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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JUN 17 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

OBRYAN EXXIDICE COPELAND

APPELLANT

APPELLATE CASE NO. 2014-000703

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

Whether the plea judge abused his discretion in denying Appellant's motion to reconsider his sentence where his order merely recounted the posture of the motion and stated, "After thoughtful review, the Court hereby **Denies** reconsideration of the sentence and **Affirms** its sentence."

STATEMENT OF THE CASE

On October 2, 2009, the Laurens County Grand Jury indicted Appellant Obryan Exxidice Copeland on five counts of armed robbery; one count of attempted armed robbery; assault with intent to kill; assault and battery of a high and aggravated nature; grand larceny; conveying a false bomb threat; criminal conspiracy; and five counts of possession of a weapon during the commission of a violent crime. R. 378-411. On November 15, 2010, Appellant proceeded to trial before The Honorable R. Lawton McIntosh and a jury for the charge of assault with intent to kill, the charge of criminal conspiracy, one of the charges for possession of a weapon, and one of the charges for armed robbery. Joseph St. Pierre represented Appellant and Ronald N. Fleming represented the State. R. 1; R. 3, lines 1-14.

On November 17, 2010, the court suspended the trial to conduct a plea hearing. R. 316, lines 1-7. Appellant pled guilty to the four charges at trial and nolo contendere to the remaining charges. R. 316, line 1—R. 348, line 9. Judge McIntosh sentenced Appellant to concurrent sentences of twenty years' incarceration for assault with intent to kill; thirty years for armed robbery; five years for possession of a weapon; five years for criminal conspiracy; ten years for assault and battery of high and aggravated nature; twenty years for attempted armed robbery; five years apiece for the four remaining possession of a weapon charges; thirty years apiece for the four remaining armed robbery charges; ten years for conveying a false bomb threat; and five years for grand larceny. R. 358, line 12—R. 360, line 10.

On November 24, 2010, Appellant filed a motion for reconsideration of his sentence. R. 363-364. On June 9, 2011, Judge McIntosh held a hearing on the motion. The same attorneys represented the parties. R. 365. On February 28, 2014, Judge McIntosh issued an order denying Appellant's motion. R. 377.

ARGUMENT

THE PLEA JUDGE ABUSED HIS DISCRETION IN DENYING APPELLANT'S MOTION TO RECONSIDER HIS SENTENCE BECAUSE HIS ORDER MERELY RECITED THE RULING WITHOUT STATING ON WHAT BASES DISCRETION WAS EXERCISED.

STATEMENT OF FACTS

With regard to the charges for which Appellant proceeded to trial, the State alleged that on July 7, 2009, Appellant entered the Corner Store on North Harper Street in Laurens with a handgun and fired in the direction of the clerk. He forced her to give him the money in the store and left in a getaway car driven by his codefendant. R. 335, line 16—R. 336, line 12. All of the other charges except the assault and battery of a high and aggravated nature stemmed from allegations that Appellant participated with codefendants in string of armed robberies of local, small businesses from May 23, 2009 to June 20, 2009. During this period and in furtherance of the robberies, Appellant allegedly stole a vehicle to use as a getaway car and called in a bomb threat at a local healthcare center to occupy police. The assault and battery charge arose from Appellant's alleged assault of another inmate while in jail on February 6, 2010. R. 339, line 3—R. 347, line 25.

In the motion for reconsideration of his sentence, Appellant argued that his sentence was extremely disproportionate to that of a codefendant; that Judge McIntosh was aware the State had previously offered Appellant a deal of twelve years and that he imposed a harsher sentence to punish Appellant for exercising his right to trial; and that a period of lesser incarceration would be sufficient to fulfill the purposes of sentencing. R. 363. At the hearing on the motion, counsel for Appellant elaborated to the court, "We had been negotiating before trial to a substantially less amount of time to wrap all these up and,

obviously, he chose to go to trial and he got sentenced accordingly and he had to plead to all those counts” R. 367, lines 12-15. He also elaborated on why a lesser sentence of incarceration would suffice: “He’s got a huge incentive not to re-offend, because if he does slip up in the slightest, he gets life without parole. I believe Your Honor could add additional safeguards to that if you were to change his sentence by adding up to five years [of] probation onto any suspended sentence” R. 369, lines 5-10. In response, Judge McIntosh’s order denying reconsideration merely recounted the posture of the motion and stated, “After thoughtful review, the Court hereby **Denies** reconsideration of the sentence and **Affirms** its sentence.” R. 377.

DISCUSSION

The plea judge abused his discretion in denying Appellant’s motion to reconsider his sentence because his order merely recited the ruling without stating on what bases his discretion was exercised. 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).

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 abuse of discretion occurs when . . . the trial court is vested with discretion, but the ruling reveals no discretion was exercised.” *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

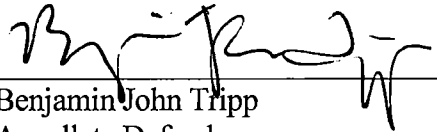
on what bases the discretion was exercised.” *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).

In this case, Judge McIntosh did not state in the order any grounds or explanation for his denial of the motion to reconsider. Appellant first argued that his sentence was too disproportionate to that of a codefendant. The record shows that he was involved with multiple codefendants in various incidents yielding different levels of culpability. Judge McIntosh did not explain any basis for the required discretionary review of Appellant’s sentence based on this argument. Appellant secondly argued the sentence deserved reconsideration a deal because the State believed a far less harsh sentence was appropriate based on prior negotiations and because Appellant should not be penalized for exercising his constitutional right to trial. The record shows the State was offering a negotiated sentence of twelve years’ incarceration, eighteen years less than the sentence Judge McIntosh imposed. No explanation for the discretionary rejection of this argument appears in the order. Appellant finally argued that a period of lesser incarceration would be sufficient to fulfill the purposes of sentencing. The record shows that Appellant was facing an automatic sentence of life without the possibility of parole if he committed any further offense. Again, no explanation of a discretionary denial of this argument appears in the order. Instead, the mere statement in the order that “After thoughtful review, the Court hereby **Denies** reconsideration of the sentence and **Affirms** its sentence” is quintessentially a recitation of discretion without an explanatory basis. Judge McIntosh’s failure to state on what bases he exercised discretion in denying Appellant’s motion constituted an abuse of his discretion, and this Court should reverse his ruling.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the ruling denying Appellant's motion to reconsider his sentence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin John Tripp", is written over a horizontal line.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of June, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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APPELLATE CASE NO. 2014-000703

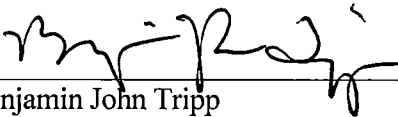
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Obryan E. Copeland 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 R. Lawton McIntosh, which was held on November 17, 2010, 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 Obryan E. Copeland.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of June, 2015.

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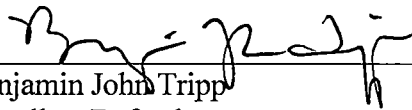
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Transcript of November 15, 2010;
- (3) Transcript of November 16-17, 2010;
- (4) Motion for Reconsideration;
- (5) Transcript of June 9, 2011;
- (6) Order Denying Relief.

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

June 17th, 2015



Benjamin John Tripp
Appellate Defender

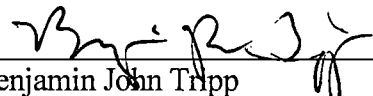
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(803) 734-1343

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."

June 17, 2015



Benjamin John Tripp
Appellate Defender

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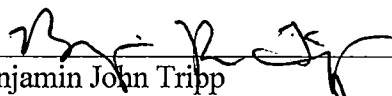
OBRYAN E. COPELAND,

APPELLANT

APPELLATE CASE NO. 2014-000703

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 Obryan E. Copeland, #316500 at Lieber Correctional Institution, this 17th day of June, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of June, 2015.

U m

(L.S.)

Notary Public for South Carolina

My Commission Expires: May 12, 2025.