

2013 A02 20101069
2013 A02 20101060
2013 A02 20101059

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
State of South Carolina)
)
v.)
)
Michael Fuller,)
)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

INDICMENT NO. 2014-GS-02-01308;
2014-GS-02-01310; 2014-GS-02-01311;
2014-GS-02-01312

**ORDER GRANTING IN PART
DEFENDANT'S MOTION TO
RECONSIDER**

MAR 29 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court, of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 23 day of March 2016
Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Katie J. Williams
Deputy Clerk

Defendant filed a Motion to Reconsider pursuant to Rule 29, SCRCP on February 29, 2016. In his Motion, Defendant asks this Court to reconsider the sentence it imposed on Defendant on February 19, 2016 and its refusal to find that the conviction for Kidnapping did not include a criminal sexual offense or attempted criminal sexual offense.

The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). A judge is to be accorded 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. *Wasman v. United States*, 468 U.S. 559, 563 (1984). After careful consideration of the record in the case and the submission of the parties, Defendant's Motion to Reconsider Sentencing is granted in part and denied in part.

Defendant's Motion also asks the Court to reconsider its refusal to find that the Kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense. Pursuant to § 23-3-430(C)(15), sex offender registration is required after a conviction of

1 cent copy to attorney Wallis Alves
1 cent copy to Sol. Margaret Bolman
email copy to Judge

FILED March 22 2016
Liz Godard
C.C.P. & G.S.
Sherry Langley
Deputy Clerk

"Kidnapping a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense." The requirement of sex offender registry is presumptive in a conviction for Kidnapping. The statute does not require a separate conviction for a criminal sexual offense or an attempted criminal sexual offense.

Defendant was charged and indicted for Criminal Sexual Conduct in the First Degree in addition to Kidnapping. The Jury, despite specific testimony of sexual activity from the Victim, failed to convict Defendant on the Criminal Sexual Conduct in the First Degree charge. The totality of the circumstances as presented in this four (4) day trial, including the targeting of the Victim by Defendant, the timing of the Kidnapping, the perceived vulnerability of the Victim and the wounds to the Victim, leads this Court to believe that a criminal sexual offense occurred in conjunction with the Kidnapping. Therefore, Defendant's Motion to Reconsider this Court's Requirement to Register as a Sex Offender is denied.

THEREFORE IT IS ORDERED THAT:


1. Defendant's Motion for Reconsideration is GRANTED IN PART and this Court's Sentencing Order of February 19, 2016 is amended such that Defendant's sentences for Kidnapping, § 16-03-910; Unlawful Possession of a Pistol, § 16-23-0030; Possession of a Weapon During a Violent Crime, § 16-23-0490; and Unlawful Carrying of a Pistol, § 16-23-0020 should all run CONCURRENT with each other; and

GL 2

2. Defendant's Motion for Reconsideration is DENIED IN PART and this Court's failure to to making a finding that Defendant's Kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense stands.

IT IS SO ORDERED.

Columbia, South Carolina
March 14, 2016



G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit



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State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

G. Thomas Cooper, Jr.
Judge

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March 15, 2016

Ms. Liz Godard
Aiken County Clerk of Court
PO Box 583
Aiken, South Carolina 29801-0583

RE: *State of South Carolina v. Michael Fuller*, 2014-GS-02-01308; 2014-GS-02-01310; 2014-GS-02-01311; 2014-GS-02-01312

Dear Ms. Godard:

Please find enclosed for filing an Order for the above captioned case. Please email me a copy of the filed Orders at gcooperlc@sccourts.org.

With kindest regards, I am

Very truly yours,

Lauren Patterson
Law Clerk to the Honorable G. Thomas Cooper, Jr.

GTCJr:lep

Enclosures

March 22 2016
Liz Godard
C.C.R. & G.S.
Shirley A. Langley, Jr.
Deputy Clerk