

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

RECEIVED

APR 28 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TEVIN HART,

APPELLANT

APPELLATE CASE NO. 2014-000944

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
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 abuse his discretion in denying Appellant's motion to reconsider his sentence where he imposed the same sentence on Appellant and his codefendant even though Appellant was years younger, had no prior record, and was pressured into committing the crime by the older codefendant?

STATEMENT OF THE CASE

On July 12, 2012, the Dorchester County Grand Jury indicted Appellant Tevin Shaquille Hart on one count of first degree burglary, one count of armed robbery, and four counts of kidnapping. R. 39-50. On October 7, 2013, Appellant appeared at a plea hearing before The Honorable Maite Murphy. Melisa Gay represented Appellant and Don Sorenson represented the State. R. 1. Appellant pled guilty to all counts as charged, and Judge Murphy delayed sentencing. R. 4, lines 4-5; R. 17, lines 4-10. On January 23, 2014, Appellant appeared for sentencing before Judge Murphy. R. 19. Judge Murphy sentenced Appellant to concurrent sentences of thirty years for each of the kidnapping and armed robbery charges and forty years for the burglary charge. R. 33, line 12—R. 34, line 1. On January 30, 2014, Appellant filed a motion to reconsider the sentence, which Judge Murphy denied by order dated April 3, 2014. R. 36; R. 37-38.

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ARGUMENT

THE JUDGE ABUSED HIS DISCRETION IN DENYING APPELLANT'S MOTION TO RECONSIDER HIS SENTENCE BECAUSE THE RECORD SHOWS APPELLANT WAS LESS CULPABLE THAN HIS CODEFENDANT ON WHOM THE JUDGE IMPOSED THE EXACT SAME SENTENCE.

STATEMENT OF FACTS

At Appellant's plea hearing the State alleged that on March 29, 2012, Appellant and two codefendants, holding guns and with faces covered, entered a home occupied by a woman and her three children. After ordering the occupants not to interfere, the men took a number of valuables from the home. R. 6, line 21—R. 8, line 23. One of the codefendants, Martin Young, later confessed to planning with the other to rob the home, which they mistakenly believed belonged to a drug dealer, and in his confession he implicated Appellant. Appellant soon after admitted his involvement and implicated the other two men. R. 8, lines 11-16; R. 11, line 5—R. 12, line 3.

Prior to Appellant's sentencing, Appellant and Martin Young testified for the State against the third codefendant at trial. Judge Murphy then sentenced Martin Young. R. 24, lines 9-13, lines 11-16; R. Thereafter, at Appellant's sentencing hearing, counsel for the State informed Judge Murphy that Appellant had no prior record and had been willing for some time to admit his guilt and testify for the State. Counsel for the State and Appellant had met five times, three times of which they "actually [sat] down [to] kind of go over his testimony." Counsel for the State stated that Appellant had "for the most part been very cooperative." R. 24, line 7—R. 24, line 22.

Counsel for Appellant told Judge Murphy that Petitioner was only twenty years old, and his codefendants were six-to seven years older. Although Petitioner was not aware of the plan to commit the robbery, he followed along because the older men told him to. R. 26,

line 5—R. 27, line 10. Counsel also told the judge that Petitioner agreed to testify for the State even though he “believed firmly” that one of the codefendants would hurt his family. In fact, he had received numerous threats in pretrial custody. R. 27, line 16—R. 28, line 15.

Judge Murphy issued concurrent sentences of thirty years’ incarceration for each of the kidnapping charges and the robbery charge and a concurrent sentence of forty years for the burglary charge. R. 33, line 12—R. 16, line 1.

On January 30, 2014, Appellant filed a motion for reconsideration of his sentence, arguing it was “overly harsh in light of the Defendant’s lack of any prior record and his participation in the State’s prosecution of his co-defendant as a testifying witness.”¹ R. 36. On April 3, 2014, Judge Murphy issued an order denying the motion. R. 37-38.

DISCUSSION

Judge Murphy abused his discretion in denying Appellant’s motion to reconsider his sentence because the record shows Appellant was less culpable than his codefendant on whom the Judge imposed the exact same sentence.

If justice is to be done, a sentencing judge should know all the material facts. Fair administration of justice demands that the judge will not act on surmise or suspicion but will impose sentences with insight and understanding. Hence, the judge is required to listen and give serious consideration to any information material to punishment.

State v. Franklin, 267 S.C. 240, 245-46, 226 S.E.2d 896, 897 (1976).

The authority to timely amend a sentence rests in the discretion of the sentencing judge. *State v. Smith*, 276 S.C. 494, 497-98, 280 S.E.2d 200, 201-201 (1980). “This court’s authority to review such a decision is confined to correcting errors of law unless

¹ Records from the South Carolina Department of Corrections show Martin Young received the same sentence as Appellant.

the lack of a legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious.” *State v. Hamilton*, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999) (citing *State v. White*, 218 S.C. 130, 135-6, 61 S.E.2d 754, 756 (1950); *State v. Archie*, 322 S.C. 135, 137-8, 470 S.E.2d 380, 381 (Ct. App. 1996)).

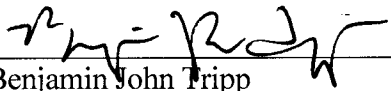
In this case, the record indicates that Judge Murphy’s imposition of the same sentence for Appellant and Martin Young lacked support in the record. Martin Young confessed to orchestrating the robbery with the third codefendant based on their belief that the home belonged to a drug dealer. No evidence showed Appellant helped with the plan to rob a drug dealer or that Appellant was involved with drugs at all. Appellant was not involved in preparing for the robbery in any way, and he only became involved because his two codefendants, much older men who were already involved in illicit activity, ordered him to participate. Appellant was young and had no prior record. And due to his youth and inexperience, Appellant was subject to serious threats of violence for his cooperation with authorities. Nevertheless, he implicated the other two men to police and testified for the State. Counsel for the State and Appellant had met five times, three times of which they “actually [sat] down [to] kind of go over his testimony.”

In administering a fair and just sentence, Judge Murphy was required to consider these facts showing Appellant’s much lower level of culpability. Because he imposed the same sentence on Appellant and Martin Young, he plainly did not. Accordingly, his refusal to properly sentence Appellant made the sentence arbitrary and capricious.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the ruling of the plea judge and remand for reconsideration of Appellant's sentence.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Maite Murphy, Circuit Court Judge

APR 29 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

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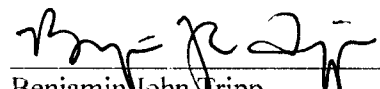
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tevin Hart 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 Maite Murphy, which was held on January 23, 2014, 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 Tevin Hart.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

APR 20 2015
SC Court of Appeals

THE STATE,

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v.

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APPELLANT

APPELLATE CASE NO. 2014-000944

**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) Transcript of October 7, 2013;
- (3) Transcript of January 23, 2014;
- (4) Motion to Reconsider Sentence;
- (5) Order Denying Motion to Reconsider Sentence.

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

April 28th, 2015



Benjamin John Tripp
Appellate Defender

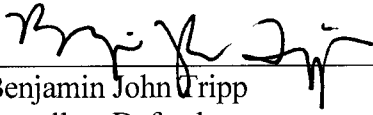
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Attorney for Appellant

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."

April 28, 2015



Benjamin John Tripp
Appellate Defender

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APPELLATE CASE NO. 2014-000944

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 Tevin Hart, #358579 at Broad River Correctional Institution, this 28th day of April, 2015.




Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me

this 28th day of April, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.