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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2015-002411
Op. No. 2015-UP-478 (Ct. App. filed October 7, 2015)

THE STATE,

Respondent,

vs.

MICHAEL D. CAMP,

Petitioner.

RETURN TO THE PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

Procedural History

On August 7, 2014, the Cherokee County Grand Jury indicted Petitioner Michael D. Camp for breaking into a motor vehicle (R. 17-18) and third degree burglary (R. 19-20). On September 18, 2014, Camp appeared before the Honorable R. Keith Kelly and pled guilty as indicted to both offenses. Judge Kelly sentenced Camp 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, Camp reappeared before Judge Kelly, who *sua sponte* reconsidered Camp's sentences. Judge Kelly amended Camp's sentences to five years of imprisonment with credit for pre-trial detention. Camp's counsel objected to the amended sentences, arguing the State had not presented any new information or evidence regarding the two offenses.

Camp filed a timely notice of appeal. The Court of Appeals affirmed Camp's convictions and sentences in an unpublished opinion without oral argument. State v. Michael Douglas Camp, Op. No. 2015-UP-478 (Ct. App. filed October 7, 2015). Thereafter, Camp petitioned for rehearing on October 12, 2015. The Court of Appeals denied Camp's petition on November 19, 2015.

On November 24, 2015, Camp filed his Petition for a Writ of Certiorari and Appendix with this Court. This Return follows.

Factual History

On October 10, 2013, Camp and his cousin, Kendrick Lipscomb, broke into a vehicle owned by Amber Painter. (R. 5-6). The vehicle was located at 200 Pine Street in Cherokee County, South Carolina. (R. 5). Camp and Lipscomb stole an iPad and Garmin GPS from inside the vehicle. (R. 5). Later that same evening, Camp and Lipscomb broke

into an outbuilding belonging to Michael Crawford. (R. 5). The building was located at 328 Thompson Street in Cherokee County. (R. 5). Camp and Lipscomb took various items from the property. (R. 6).

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

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

The following day, September 19, 2014, the plea court reconvened for a *sua sponte* reconsideration hearing. (R. 13-15). The plea court, citing mature reflection of the sentenced handed down the day prior, amended Camp's sentences to five years of imprisonment for each offense to be served concurrently. (R. 13). Defense counsel objected to the amended sentence, arguing the State had not presented any additional information or evidence regarding these two offenses. (R. 14). Defense counsel speculated the *sua sponte* reconsideration was due to Camp's arrest the day of the plea for new charges. (R. 14). The court responded it was "going to take that into consideration" and reiterated it was the court's motion. (R. 14). Camp did not deny he

had been arrested subsequent to his plea or deny the conduct giving rise to the new charge. (R. 13-15).

ARGUMENT

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

Camp asserts the Court of Appeals erred in affirming the trial court's amendment of his probationary sentence to active incarceration when the court became aware of a subsequent arrest. Camp argues 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 the court, acting both "dismissive and privileged," failed to give an explanatory basis for the amendment of the sentence. (PWC 7). However, Camp's argument fails, as the court was well within its broad discretion to *sua sponte* reconsider and amend Camp's sentence. The Court of Appeals correctly affirmed the lower court. This Court should deny this petition for a writ of certiorari.

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 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, 356 S.C. at 389, 589 S.E.2d at 204.

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 Camp'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 Camp'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 Camp's 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 it *sua sponte* reconsidered Camp's sentence based upon "mature reflection" and that Camp's subsequent arrest following his guilty pleas was a contributing factor. (R. 13-15). After revealing his reasons for reconsideration, Camp 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 (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 Camp's sentence. The Court of Appeals correctly affirmed Camp's convictions and sentences. This Court should deny this petition for certiorari.

CONCLUSION

For all the foregoing reasons, the State respectfully submits this petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 29, 2015

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PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Return to the Petition for a Writ of Certiorari on Petitioner 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
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I further certify that all parties required by Rule to be served have been served.
This 29th day of December, 2015.

Megan Harrigan Jameson

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