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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLIFTON D. COOKE,

APPELLANT

APPELLATE CASE NO. 2014-001175

ANDERS BRIEF OF APPELLANT

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the plea judge err in imposing a twenty year prison term after Appellant entered an Alford¹ plea to voluntary manslaughter where admitted accomplice, Talmadge Dixon, received only a one year prison term and refused to further cooperate with law enforcement, and where Appellant had been granted a new trial because the State failed to disclose exculpatory evidence at Appellant's first trial, since the treatment of Appellant was fundamentally unfair?

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

STATEMENT OF THE CASE

On April 26, 2006, a Kershaw County Grand Jury indicted Appellant for murder. R. 33 – R. 34. Appellant went to trial in 2007 and was convicted and sentenced to forty years imprisonment. R. 31. In February 2012, through post-conviction relief, Judge J. Ernest Kinard, Jr. granted Appellant a new trial based on exculpatory evidence not being disclosed to the defense. R. 9, lines 4 – 8. On March 6, 2014, Appellant pled guilty to voluntary manslaughter pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). R. 1 – 24. Judge R. Ferrell Cothran, Jr. sentenced Appellant to twenty years imprisonment. R. 24, lines 4 – 7.

Appellant filed a Motion to Reconsider his sentence on March 14, 2014. R. 31. In an Order dated May 20, 2014, and without a hearing, Judge Cothran denied Appellant's Motion to Reconsider. R. 32. This appeal follows.

ARGUMENT

The plea judge erred in imposing a twenty year prison term after Appellant entered an Alford plea to voluntary manslaughter where admitted accomplice, Talmadge Dixon, received only a one year prison term and refused to further cooperate with law enforcement, and where Appellant had been granted a new trial because the State failed to disclose exculpatory evidence at Appellant's first trial, since the treatment of Appellant was fundamentally unfair.

Guilty Plea

The assistant solicitor narrated the State's version of the facts. According to the solicitor, on January 5, 2002, the victim, Troy Keitt, was at his mother's house at 1978 Bunker Hill Road in Lugoff. R. 6, lines 12 – 15. Also present were his wife, his mother, sister, two neighbors, and several children. R. 6, lines 16 – 20. That evening, between 7:00 and 8:00 p.m., there was a knock on the door. R. 6, lines 21 – 22. Althea, Keitt's wife, opened the door and saw a black male standing there. The male asked to speak to Keitt, who then walked outside. R. 6, line 25 – R. 7, line 4. Moments later, everyone in the house heard gunshots and ran outside. R. 7, lines 8 – 10. Althea and Keitt's sister both claimed when they ran outside, they witnessed two individuals running towards a vehicle. R. 7, lines 12 – 18. Althea and Keitt's mom and sister all claimed they heard Keitt say that "Clifton and Weasel" shot him. R. 7, lines 21 – 23. "Weasel" is the nickname for Talmadge Dixon. R. 7, lines 23 – 24.

Talmadge Dixon turned himself in and, after denying being at Keitt's house that night, gave a statement that he, Appellant, and someone he knew as "Wess or West," drove

to Keitt's house. R. 8, lines 1 – 8. Dixon stated that he stayed in the car but Appellant got out alone. Dixon claimed that Appellant and Keitt started to argue and Appellant pulled out a revolver and continued to shoot Keitt. R. 8, lines 16 – 20. According to the autopsy report, Keitt sustained seven gunshot wounds. R. 8, lines 21 – 22.

Defense counsel spoke on Appellant's behalf during the guilty plea. Counsel informed the court that Gloria Moore, a neighbor who had seen Keitt outside after he was shot, told police that she did not hear Keitt say anything about Clifton Cooke, only "Weasel." R. 15, line 22 – R. 16, line 3. Although Moore was originally a testifying witness for the State, she was not called to testify at trial. R. 15, lines 6 – 8. The responding officer, Deputy Rob Evans, was also not called to the stand. R. 14, lines 22 – 25.

Counsel also put on the record that, just minutes before the Alford plea, the assistant solicitor had informed Appellant and counsel that the State's key witness, Dixon, refused to cooperate further with law enforcement.

Order Denying Motion to Reconsider Sentence

Defense counsel filed a motion to reconsider Appellant's twenty-year sentence. In the motion, counsel requested a re-sentencing hearing so that Appellant could introduce several pieces of evidence from his PCR hearing for the judge to consider. R. 31. After meeting with defense counsel and the assistant solicitor in camera, Judge Cothran denied Appellant's motion to reconsider. R. 32. He found that even though Appellant was informed that Dixon would no longer cooperate as the State's witness, only minutes before the Alford plea, Appellant "could have taken any number of actions based on the disclosure."

Discussion

The plea judge erred in sentencing Appellant to twenty years imprisonment for voluntary manslaughter. Defense counsel informed the judge that there was exculpatory evidence from a neighbor that Keitt never mentioned Appellant's name in response to questioning about who shot him. Because this evidence was not disclosed to the defense at Appellant's first trial, he was granted a new trial through post-conviction relief. Further, Appellant entered an Alford plea and his co-defendant, Talmadge Dixon, only served one-year in prison and refused to further cooperate with the State.

In criminal cases, the role of the appellate court is to determine whether the trial court abused its discretion. State v. Page, 406 S.C. 272, 282, 750 S.E.2d 623, 628 (Ct. App. 2013). An abuse of discretion occurs when the court has made a decision that is controlled by an error of law or unsupported by the evidence presented. State v. Pope, 410 S.C. 214, 221, 763 S.E.2d 814, 818 (Ct. App. 2014) (quoting State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012)). To warrant a reversal of the lower court, such an error of law or decision lacking evidentiary support must prejudice to the defendant. State v. Commander, 396 S.C. 254, 721 S.E.2d 413 (2011).

At sentencing, a judge has an obligation to consider information that is material to punishment of the defendant. Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984). Justice demands that a sentencing judge listen and give serious consideration to any information material to punishment. State v. Franklin, 267 S.C. 240, 245, 226 S.E.2d 896, 897 (1976). In addition, a judge must impose sentences with insight and understanding. Id.

Here, Judge Cothran erred by sentencing Appellant to twenty years imprisonment after his Alford plea. Defense counsel explained to the judge that Appellant had been

convicted of murder but was granted a new trial through post-conviction relief. There was exculpatory evidence from a neighbor, Gloria Moore, that Keitt never mentioned Appellant's name in response to questioning about who shot him. He only said "Weasel," the nickname for Dixon, shot him. The State was also planning to call Deputy Rob Evans, the responding officer, but chose not to call him to testify. Counsel informed Judge Cothran that the PCR judge granted Appellant a new trial based on the fact that this exculpatory evidence existed and the State knew about it at trial.

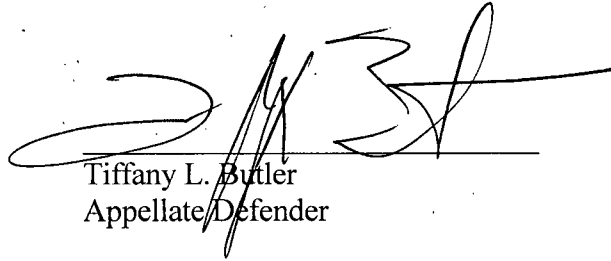
Defense counsel also explained to the judge that Dixon, Appellant's co-defendant and the State's key witness, was named in multiple statements by multiple witnesses and initially lied to police about being at Keitt's residence on the night Keitt was shot. Despite the fact that Dixon's name surfaced numerous times throughout the investigation, he was offered a deal to testify against Appellant at trial. After the trial, Dixon pled guilty to accessory after the fact and was sentenced to time served of just over a year. Meanwhile, Appellant was serving a forty-year sentence. Dixon refused to cooperate with the State any further.

Even though counsel described the exculpatory evidence that Keitt did not give Appellant's name as the shooter and the mitigating evidence of his co-defendant's involvement, the judge, nevertheless, sentenced Appellant to twenty years imprisonment, which is two-thirds the maximum punishment. The judge should have given more consideration to the amount of mitigating evidence presented and the fact that Appellant maintained his innocence while entering an Alford plea. Judge Cothran abused his discretion by sentencing Appellant to an amount of time that was not warranted or supported by the evidence presented during the plea, therefore, prejudicing Appellant.

CONCLUSION

For the foregoing reasons, Appellant Clifton Cooke respectfully requests this Court to vacate his sentence of twenty years for voluntary manslaughter and remand to the lower court for a re-sentencing hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Butler', written over a horizontal line.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2015.

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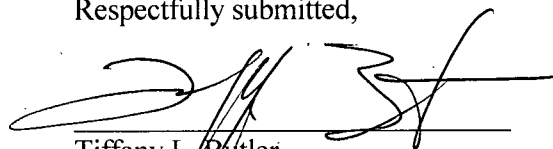
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Clifton D. Cooke states:

1. She is 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 trial before Judge R. Ferrell Cothran, Jr., which was held on March 6, 2014, 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 Clifton D. Cooke.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2015.

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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 indictment;
- (2) Entire transcript
- (3) Motion to Reconsider
- (4) Order Denying Motion to Reconsider

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

January 13th, 2015



Tiffany L. Butler
Appellate Defender


South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

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

January 13, 2015



Tiffany L. Butler,
Appellate Defender

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CERTIFICATE OF SERVICE

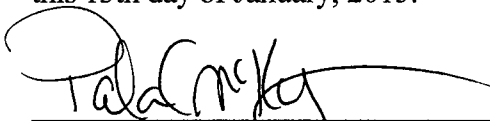
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Clifton D. Cooke, #320091 at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 13th day of January, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of January, 2015.



(L.S.)

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