirmed.

IT IS SO ORDERED.

May 24, 2012
Spartanburg, South Carolina

M. HOPE BLACKLEY
2012 MAY 24 PM 4:12
SPARTANBURG COUNTY
CLERK OF COURT
FILED


Roger L. Couch, Presiding Judge
Seventh Judicial Circuit