

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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MAY 27 2015

Appeal from Charleston County

SC Court of Appeals

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CORNELIUS DAVIS,

APPELLANT

APPELLATE CASE NO. 2014-000806

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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(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

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STATEMENT OF ISSUE ON APPEAL

Whether the plea judge abused her discretion in denying Appellant's motion to reconsider his sentence where she concluded that he was predatory toward the victim even though counsel had previously allocuted without contradiction that the victim and her mother were responsible for Appellant's contact with the victim.

STATEMENT OF THE CASE

On July 9, 2012, the Lexington County Grand Jury indicted Appellant Cornelius Kiopheus Davis for committing or attempting a lewd act upon a child. On August 7, 2012, the Charleston County Grand Jury indicted Appellant for criminal sexual conduct with a minor, second degree. And on September 2, 2012, the Richland County Grand Jury indicted Appellant for criminal sexual conduct with a minor, second degree. R. 39-44.

On February 25, 2014, Appellant appeared at a plea hearing in Charleston County before The Honorable Deadra L. Jefferson. Joenathan S. Chaplin represented Appellant and Deborah Herring Lash represented the State. R. 1. Appellant pled guilty to the criminal sexual conduct charge. He also waived venue for the Richland and Lexington charges and pled guilty in each case to the reduced charge of assault and battery, third degree. R. 3, line 1—R. 5, line 16. Judge Jefferson sentenced Appellant to thirty days' incarceration for each of the assault and battery charges and fifteen years' concurrent incarceration for the criminal sexual conduct charge. R. 26, line 20—R. 27, line 3.

ARGUMENT

THE PLEA JUDGE ABUSED HER DISCRETION IN DENYING APPELLANT'S MOTION TO RECONSIDER HIS SENTENCE BASED ON THE CONCLUSION THAT HE PREYED ON THE VICTIM.

STATEMENT OF FACTS

The State reported that during the spring of 2012, Appellant was a teacher at a school in Lexington County and served as a counselor for the Special Olympics. He allegedly sexually assaulted a female student at the school and had intercourse with the student at his home in Richland County and at a Special Olympics event in Charleston in which the victim was a participant. R. 9, line 6—R. 10, line 23.

Counsel for Appellant allocuted to Judge Jefferson that “the victim’s mother knew [Appellant] very, very well. To the point that she was contacting [Appellant] thousands of times.” R. 17, lines 12-14. Specifically, the two were texting and would meet personally. Counsel for Appellant submitted to Judge Jefferson a “whole book” of text messages between the two, although he stated he “really [did not] know what transpired between him and the mother at all.” R. 17, line 14—R. 18, line 20. Counsel also explained, “At some points they did talk about her daughter as well. And then on a couple of occasions, the daughter contacted my client” R. 17, lines 9-11.

After he was sentenced, Appellant filed on March 17, 2014 a pro se motion to reconsider his sentence on grounds that the sentence was excessive. R. 29-31. The State filed a return on April 3, 2013. R. 32-33. On May 1, 2014, Judge Jefferson issued an order denying Appellant’s motion to reconsider. R. 34-38. The order specifically stated Appellant’s sentence was appropriate considering, inter alia, “the predatory acts” of Appellant. R. 37.

DISCUSSION

Judge Jefferson abused her discretion in denying Appellant's motion to reconsider based on the conclusion that he preyed on the victim. 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).

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.

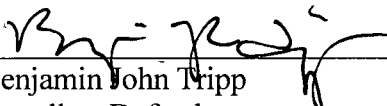
State v. Franklin, 267 S.C. 240, 245-46, 226 S.E.2d 896, 897 (1976).

In this case, the evidence in the record does not support the conclusion that Appellant preyed on the victim. Counsel for Appellant explained without contradiction how the victim and Appellant encountered each other. Appellant was already "very, very" close to the victim's mother. The mother was contacting Appellant repeatedly by text and on her own accord. She would also meet Appellant in person. In their communications, the victim's mother discussed her daughter with Appellant. These discussions evolved into the daughter accosting Appellant through the phone. Thus, the evidence in the record does not support a finding that Appellant initiated contact with the victim through "predatory acts." Judge Jefferson therefore abused her discretion in concluding to the contrary and denying the motion to reconsider the sentence.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the ruling of the plea judge and remand for a new sentencing hearing.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of May, 2015.

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Deadra L. Jefferson, Circuit Court Judge

THE STATE,

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APPELLATE CASE NO. 2014-000806

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cornelius K. Davis states:

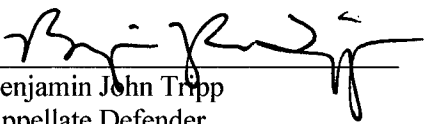
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on February 25, 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 Cornelius K. Davis.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of May, 2015.

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IN THE COURT OF APPEALS

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APPELLATE CASE NO. 2014-000806

**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 February 25, 2014;
- (3) Pro se motion to reconsider;
- (4) State's return to motion to reconsider;
- (5) Order denying motion to reconsider.

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

May 27th, 2015


Benjamin John Tripp
Appellate Defender

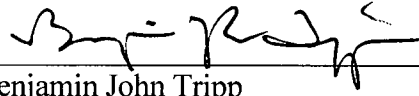
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

May 27, 2015



Benjamin John Tripp
Appellate Defender

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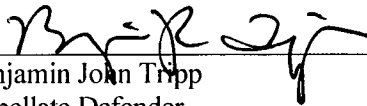
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APPELLANT

APPELLATE CASE NO. 2014-000806

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 Cornelius K. Davis, #358938 at Lieber Correctional Institution, this 27th day of May, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of May, 2015.

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