

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY
R Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-002047

THE STATE,

Respondent,

vs.

MICHAEL CAMP,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I The trial court did not abuse its broad discretion in amending Appellant's sentence after its *sua sponte* reconsideration of the sentence it handed down the day prior.

STATEMENT OF THE CASE

On August 7, 2014, the Cherokee County Grand Jury indicted Appellant for breaking into a motor vehicle (2014-GS-11-0694) and third degree burglary (2014-GS-11-0695). Michael Berry, Esquire, represented Appellant. Assistant Solicitor Kim Leskanic prosecuted both charges on behalf of the State.

On September 18, 2014, Appellant appeared before the Honorable R. Keith Kelly and pled guilty as indicted to both offenses. Judge Kelly sentenced Appellant to five years of imprisonment suspended upon the service of five years of probation with credit for pre-trial detention for each offense to be served concurrently.

The next day, September 19, 2014, Appellant reappeared before Judge Kelly, who *sua sponte* reconsidered Appellant's sentences. Judge Kelly amended Appellant's sentences to five years of imprisonment with credit for pre-trial detention. Appellant's counsel objected to the amended sentences, arguing that the State had no presented any new information or evidence regarding the two offenses.

Thereafter, Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On October 10, 2013, Appellant and his cousin, Kendrick Lipscomb, broke into a vehicle owned by Amber Painter. (Sept. 18, 2014 Tr. pp. 5-6). The vehicle was located at 200 Pine Street in Cherokee County, South Carolina. (Sept. 18, 2014 Tr. p. 5). Appellant and Lipscomb stole an iPad and Garmin GPS from inside the vehicle. (Sept. 18, 2014 Tr. p. 5). Later that same evening, Appellant and Lipscomb broke into an outbuilding belonging to Michael Crawford. (Sept. 18, 2014 Tr. p. 5). The building was located at 328 Thompson Street in Cherokee County. (Sept. 18, 2014 Tr. p. 5). Appellant and Lipscomb took various items from the property. (Sept. 18, 2014 Tr. p. 6).

Following the two thefts, Appellant and Lipscomb were driving in Cherokee County when they approached a checkpoint. (Sept. 18, 2014 Tr. p. 6). Lipscomb, who was driving the car, jumped out and ran. (Sept. 18, 2014 Tr. p. 6). Appellant got out and walked away from the vehicle. (Sept. 18, 2014 Tr. p. 6). Law enforcement was able to link both co-defendants to the vehicle and recovered all the stolen property within the car. (Sept. 18, 2014 Tr. p. 6). Lipscomb gave a statement implicating himself and Appellant in both thefts. (Sept. 18, 2014 Tr. p. 6).

On September 18, 2014, Appellant appeared before the court and pled guilty to both offenses. The State recommended concurrent sentences but made no further recommendation. (Sept. 18, 2014 Tr. pp. 2, 3). Appellant acknowledged that he could receive up to five years imprisonment for each offense. (Sept. 18, 2014 Tr. pp. 2, 3). Following the plea colloquy and mitigation from defense counsel, the court sentenced Appellant to five years of imprisonment suspended upon the service of five years of probation with credit for time served. (Sept. 18, 2014 Tr. p. 10).

The following day, September 19, 2014, the court reconvened for a *sua sponte* reconsideration hearing. (Sept. 19, 2014 Tr. pp. 2-4). The court, citing mature reflection of the sentenced handed down the day prior, amended Appellant's sentences to five years of imprisonment for each offense to be served concurrently. (Sept. 19, 2014 Tr. p. 2). Defense counsel objected to the amended sentence, arguing that the State had not presented any additional information or evidence regarding these two offenses. (Sept. 19, 2014 Tr. p. 3). Defense counsel speculated that the *sua sponte* reconsideration was due to Appellant's arrest the day of the plea for new charges. (Sept. 19, 2014 Tr. p. 3). The court responded that it was "going to take that into consideration" and noted that it was the court's motion. (Sept. 19, 2014 Tr p 3) Appellant did not deny that he had been arrested subsequent to his plea or deny the conduct giving rise to the new charge. (Sept. 19, 2014 Tr. pp. 2-4).

ARGUMENT

I. The trial court did not abuse its broad discretion in amending Appellant's sentence after its *sua sponte* reconsideration of the sentence it handed down the day prior.

Appellant asserts that the trial court abused its discretion by amending his probationary sentence to active incarceration when the court became aware of a subsequent arrest. Appellant argues that the record does not support the court's amendment of his sentence, as the State presented no additional evidence or information that increased his culpability for the two offenses to which he pled guilty. He also avers that the court failed to give an explanatory basis for the amendment of the sentence. However, Appellant's argument fails, as the court was well within its broad discretion to *sua sponte* reconsider and amend Appellant's sentence.

In criminal cases, appellate courts review only errors of law and are bound by the factual findings of the trial court unless the findings are clearly erroneous. State v. Warren, 392 S.C. 235, 237-38, 708 S.E.2d 234, 235 (Ct. App. 2011) (citing State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007)). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is within the limits prescribed by statute." State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

The trial court has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and **must be permitted to consider any and all information that reasonably**

might bear on the proper sentence for the particular defendant, given the crime committed” State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (emphasis added). This court has held that it is “not concerned with balancing prejudicial impact with probative value when reviewing evidence used in the sentencing phase of a non-capital crime because evidentiary rules are inapplicable in a sentencing proceeding.” State v. Hutto, 356 S.C. 384, 389, 589 S.E.2d 202, 204 (Ct. App. 2003) citing Rule 1101(d)(3), SCRE; State v. Gulledge, 326 S.C. 220, 228-29, 487 S.E.2d 590, 594 (1997). “In sentencing a convicted defendant a trial court is only limited by constitutional provisions that require the evidence to be relevant, reliable and trustworthy.” See Hutto, supra.

The sentencing court may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information it may consider or the source from which it may come before imposing a sentence. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); see also State v. Cantrell, 250 S.C. 376, 379-80, 158 S.E.2d 189, 191 (1967) (“A sentencing judge is not confined to the narrow issue of guilt. His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant, if not essential, to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.”)

The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge Warren, 392 S.C. at 237-38, 708 S.E.2d at 235 (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support. Warren, 392 S.C. at 237-38, 708 S.E.2d at 235 (citing State v.

Winkler, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010)). Examples of an abuse of discretion in reconsideration or amendment of a sentence are “(1) after the expiration of the term of court at which the sentence was imposed or (2) within the same term of court unless the State is afforded due notice.” Smith, 276 S.C. at 497, 280 S.E.2d at 201 (citing State v. Best, 257 S.C. 361, 186 S.E.2d 272 (1972); State ex rel McLeod v. County Court of Richland County, 261 S.C. 478, 200 S.E.2d 843 (1973); State v. Moulds, 264 S.C. 404, 215 S.E.2d 445 (1975); and State v. Patterson, 272 S.C. 2, 249 S.E.2d 770 (1978)).

In the present case, the trial court did not abuse its broad discretion in amending Appellant’s sentence. The court, upon its own motion, elected to reconsider the sentence it handed down the day prior. The trial court’s reconsideration of Appellant’s sentence occurred within the same term of court. Moreover, the amended sentence was well within the statutory range proscribed by the legislature for the two offenses. Therefore, the court’s decision and amended sentence were not controlled by an error of law.

Additionally, the trial court placed its reasons for reconsideration and the amended sentence on the record. The court noted that it *sua sponte* reconsidered Appellant’s sentence based upon “mature reflection” and that Appellant’s subsequent arrest following his guilty pleas was a contributing factor. (Sept. 19, 2014 Tr. pp. 2-4). After revealing his reasons for reconsideration, Appellant did not challenge the new arrest or the underlying conduct. See Franklin, 267 S.C. 240, 226 S.E.2d 896 (noting defendant did not deny any of the information presented to the court during sentencing, including his criminal record, probation report (including charges for which he had not yet been tried), and prison infractions which he then alleged were improper for the court to consider); see also State v. Arther, 290 S.C. 291, 350 S.E.2d 187 (1986) (holding it was improper for the sentencing court to consider the arrest warrant and support affidavit

alleging that defendant has committed a prior murder where the charge was dismissed) Furthermore, a trial court is allowed to consider such information when determining an appropriate sentence. See Franklin, 267 S.C 240, 226 S.E 2d 896 (1976) (finding the sentencing court may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information it may consider or the source from which it may come before imposing a sentence.)

The trial court did not abuse its broad discretion in reconsidering or amending Appellant's sentence. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

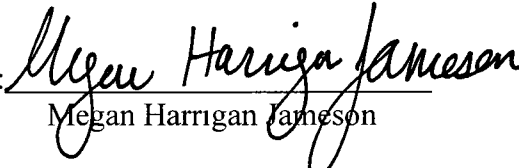
Respectfully submitted,

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April 23, 2015

STATE OF SOUTH CAROLINA
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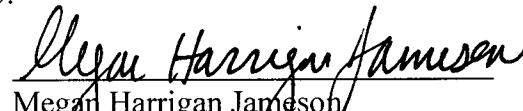
Appellant.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Benjamin J Tripp, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 23rd day of April, 2015.


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April 23, 2015

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RE: State v Michael Camp – Appellate Case No 2014-002074

Dear Mr. Tripp:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Megan Harrigan Jameson
Assistant Attorney General
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MHJ/

Enclosures

cc The Honorable Jenny A Kitchings (original and one enclosed)
Victim Services

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