

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM PICKENS COUNTY

SC Court of Appeals

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000211

THE STATE,APPELLANT,

v.

FREDERICK SCOTT PFEIFFER,RESPONDENT.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

ARGUMENT

WHETHER The sentencing court was without authority to rule on Respondent's 2nd post-trial motion because Respondent's 2nd motion was not made within ten (10) days after the imposition of his sentence?

STATEMENT OF THE CASE

On June 19, 2012, the State Grand Jury of South Carolina (the "State Grand Jury") returned a true-billed indictment charging Respondent and Arthur M. Field ("codefendant") with securities fraud and conspiracy. (ROA, p. aa [Indictment 2013GS4709]). Respondent was a lawyer licensed in South Carolina until his indictment.¹ The Indictment alleged that Respondent and codefendant conspired to perpetrate a fraud upon South Carolina investors by concealing and misstating material information in connection with the offer and sale of notes by the now defunct Capital Investment Funding, LLC ("CIF"). CIF raised money through the sale of "senior notes" to South Carolina investors. These notes constituted securities under South Carolina law, and as such were registered with the South Carolina Securities Division (the "Securities Division"). The proceeds of these note sales were then lent to various entities; primarily the New Jersey based Lancaster Resources, Inc. ("LRI"), which was CIF's primary debtor for the entirety of its existence. Respondent served as counsel to CIF as well as the co-owner and co-manager of CIF's principal re-lender Cosimo, LLC ("Cosimo"). Throughout the course of CIF's existence, Respondent supplied legal opinions on CIF's compliance with state and federal securities laws and the lack thereof. Respondent was also separately indicted by the South Carolina State Grand Jury; these multi-

¹ <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2012-06-15-01>

county indictments include commission of securities fraud and conspiracy with regard to the operations of Cosimo, LLC, which served as the major relender of investor funds provided to Capital Investment Funding, LLC. (ROA, p. bb [Indictment 2013GS4710]) They also alleged forgery by use of a fictitious name to endorse a check from the South Carolina Department of Transportation for compensation in condemnation of property, and perjury and false swearing regarding this fictitious name in two depositions where Capital Investment Funding loans were involved.

Ultimately, Respondent pled guilty on September 18, 2013 to three (3) of the counts, i.e. 2013GS4709 Count I (Criminal Conspiracy CDR 0049); Count III (Securities Fraud, CDR 2615); and Count VI (Securities Fraud CDR 2615). (ROA, p. cc [September 18, 2013 plea transcript]) Respondent's restitution hearing was deferred following his plea and sentencing.

Respondent filed a timely (1st) motion for reconsideration on September 30, 2013. (ROA, p. xx [Respondent's 1st Motion for Reconsideration, dated September 30, 2013]). On October 8, 2013, the sentencing court held a hearing on Respondent's (1st) Motion for Reconsideration of sentence at the same time as the restitution hearing – the sentencing Court issued amended sentencing sheets the same day at Respondent's request for a mere clarification regarding SCDC's calculation(s) methods. (ROA, p. dd [Amended Sentencing Sheets dated October 8, 2013], ROA, p. ee [October 8, 2013 restitution and re-sentencing transcript]).

Twenty-nine (29) days after his plea, Respondent filed a 2nd motion for reconsideration – dated October 17, 2013. (ROA, p. nn, [Respondent’s 2nd motion for reconsideration is dated October 17, 2013]). Respondent was ordered to pay restitution in the net amount of \$169,186.30. (ROA, p. ff [July 9, 2014 restitution and 2nd reconsideration transcript, p. 48-51], ROA, p. gg [Restitution Order, dated October 8, 2013 and July 9, 2014]). Ultimately, the sentencing court granted Respondent’s 2nd request to reconsider his sentence. (ROA, p. yy [Order Granting Defendant’s 2nd Motion to Reconsider, dated January 23, 2015])

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). “On appeal, the trial court’s ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs where the trial court’s conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

ARGUMENT

THE SENTENCING COURT WAS WITHOUT AUTHORITY TO RULE ON RESPONDENT'S 2ND POST-TRIAL MOTION BECAUSE RESPONDENT'S 2ND MOTION WAS NOT MADE WITHIN TEN (10) DAYS AFTER THE IMPOSITION OF HIS SENTENCE

Respondent's 2nd motion for reconsideration is dated October 17, 2013. (ROA, p. nn, [Respondent's 2nd motion for reconsideration is dated October 17, 2013]). The 2nd motion for reconsideration is untimely and invalid. It is far beyond the ten (10) days from the September 18, 2013 plea available per Rule 29(a), SCRCrimP. The rule is clear that "post-trial motions shall be made within ten (10) days after the imposition of sentence." Accordingly, the sentencing court was without authority to entertain the motion. *See, State v. Warren*, 392 S.C. 235 (Ct. App. 2011).

There were two (2) motions for reconsideration filed by Respondent, the first was timely filed and the sentencing court of course retained authority to decide the limited issue presented in Respondent's 1st motion for reconsideration – but that authority does not extend to supplemental arguments presented outside the ten (10) day window.² *Id.* at 240. The sole issue in the 1st motion for reconsideration was an alleged inconsistency with this Court's sentencing as interpreted by SCDC, i.e. "that there are inconsistencies between the sentences handed down by the Court with what

² Respondent's plea was on September 18, 2013. Ten (10) days later was September 28, 2013, which was a Saturday. Accordingly, Respondent's 1st Motion for Reconsideration was timely filed on September 30, 2013.

is reflected within the Sentencing Sheets...” (ROA, p. xx [Respondent’s 1st Motion for Reconsideration, dated September 30, 2013]).

The sentencing court had limited authority following the plea. The limited authority over the case following the plea was “for the purpose of hearing and disposing of the motion” – the specific issue presented in the 1st motion, not over anything and everything else forever. Rule 29(a), SCRCrimP; Warren, at 240. Respondent’s 2nd Motion for Reconsideration presented a different issue and is therefore untimely and invalid.

The sentencing court specifically rejected this timeliness argument explaining “*that the codefendant’s sentence was not known until October 8, 2013...With this new codefendant sentencing information, Defendant did timely file this 2nd motion for reconsideration, dated October 17, 2013.*”³ (ROA, p. yy [Order Granting Defendant’s 2nd Motion to Reconsider, dated January 23, 2015, p. 3]). The sentencing court’s ruling is an error of law. Rule 29(a), SCRCrimP. affords a limited ten (10) day window that begins “after the imposition of the sentence.” The sentencing of a codefendant is irrelevant for the purposes of Rule 29(a), SCRCrimP.

The only exception to the ten (10) day window for defense filed post-trial motions is in regards to “motions for new trials based on after-

³ Applying the sentencing court’s logic would allow any defendant to file a post-trial motion for reconsideration of sentencing whenever a codefendant’s sentence is arguably at issue. To do so would virtually eliminate any finality – for example, in the matter at hand, the codefendant’s sentence calculation is not final; it is the issue in pending Appellate Case number 2015-000210.

discovered evidence...”⁴ Rule 29(a), SCRCrimP. Respondent never attempted to claim that he wanted a “new trial” based on the substance of his 2nd Motion for Reconsideration. Accordingly, the timeline provided by our Rules requires that “[p]ost-trial motions shall be made within ten (10) days after the imposition of the sentence.” Rule 29(a), SCRCrimP.

Respondent’s 2nd post-trial motion was made beyond ten (10) days after the imposition of his sentence – it is therefore invalid. Moreover, the sentencing court lacked the authority to rule on said motion because absent any exception to the rule requiring a timely motion “a trial judge is without [authority] to consider a criminal matter once the term of court during which judgment was entered expires.” State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008).

⁴ While inapplicable to this matter, in substantial assistance situations the State can make such a motion per S.C. Code § 17-25-65.

CONCLUSION

Respondent's 2nd motion for reconsideration was untimely. The sentencing court erred by granting relief based on an untimely motion for reconsideration. The sentencing court's "Order Granting Defendant's 2nd Motion to Reconsider" (dated January 13, 2015) should be nullified.

Respectfully submitted,

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May 2, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

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THE STATE,

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FREDERICK SCOTT PFEIFFER,

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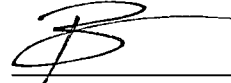
I certify that I have served the Initial Brief of Appellant and Designation of Matter with Certificate of Counsel by depositing a copy of it in the United States Mail; postage prepaid, on May 2, 2016, addressed to his attorney of record:

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SC Court of Appeals

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May 2, 2016

The Honorable Jenny Abbott Kitchings
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Post Office Box 11629
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RE: State v. FREDERICK SCOTT PFEIFFER,
Appellate Case No. 2015-000211

Dear Ms. Kitchings:

Enclosed for filing in the above matter are the following:

- (1) Initial Brief of Appellant.
- (2) Designation of Matter with Certificate of Counsel.
- (3) Proof of Service of the above items to Respondent's attorney of record.

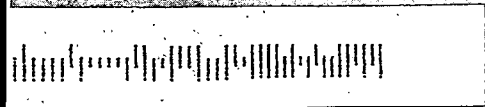
Sincerely,

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