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JAN 30 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LANELL GOODWINE,

APPELLANT

APPELLATE CASE NO. 2013-001948

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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

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STATEMENT OF ISSUE ON APPEAL

Whether the ten-year mandatory minimum sentence for armed robbery is cruel and unusual punishment under the federal and state constitutions as applied to this nineteen year-old defendant with no prior criminal record?

STATEMENT OF THE CASE

On July 11, 2011, a Charleston County grand jury indicted appellant Lanell Goodwine for armed robbery and attempted armed robbery. R. 70. On September 6, 2013, appellant pled guilty before the Honorable Stephanie McDonald. R. 1. Shannon Elliott represented the State. R. 1. Andrew Grimes represented appellant. R. 1. The court accepted the plea. R. 20, l. 15 – 21, l. 6. Judge McDonald sentenced appellant to concurrent terms of twelve years' imprisonment on both convictions. R. 66, ll. 12 – 19. This appeal follows.

ARGUMENT

The ten-year mandatory minimum sentence for armed robbery is cruel and unusual punishment under the federal and state constitutions as applied to this nineteen year-old defendant with no prior criminal record.

Appellant Lanell Goodwine ("Goodwine") pled guilty to armed robbery and attempted armed robbery. The solicitor's recitation of the facts indicated that on October 14, 2010, Goodwine and his co-defendant approached the victim with weapons, forced him to lie on the ground and took his ATM card. R. 9, l. 21 – 11, l. 3. They forced the victim to give them his PIN. R. 10, ll. 10 – 15. They use the ATM card to get money and threatened to kill the victim if he reported the incident to the police. R. 10, l. 16 – 11, l. 3. As for the attempted robbery, Goodwine approached a delivery driver at a grocery store with a gun and demanded his wallet and phone. R. 11, ll. 4 – 19. The victim kicked Goodwine and escaped. R. 11, ll. 12 – 19. Goodwine disputed that two guns were involved in the robbery and stated that the only gun used was a BB gun. R. 17, ll. 13 – 16. Otherwise, Goodwine admitted the facts as stated by the solicitor. R. 17, l. 13 – 18, l. 4. Appellant was nineteen years old at the time of the robberies. R. 49, ll. 2 – 11. After explaining the waivers of constitutional rights, Judge McDonald accepted Goodwine's guilty pleas. R. 20, l. 15 – 21, l. 6.

Judge McDonald then heard lengthy argument that the mandatory minimum ten-year sentence for armed robbery was unconstitutional as applied to Goodwine. Plea counsel submitted a sentencing memorandum with attached exhibits outlining Goodwine's position that the court should sentence Goodwine to five years' imprisonment. R. 74 – 121 (Sentencing memorandum). Plea counsel argued that the

Eighth Amendment and Article I, section 15 of the South Carolina Constitution mandated individualized sentencing for Goodwine. R. 26, ll. 3 – 19. Plea counsel cited Roper v. Simmons, 543 U.S. 551 (2005), Graham v. Florida, 560 U.S. 48 (2010), and Miller v. Alabama, 132 S.Ct. 2455 (2012). Judge McDonald ruled that the mandatory minimum was constitutional under both the federal and state constitutions and sentenced Goodwine to twelve years' imprisonment. R. 63, l. 19 – 67, l. 22.

The trial court erred in finding that the mandatory minimum sentence is constitutional as applied to Goodwine. South Carolina's armed robbery statute provides that a person convicted "must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted." S.C. Code Ann. § 16-11-330(A). Section 16-11-330(A) deprives a youthful (or juvenile) defendant like Goodwine of individualized sentencing consideration and therefore constitutes cruel and unusual punishment.

The trial court indicated that it was bound by precedent from our Supreme Court. R. 27, l. 18 – 28, l. 1. In State v. Johnson, 276 S.C. 444, 446, 279 S.E.2d 606, 607 (1981), the Court rejected an argument under the Eighth Amendment that the mandatory minimum sentence for armed robbery was constitutional. However, Johnson does not control the result in this case for two reasons. First, Johnson was only decided under the Eighth Amendment. Id. Johnson did not consider any argument under the South Carolina Constitution. Just like the South Carolina Constitution's right to be free from unreasonable invasions of privacy and the privilege against self-incrimination provide greater protection than the Fourth and Fifth Amendments, so too should this Court hold that the South Carolina Constitution's prohibition against cruel and unusual punishment

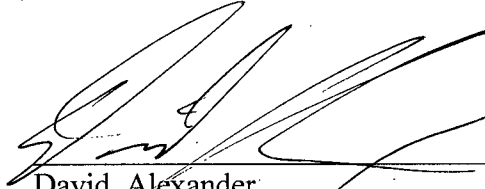
requires individualized sentencing and strike down the mandatory minimum sentence in this case. See State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001); State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994).

Second, the trial court also erred in holding that standards of decency have not changed since Johnson. It is clear that Roper, Graham, and Miller now recognize that youthful offenders are categorically different than adult offenders. These cases mandate individualized sentencing for juveniles. While Goodwine was not technically a juvenile, he was only a year away from falling into this protected class. Goodwine had no criminal record. He took responsibility for his crimes and apologized. Since the crimes, he was employed and had not re-offended. The mandatory minimum sentence divested the trial judge of the discretion necessary to properly sentence Goodwine. This lack of discretion constitutes cruel and unusual punishment in this case and Goodwine's sentence violates the federal and state constitutions.

CONCLUSION

For these reasons, this Court should remand the case for resentencing with the instruction that no mandatory minimum sentence applies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of January, 2015.

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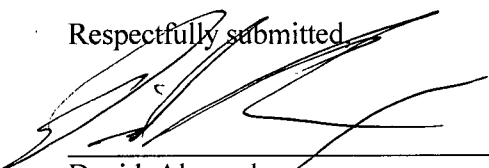
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lanell Goodwine states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Stephanie P. McDonald, which was held on September 6, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Lanell Goodwine.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th 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(s);
- (2) Plea Hearing Transcript
- (3) Sentencing Memorandum with attached exhibits

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

January 30h, 2015



David Alexander
Appellate Defender

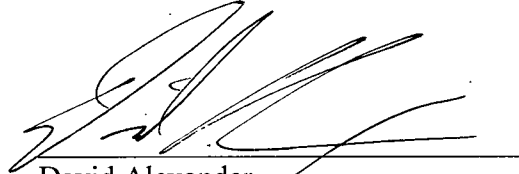
South Carolina Commission on Indigent Defense
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this 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 30th, 2015.



David Alexander
Appellate Defender

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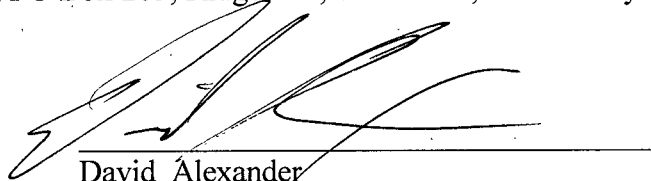
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LANELL GOODWINE,

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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 Lanell Goodwine, #356938 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 30th day of January, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of January, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.