

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Cherokee County

R. Keith Kelly, Circuit Court Judge

---

Unpublished Opinion No. 2015-UP-478

Issued on October 7, 2015

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THE STATE,

RESPONDENT,

V.

MICHAEL D. CAMP,

APPELLANT

APPELLATE CASE NO. 2014-002074

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A P P E N D I X

---

BENJAMIN JOHN TRIPP  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

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P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Michael Douglas Camp, Appellant.

Appellate Case No. 2014-002074

---

Appeal From Cherokee County  
R. Keith Kelly, Circuit Court Judge

---

Unpublished Opinion No. 2015-UP-478  
Submitted August 1, 2015 – Filed October 7, 2015

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**AFFIRMED**

---

Appellate Defender Benjamin John Tripp, of Columbia,  
for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Megan Harrigan Jameson, both of  
Columbia; and Solicitor Barry Joe Barnette, of  
Spartanburg, for Respondent.

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**PER CURIAM:** Michael Douglas Camp appeals his concurrent five-year  
sentences for breaking into a motor vehicle and third-degree burglary, arguing the

plea court abused its discretion in amending his sentence. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Warren*, 392 S.C. 235, 237-38, 708 S.E.2d 234, 235 (Ct. App. 2011) ("The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge."); *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) (stating an appellate court "has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive"); S.C. Code Ann. § 16-13-160(B) (2003) (stating an individual found guilty of breaking into a motor vehicle "is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than one thousand dollars, or both"); S.C. Code Ann. § 16-11-313(B) (2003) ("Burglary in the third degree is a felony punishable by imprisonment for not more than five years for conviction on a first offense and for not more than ten years for conviction of a second offense according to the discretion of the [c]ourt.").

**AFFIRMED.**<sup>1</sup>

**FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA  
 IN THE COURT OF APPEALS

---

THE STATE,

RESPONDENT,

V.

MICHAEL D. CAMP,

APPELLANT

APPELLATE CASE NO. 2014-002074

---

Appeal from Cherokee County

R. Keith Kelly, Circuit Court Judge

---

Opinion No.

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PETITION FOR REHEARING

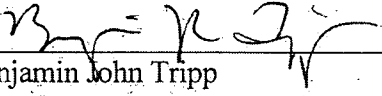
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Pursuant to Rule 221(a), SCACR, Appellant Michael D. Camp respectfully petitions the Court for a rehearing of its Unpublished Opinion No. 2015-UP-478 issued on October 7, 2015 based upon the following points overlooked or misapprehended by the Court.

The Opinion cites *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) for the proposition that an appellate court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive. This case does not involve **the review of a sentence as**

**originally imposed by the lower court judge.** It involves the judge's **exercise of discretion in changing the sentence.** As explained in Appellant's brief to this court, he changed the sentence contrary to the established facts in the record and to settled law, and he therefore abused his discretion.

Respectfully submitted,

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

This 12th day of October, 2015.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Cherokee County  
R. Keith Kelly, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

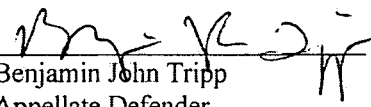
MICHAEL D. CAMP,

APPELLANT

APPELLATE CASE NO. 2014-002074

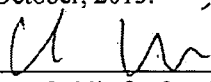
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Megan Harrigan Jameson, Esquire, this 12th day of October, 2015.

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 12th day  
of October, 2015.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: May 12, 2025.

# The South Carolina Court of Appeals

The State, Respondent,

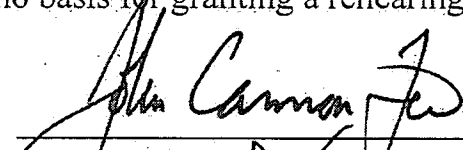
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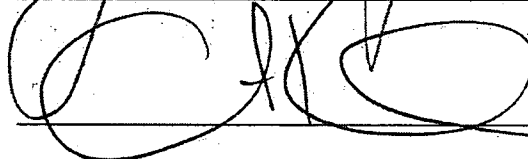
Michael Douglas Camp, Appellant.

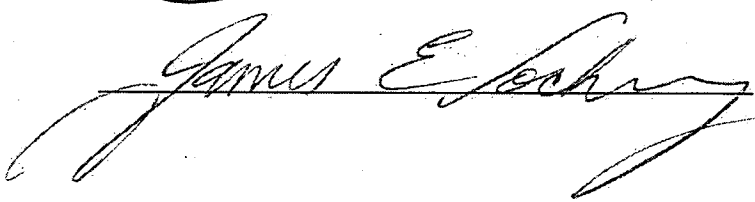
Appellate Case No. 2014-002074

\_\_\_\_\_  
ORDER  
\_\_\_\_\_

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 \_\_\_\_\_ C.J.

 \_\_\_\_\_ J.

 \_\_\_\_\_ J.

Columbia, South Carolina

cc:  
Alan McCrory Wilson, Esquire  
Benjamin John Tripp, Esquire  
Megan Harrigan Jameson, Esquire  
Barry Joe Barnette, Esquire  
The Honorable R. Keith Kelly

**FILED**

November 19, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM CHEROKEE COUNTY

R. Keith Kelly, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MICHAEL D. CAMP,

APPELLANT

APPELLATE CASE NO. 2014-002074

---

RECORD ON APPEAL

---

BENJAMIN JOHN TRIPP  
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(864) 596-2575

Attorneys for Respondent

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STATE OF SOUTH CAROLINA

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STATE,

Plaintiff,

Case No.

-against-

2014-GS-11-694

MICHAEL D. CAMP,

Defendant.

-----x

September 18, 2014

Cherokee, S.C.

B E F O R E:

HONORABLE R. KEITH KELLY, Judge.

A P P E A R A N C E S:

KIM LESKANIC, Esquire

Assistant Solicitor

MICHAEL BERRY, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

1 MS. LESKANIC: May it please the Court. Before  
2 you is Michael Douglas Camp. He is pleading guilty on  
3 two Indictments; 2014-GS-11-694 is a True Bill  
4 Indictment for breaking into motor vehicle, and  
5 2014-GS-11-695 is a True Bill Indictment for burglary,  
6 third degree, first offense.

7 The pleas have a recommendation of current  
8 sentencing and he is represented by Mr. Berry.

9 THE COURT: Sir, you are Mr. Michael Camp?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Camp, you are in custody. Have  
12 you taken any me medication or any substance that  
13 affects you reasoning or thinking ability?

14 THE DEFENDANT: No, sir.

15 THE COURT: You are of clear mind and know what  
16 you are you doing?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: 2014-0695 alleges that you did in the  
19 County of Cherokee, State of South Carolina on or about  
20 October 10 of 2013, willfully and unlawfully entered  
21 without consent and with the intent to commit a crime  
22 therein, an out building belonging to Michael Louis  
23 Foster located within this county and this State in  
24 violation of state law. That matter has been True  
25 Billed by the Grand Jury. It is non-violent by

1 definition. Burglary third, first offense, carries with  
2 it up to five years. There is a recommendation of  
3 concurrent sentencing.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: 2014-0694, alleges that you did in  
7 County of Cherokee, State of South Carolina, on or about  
8 October 10 of 2013 break into a motor vehicle belonging  
9 to Amber Renee Painter with intent to steal something or  
10 something of value therefrom all in violation of South  
11 Carolina law.

12 This matter has been True Billed by the Grand  
13 Jury. It is non-violent by definition. It carries with  
14 it up to five years and a fine of up to one thousand  
15 dollars.

16 It is the same recommendation by the government.  
17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: There are certain rights you have to  
20 give up in order to plead guilty. One of them is a  
21 right to remain silent. Do you waive and give up that  
22 right as to both Indictments?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You have a right to a trial by jury.  
25 Put 12 folks in the box over here (indicating) to try

1 your cases. Do you waive or give up that right as to  
2 each Indictment?

3 THE DEFENDANT: Yes.

4 THE COURT: You have a right to call and confront  
5 witnesses against you. Do you waive and give up that  
6 right as to each Indictment?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Understanding what I told you, how do  
9 you offer to plead on 2014-0694; guilty or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: On 2014-0695?

12 THE DEFENDANT: Guilty.

13 THE COURT: Do you plead guilty to both  
14 Indictments because you are guilty of both offenses?

15 THE DEFENDANT: Because I'm guilty.

16 THE COURT: Do you plead guilty freely,  
17 intelligently and voluntarily?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did anybody make you come here to  
20 plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you had plenty of time to speak  
23 with your lawyer?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has he answered all of your questions?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has he gone over that file with you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you need any time to look at the  
5 file any more or ask him any questions.

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you completely satisfied with with  
8 the legal representation of you.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You have ten days from today's date to  
11 file an appeal of guilty plea and or the sentence of the  
12 Court, but have to do that by filing in the clerk's  
13 office. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Please listen to the solicitor.

16 MS. LESKANIC: Thank you, Your Honor.

17 These incidents occurred on October 10th of 2013.  
18 The breaking into motor vehicle occurred at 200 Pine  
19 Street here in Cherokee County when a vehicle owned by  
20 Amber Painter was broken into by breaking out a window  
21 and her ipad and her Garmin GPS was stolen out of her  
22 vehicle.

23 On the same night an outbuilding belonging to  
24 Michael Crawford was broken in to. That was located at  
25 328 Thompson Street here in Cherokee County. What

1 happened is, Your Honor, there was a check point here in  
2 Cherokee County. The vehicle being occupied by this  
3 defendant and initially his co-defendant, Kendrick  
4 Lipscomb who plead guilty before Your Honor earlier in  
5 the week. They are coming upon the checkpoint and Mr.  
6 Lipscomb was driving the vehicle and they have stolen  
7 property from the building inside of the car. Mr.  
8 Lipscomb jumps out of the car and runs. The police  
9 officers walk up to the car. Mr. Camp is walking away  
10 from the vehicle. They are able to link both of them to  
11 the burglary and breaking into the motor vehicle.

12 Mr. Lipscomb gave a statement that both he and Mr.  
13 Camp, who I believe they are cousins, were together for  
14 both of these incidents; the breaking into a motor  
15 vehicle and the burglary third degree.

16 THE COURT: All right. Prior history?

17 MS. LESKANIC: 1994 an armed robbery, 1998 driving  
18 under the influence and driving without a license. In  
19 2000, possession of marijuana, 2002 domestic violence  
20 and shoplifting. That was the South Carolina record,  
21 Your Honor, and then it looks like in Georgia in 2004 a  
22 simple battery and also a probation violation and 12  
23 counts of breaking into a motor vehicle, in 2006  
24 possession of less than one ounce of marijuana. In 2009  
25 shoplifting, 2010 shoplifting; two counts.

1                   Those appear to be the convictions, Your Honor.

2                   THE COURT: Is he on probation?

3                   MR. BERRY: No, sir.

4                   THE COURT: Okay.

5                   Sir, did you hear what the solicitor told me about  
6 your criminal history as well as the facts of these  
7 cases?

8                   THE DEFENDANT: Yes.

9                   THE COURT: Is that true?

10                  THE DEFENDANT: Yes, sir.

11                  THE COURT: The Court accepts both the pleas,  
12 being freely, intelligently and voluntarily given and  
13 with the sound advice of an excellent lawyer, Mr. Berry.

14                  MR. BERRY: Thank you, Your Honor. May it please  
15 the Court.

16                  As the solicitor indicated, Mr. Lipscomb plead  
17 guilty earlier in the week.

18                  Judge, if this case had gone to trial he would be  
19 -- there would have been some issues in the case,  
20 obviously. Pretty much the only thing they have is Mr.  
21 Camp in the car and then the statement of Mr. Lipscomb  
22 which ties him.

23                  Judge, he's admitting his involvement on what went  
24 on with these incidents.

25                  I would just point out to the Court, Mr. Lipscomb

1 again plead guilty earlier in the week. He had a pretty  
2 significant criminal record as well. The solicitor  
3 pulled his criminal record and Your Honor issued a  
4 sentence -- a pretty hefty sentence on him of ten years  
5 suspended down to ninety days and five years of  
6 probation.

7 Judge, I am going to ask you to do something  
8 similar to that for Mr. Camp. The only difference  
9 between the two of them is that Mr. Lipscomb bonded out  
10 pretty soon after he was arrested. Mr. Camp had \$2,500  
11 bond on both these charges but has been unable to make  
12 bond and as of today been be in jail for 309 days since  
13 he was arrested.

14 One other interesting thing about this case is,  
15 Mr. Lipscomb was initially arrested on this offense,  
16 questioned by officers and then was let go. They didn't  
17 actually file the warrant. He was let go the next. The  
18 next day they picked up Mr. Lipscomb. Mr. Lipscomb  
19 gave a statement that he did, again on the record and  
20 then they came back and arrested Mr. Camp from his job.  
21 Tells me he works at Jones detailing which is over in  
22 Spartanburg. Had been doing that for some time and was  
23 working when they came and arrested him on these  
24 charges. Judge, he does want to come in here and accept  
25 responsibility today. As the solicitor mentioned this

1 was a bond motion initially. We were going to ask the  
2 Court for a PR bond but he just wants to get it wrapped  
3 up and get it put behind him.

4 So I am going to ask the Court to consider a  
5 sentence that is similar to the sentence that the Court  
6 issued for Mr. Lipscomb. Again, I think it would be  
7 appropriate to ask and I don't hesitate to ask for that  
8 given their similar criminal records and the nature of  
9 offenses.

10 THE COURT: How much probation did Mr. Lipscomb  
11 get?

12 MR. BERRY: Five years judge.

13 MS. LESKANIC: And Your Honor, just for complete  
14 candor with the Court, Mr. Lipscomb also had a more  
15 recent forgery charge. He is the one that went in to  
16 Wells Fargo Bank and tried to present a check on a  
17 deceased man's account. When they came out to his  
18 vehicle he had a quantity of crack cocaine in the door  
19 of his car and he also plead to possession with intent  
20 to distribute crack cocaine from those more recent  
21 incidents and I had filed a motion to revoke his bond  
22 and he ended up pleading guilty on these charges.

23 THE COURT: Sir, anything you want to say?

24 THE DEFENDANT: No, sir.

25 THE COURT: Any restitution?

1 MS. LESKANIC: No, sir. Everything was recovered  
2 in the vehicle that night.

3 THE COURT: 309 days?

4 MR. BERRY: Yes.

5 THE COURT: Mr. Camp, you get one shot right here.  
6 You understand what happens if you violate your  
7 probation?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay, I don't have to talk about it  
10 then. 2014-0695 State Department of Correction for a  
11 period of five years provided upon the service of time  
12 served. Balance is suspended with probation for five  
13 years. It is concurrent with the other Indictment and  
14 309 days credit, \$500 public defender's fund. 2014-06  
15 94 State Department of Correction five years provided  
16 upon the service of time served. Balance is credited  
17 for 309 days.

18 Good luck to you.

19 MR. BERRY: Thank you so much, Your Honor.

20 \* \* \*

21 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Cherokee County, South Carolina, on the 18th day of September, 2014

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 12, 2015

Aileen Butler

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STATE OF SOUTH CAROLINA.

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STATE,

Plaintiff,

Case No.

-against-

2014-GS-11-694/695

MICHAEL D. CAMP,

Defendant.

-----x

September 19, 2014

Cherokee, S.C.

B E F O R E:

HONORABLE R. KEITH KELLY, Judge.

A P P E A R A N C E S:

KIM LESKANIC, Esquire

Assistant Solicitor

MICHAEL BERRY, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

1 THE COURT: Mr. Camp, I asked that you be brought  
2 here today. The Court sua sponte is reconsidering  
3 your sentence that was handed down this week and for  
4 the record, it is 11:33 a.m. on Friday. This Court  
5 has not risen. This Court is still in session and  
6 your sentence was handed down earlier this week and  
7 this Court has reconsidered that sentence after a  
8 mature reflection. So just give us a minute to get  
9 your file.

10 Sir, you were previously before the Court actually  
11 yesterday according to the sentencing sheets that I am  
12 now holding on 2014-0695 and 2014-0694.

13 The Court has now amended your sentence;  
14 2014-GS-0695, you are confined to the State Department  
15 of Corrections for a period of five years. It's  
16 concurrent with the other Indictment, 2014-0694.  
17 Credit for 309 days.

18 On Indictment 2014-0694 you are confined to the  
19 State Department of Corrections for a period of five  
20 years. That's concurrent with the other Indictment  
21 2014-0695. Given credit for three 309 days.

22 Good luck to you, sir.

23 MR. BERRY: Judge, I would actually object to the  
24 re-sentencing and I would ask to be heard on that.

25 THE COURT: Yes.

1 MR. BERRY: Judge, Mr. Camp was again before the  
2 Court yesterday on these charges. The Court had all  
3 of the information that was relaid by the State.  
4 Judge, there has been no additional information that  
5 has been provided to the Court.

6 I would -- I would just like to put all of the  
7 information that I have on the record just to cover  
8 Mr. Camp and myself. Judge, when I came to Court this  
9 morning I was made aware by the Court that Mr. Camp  
10 had actually been re-arrested on a new charge. At  
11 that point it was not relayed to me that it was  
12 related to anything that the Court did not have  
13 yesterday, just that he had been re-arrested on a new  
14 charge.

15 I would just simply object to the resentencing  
16 because I believe that the Court is basing that on Mr.  
17 Camp's rearrest. The State presented no new evidence  
18 or no additional facts from what the State did present  
19 yesterday after the Court did in fact sentence Mr.  
20 Camp. So I would just object based on those grounds.

21 THE COURT: Yes, ma'am, anything further.

22 MS. LESKANIC: Nothing further from the State,  
23 Your Honor.

24 THE COURT: Anything, Mr. Allen?

25 Mr. Allen: Well, certainly it is my understanding

1 that we haven't had the opportunity to look into any  
2 of the new allegations. My understanding that those  
3 were mentioned in a chambers conference with Your  
4 Honor and solicitor and Mr. Berry. We don't know  
5 where the information came or how the Court was made  
6 aware of that, but we understand it was not from the  
7 solicitor, but, so ---

8 THE COURT: Well, the Court is going to take that  
9 into consideration. The Court has reconsidered. It  
10 is the Court's motion and the Court is issuing a new  
11 sentence.

12 Anything else.

13 MR. ALLEN: No, sir.

14 THE COURT: Good luck to you.  
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C E R T I F I C A T E

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I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Cherokee County, South Carolina, on the 19th day of September, 2014

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 23, 2015

Aileen Butler

WITNESSES

Gaffney Police Dept.

*[Handwritten Signature]*

ARREST WARRANT NUMBER

2013A1120200819

ACTION OF GRAND JURY

**TRUE BILL**

*Wayne Atkins*  
Foreperson of Grand Jury  
Date: 8-7-14

VERDICT

Foreperson of Petit Jury  
Date:

14-GS-11-00694

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 07 2014

TERM

THE STATE

vs.

Michael Douglas Camp

Indictment for

BREAKING INTO MOTOR VEHICLE

SC Code: 16-13-0160 (A) (1) (B)

CDR Code: 258

Class FEL/F

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2014 AUG 7 AM 10 30

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHEROKEE

AUG 27 2014

At a Court of General Sessions, convened on \_\_\_\_\_, the

Grand Jurors of Cherokee County present upon their oath:

**BREAKING INTO MOTOR VEHICLE**

That Michael Douglas Camp, did in Cherokee County, on or about October 10, 2013, break into a motor vehicle, belonging to [REDACTED], with the intent to steal the same or anything of value therefrom, in violation of §16-13-160 (A)(1)(B), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLLICITOR

WITNESSES

Gaffney Police Dept.

*Ben Blant*

ARREST WARRANT NUMBER

2013A1120200820

ACTION OF GRAND JURY

**TRUE BILL**

*Wayne Atkins*

Foreperson of Grand Jury

Date: 8-7-14

VERDICT

Foreperson of Petit Jury

Date:

14-GS-11-00695

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 07 2014

TERM

THE STATE

vs.

Michael Douglas Camp

Indictment for

**BURGLARY, THIRD DEGREE  
(BUILDING)**

SC Code: 16-11-0313

CDR Code: 427

Class FEL/E

FILED IN OFFICE  
CLERK OF COURT  
CHEROKEE COUNTY, G.

2014 AUG 7 AM 10 1

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHEROKEE


At a Court of General Sessions, convened on AUG 07 2014, the

Grand Jurors of Cherokee County present upon their oath:

**BURGLARY, THIRD DEGREE****(BUILDING)**

That Michael Douglas Camp, did in Cherokee County, on or about October 10, 2013, willfully and unlawfully enter without consent and with the intent to commit a crime therein, an outbuilding belonging to [REDACTED], located at [REDACTED], Gaffney, South Carolina, in violation of §16-11-0313, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

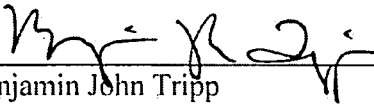
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

May 20th, 2015

  
\_\_\_\_\_  
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Cherokee County

R. Keith Kelly, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MICHAEL D. CAMP,

APPELLANT

APPELLATE CASE NO. 2014-002074

---

FINAL BRIEF OF APPELLANT

---

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**STATEMENT OF ISSUE ON APPEAL**

Did the plea judge abuse his discretion by amending Appellant's sentence to eliminate his suspension and probation where the judge became aware only that Appellant was arrested?

**STATEMENT OF THE CASE**

On August 7, 2014, the Cherokee County Grand Jury indicted Appellant Michael Douglas Camp for breaking into a motor vehicle and third degree burglary. R. 17. On September 18, 2014, Appellant appeared at a plea hearing before The Honorable R. Keith Kelly. Michael Berry represented Appellant and Kim Leskanic represented the State. R.1. At the conclusion of the hearing, Judge Kelly sentenced Appellant to concurrent sentences of five years' incarceration suspended to time served with the remainder on probation. R.10, lines 9-17.

On September 19, 2014, Appellant again appeared before Judge Kelly. Michael Berry again represented Appellant, and Kim Leskanic again represented the State. R.12. Judge Kelly amended Appellant's sentences by withdrawing both sentence suspensions and probations. Sept. 19 R.13, lines 13-21.

## ARGUMENT

**THE PLEA JUDGE ABUSED HIS DISCRETION IN AMENDING APPELLANT'S SENTENCE BECAUSE THE RECORD DOES NOT SUPPORT THE FINDING THAT APPELLANT'S CONDUCT UNDERLYING THE NEW CHARGE INCREASED HIS CULPABILITY.**

## STATEMENT OF FACTS

At the September 18, 2014 hearing, the State alleged that on the night of October 10, 2013, Appellant broke a window of a vehicle at a residence and stole valuables from inside and later broke into an outbuilding near a different residence and stole valuables. R.5, line 17—R.6, line 11. Appellant pled guilty as charged, and the judge accepted the plea and sentenced Appellant. R.4, lines 8-12; R.7, lines 11-13.

At the beginning of the September 19, 2014 hearing, the plea judge stated, “This Court is still in session and your sentence was handed down earlier this week and this Court has reconsidered [Appellant’s] sentence after a mature reflection. . . . The Court has now amended your sentence . . . .” R.13, lines 5-13. Counsel for Appellant objected to the re-sentencing on grounds that the only new information the judge had before him regarding Appellant was that Appellant was arrested on a new charge between the two hearings. R.14, line 23—R.14, line 20. Counsel for the State responded that she had heard allegations of the arrest but did not know “where the information came from or how the [c]ourt was made aware of that.” R.14, line 25—R.15, line 6. The judge responded, “Well, the Court is going to take that into consideration. The Court has reconsidered. It is the Court’s motion and the Court is issuing a new sentence.” R.15, lines 8-11.

## DISCUSSION

The plea judge abused his discretion in amending appellant's sentence because the record does not support the finding that Appellant's conduct underlying the new charge increased his culpability.

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). An arrest warrant and supporting affidavit standing alone do not constitute competent information material to punishment. *State v. Arthur*, 290 S.C. 291, 297, 350 S.E.2d 187, 190 (1986).

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). An abuse of discretion occurs when a judge's decision is controlled by an error of law or based on a factual conclusion without evidentiary support. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006). "[T]he mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what bases the discretion was exercised." *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).

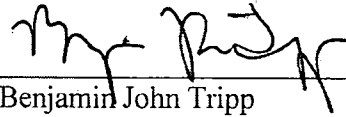
In this case, the record does not support the plea judge's enhancement of Appellant's sentence based on conduct increasing his culpability. The only new information the judge had was that Appellant was arrested on an allegation of some new offense. The arrest and allegation standing alone amounted only to suspicion of culpable conduct and were not proper considerations material to punishment. Moreover, the trial

judge did not state in his ruling what information about Appellant's conduct particularly supported an enhancement. His statements that "the Court has reconsidered [and] [i]ts the Court's motion" and that the amendment resulted from "mature reflection" were quintessentially recitations of discretion without an explanatory basis.

**CONCLUSION**

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

Respectfully submitted,



\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

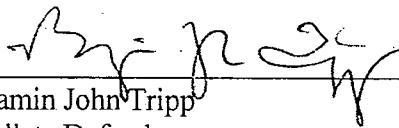
ATTORNEY FOR APPELLANT

This 21st day of May, 2015.

CERTIFICATE OF COUNSEL

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

May 21, 2015

  
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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Cherokee County  
R. Keith Kelly, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MICHAEL D. CAMP,

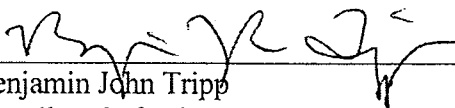
APPELLANT

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CERTIFICATE OF SERVICE

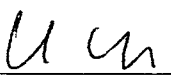
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The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of May, 2015.

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 21st day of May, 2015.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2025.

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.

---

**FINAL 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 (R. pp. 17-18) and third degree burglary (R. pp. 19-20). 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. (R. pp. 5-6). The vehicle was located at 200 Pine Street in Cherokee County, South Carolina. (R. p. 5). Appellant and Lipscomb stole an iPad and Garmin GPS from inside the vehicle. (R. p. 5). Later that same evening, Appellant and Lipscomb broke into an outbuilding belonging to Michael Crawford. (R. p. 5). The building was located at 328 Thompson Street in Cherokee County. (R. p. 5). Appellant and Lipscomb took various items from the property. (R. p. 6).

Following the two thefts, Appellant and Lipscomb were driving in Cherokee County when they approached a checkpoint. (R. p. 6). Lipscomb, who was driving the car, jumped out and ran. (R. p. 6). Appellant got out and walked away from the vehicle. (R. p. 6). Law enforcement was able to link both co-defendants to the vehicle and recovered all the stolen property within the car. (R. p. 6). Lipscomb gave a statement implicating himself and Appellant in both thefts. (R. 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. (R. pp. 2, 3). Appellant acknowledged that he could receive up to five years imprisonment for each offense. (R. pp. 2, 3). Follow 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. (R. p. 10).

The following day, September 19, 2014, the court reconvened for a *sua sponte* reconsideration hearing. (R. pp. 13-15). 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. (R. p. 13). Defense counsel objected to the amended sentence, arguing that the State had not presented any additional information or evidence regarding these two offenses. (R. p. 14). Defense counsel speculated that the *sua sponte* reconsideration was due to Appellant's arrest the day of the plea for new charges. (R. p. 14). The court responded that it was "going to take that into consideration" and noted that it was the court's motion. (R. p. 14). Appellant did not deny that he had been arrested subsequent to his plea or deny the conduct giving rise to the new charge. (R. pp. 13-15).

## 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. Gullede, 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. (R. pp. 13-15). 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.

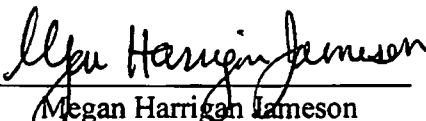
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June 3, 2015

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.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that this Final Brief of Respondent 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."

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June 3, 2015

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHEROKEE COUNTY  
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-002047

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THE STATE,

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vs.

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Appellant.

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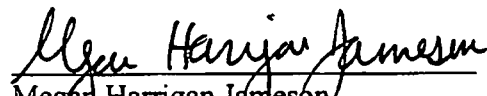
**PROOF OF SERVICE**

---

I, Megan Harrigan Jameson, certify that I have served the within Final Brief of Respondent 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  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This 3<sup>rd</sup> day of June, 2015.

  
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