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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY CURTIS FRALEY,

APPELLANT

APPELLATE CASE NO 2015-001737

SUPPLEMENTAL RECORD ON APPEAL

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INDEX

INDEX.....i
JULY 23, 2015 SENTENCING TRANSCRIPT 1
CERTIFICATE OF COUNSEL 15

1 STATE OF SOUTH CAROLINA)
 2) Court of General Sessions
 3 COUNTY OF BERKELEY) Case No. 2014-GS-08-1505,
) 1507, 1508, 1590, 1511,
) 1684, 1685 and 1874
 4 STATE OF SOUTH CAROLINA)
 5)
 6 vs.) Transcript of Record
 7)
 8 GARY FRALEY,)
 9)
 10 Defendant.)
 11)
 12) DATE: July 23, 2015
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9 B E F O R E:
 10 THE HONORABLE KRISTI LEA HARRINGTON
 11

12 A P P E A R A N C E:
 13 ANNE WILLIAMS and DANIEL B POULOS
 14 Attorney for the State
 15 MELISSA GAY
 16 Attorney for the Defendant

17 Karen V. Andersen, RMR, CRR
 18 Circuit Court Reporter

1 THE COURT: I need somebody from probation.

2 All right. The purpose of this hearing is just to
3 make sure that everything was placed adequately on the record
4 from the sentencing held July 17th following the defendant's
5 conviction and guilty verdict by the jury.

6 Ms. Williams and Mr. Poulos are present for the
7 State. Ms. Gay and Mr. Fraley on behalf of the defendant.

8 You have the amended sentencing sheets. I had
9 indicated to you, Ms. Williams, there were just some
10 scrivener's errors. So I wanted to make sure that -- and I
11 checked with the Department of Corrections -- to make sure
12 that the sentencing sheets were accurately completed.

13 So there was some scrivener's errors on
14 2014-GS-08-1505. The Court did not give Mr. Fraley credit
15 for the time that was served. So that box was not checked.

16 I think, based upon my reading of the statute, that
17 Mr. Fraley is corrected -- is entitled to the credit for the
18 time he has served since his arrest.

19 Any objection to making that correction on the
20 sentencing sheet?

21 MS. WILLIAMS: Not from the State, Your Honor.

22 MS. GAY: No, ma'am.

23 THE COURT: All right. It is a benefit that inures
24 to Mr. Fraley.

25 Do you have the amount of time that he has served?

1 What was his arrest date? He was arrested on August 5th,
2 2014; is that correct?

3 MS. GAY: Yes, ma'am.

4 THE COURT: So I'm going to place on each of the
5 sentencing sheets that he is to be given credit since his
6 arrest on August 5th of 2014. Any objection to making that
7 amendment to all?

8 MS. WILLIAMS: Not from the State, Your Honor.

9 MS. GAY: Not from Mr. Fraley, Your Honor.

10 THE COURT: Again, the sentencing sheet on
11 2014-GS-08-1508 will indicate credit for time served.

12 2014-GS-08-1506, there was a scrivener's error. I
13 had corrected that. And there was a notation. The major
14 error that I want everyone to be aware of on 2014-GS-08-1507,
15 was the indictment indicates that that was the indictment for
16 unlawful conduct towards a child. The sentencing sheet
17 indicates unlawful neglect of a child. The State has
18 provided the sentencing sheet to reflect the statutory title
19 of the charge. The CDR code in both places are correct and
20 the statute number is correct.

21 Any objection to amending that sentencing sheet to
22 reflect the appropriate charge, from the State?

23 MS. WILLIAMS: Not from the State, Your Honor.

24 MS. GAY: No, ma'am.

25 THE COURT: Do you understand, Ms. Gay, what I've

1 indicated?

2 MS. GAY: Yes.

3 THE COURT: If at any time you need to explain to
4 your client what we are doing, please, just let me know so
5 that you can indicate to him. All of these are benefits to
6 your client. There is nothing that has changed. There is no
7 increase in sentencing or penalty or anything of that nature.
8 It's merely that when he goes to DOC, I want to make sure
9 that all of his paperwork is correct and that he accurately
10 understands that.

11 MS. GAY: Do you understand what she was saying?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Mr. Fraley, if at any point you need any
14 more time -- we are only here to clarify the sentencing
15 sheets -- but if you need to speak with your attorney,
16 please, let me know. Do you understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Thank you. There are no errors on 1511
19 that I have been able to determine. 1684, no errors. 1685,
20 no errors.

21 As to the indictment on 1874, my review of the
22 statute indicates that this is a violent and a most serious
23 offense. Is that your understanding, Ms. Williams?

24 MS. WILLIAMS: Yes, Your Honor.

25 THE COURT: And I am not sure that I indicated that

1 to Mr. Fraley on that particular indictment. As we have had
2 discussions, the law has changed. And so I just wanted to
3 make sure. I have advised Mr. Fraley that he has already
4 been convicted on previous violent and most serious charges,
5 the kidnapping. So these would not necessarily effect his
6 classification and status in and of itself.

7 Ms. Gay, do you agree that the criminal sexual
8 conduct with a minor in the third degree is a violent and
9 most serious offense?

10 MS. GAY: I was just hearing the solicitor talk with
11 your clerk about it, and they looked that up. And I trust
12 that they looked that up correctly, yes.

13 THE COURT: Just so the record is abundantly clear,
14 there was nothing checked on the sentencing sheet. It wasn't
15 that it was checked as nonviolent and now we're moving it to
16 a violent or most serious. There just -- apparently, the
17 State just neglected to check the boxes when it was printing
18 the sheets.

19 MS. GAY: Yes, ma'am.

20 THE COURT: Did you explain to your client -- and I
21 think I've asked this question several times even before we
22 began the trial -- if he understands what the classifications
23 of violent and most serious mean?

24 MS. GAY: Yes, the strikes.

25 Do you want to take a minute?

1 THE DEFENDANT: Yes, take a minute.

2 MS. GAY: Hold on one second.

3 THE COURT: Take all the time you need.

4 (Whereupon, an off-the-record discussion takes
5 place.)

6 MS. GAY: Yes, ma'am. I've explained it to him.

7 THE COURT: Any objection to the Court making that
8 notation to coincide with the statute?

9 MS. GAY: No, ma'am.

10 THE COURT: Mr. Fraley, do you need any additional
11 time to discuss that matter with your attorney?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: All right. So I have spoken with the
14 Department of Corrections just to make sure that when
15 Mr. Fraley is transported and the paperwork goes through,
16 that the sentence is clear, so that he is given the
17 appropriate credit for time served and the classifications.

18 The order of the Court on 2014-GS-08-1505, which is
19 the indictment for kidnapping of minor , which is a sexual
20 offense, that Mr. Fraley be committed to the State Department
21 of Corrections for a term of 30 years. He is to be given
22 credit on all indictments since his arrest on August 5th,
23 2014. The Department of Corrections will calculate that
24 exact time. That is a violent and a most serious offense and
25 will place him on the registry.

1 That is consecutive to 2014-GS-08-1508, which is a
2 violent and a most serious offense. The defendant is to be
3 given credit for the time that he has served. That is
4 consecutive to the previous indictment, as well as to
5 2014-GS-08-1509, which was the indictment for kidnapping
6 Mr. Tsafos. I found on the sentencing sheet and made the
7 notation there is to be -- that was not a sexual offense --
8 committed to the State Department of Corrections for a term
9 of 30 years.

10 It's order of the Court on 2014-GS-08-1506 that the
11 defendant be committed to the State Department of Corrections
12 for a term of five years. That is concurrent to
13 2014-GS-08-1505. The defendant is to be given credit for
14 time served.

15 It's order of the Court on 2014-GS-08-1507, which is
16 the unlawful conduct towards a child, the notation has been
17 made that is also a nonviolent offense. I will make that
18 notation. That the defendant be committed to the State
19 Department of Corrections for a term of 10 years. He is to
20 be given credit for the time that he has served. And that is
21 to be concurrent to 2014-GS-08-1505.

22 It's order of the Court on 2014-GS-08-1511, which is
23 a violent and a most serious offense, that the defendant be
24 committed to the State Department of Corrections for a term
25 of 20 years. That is concurrent to 2014-GS-08-1507. He is

1 to be given credit for time that he has served.

2 It's order of the Court on 2014-GS-08-1684 that the
3 defendant be committed to the State Department of Corrections
4 for a term of 20 years. That is a violent and most serious
5 offense. He is to be given credit for the time that he has
6 served.

7 2014-GS-08-1685, the defendant is to be committed to
8 the State Department of Corrections for a term of 20 years.
9 That is a violent and a most serious offense. And it is to
10 run concurrent with 2014-GS-08-1511. Credit for the time
11 that he has served.

12 2014-GS-08-1874 is a criminal sexual conduct with a
13 minor in the third degree, a violent and a most serious
14 offense. The defendant is to be committed to the State
15 Department of Corrections for a term of 15 years. That is
16 concurrent with 2014-GS-08-1685. Credit for the time that
17 you have served.

18 2014-GS-08-1934, possession of a weapon during the
19 commission of a violent crime. That is a nonviolent offense.
20 Sentencing sheet will be checked to note that defendant is to
21 be committed to the State Department of Corrections for a
22 term of five years. That is concurrent to 2014-GS-08-1874.
23 Credit for the time that he has served.

24 Just to make this again abundantly clear, as I
25 indicated, I've spoken with the Department of Corrections to

1 ensure that my sentence is adequately and appropriately
2 carried out.

3 2014-GS-08-1505 is to be served, and then the
4 defendant will begin serving on 2014-GS-08-1508, the 30-year
5 sentence, consecutive to 2014-GS-08-1509.

6 Indictments 2014-GS-08-1506, 1507, 1511, 1684, 1685,
7 1874, and 1934 are all to run concurrent to each other and
8 concurrent to 2014-GS-08-1509.

9 Any questions about my sentence, Ms. Williams?

10 MS. WILLIAMS: Not from the State, Your Honor.

11 THE COURT: Ms. Gay, do you need just a moment to go
12 over all of that?

13 MS. GAY: Yeah. I just -- let me ask it the way
14 that I can maybe understand it, Your Honor.

15 1505 is a controlling sentence with 30 years. And
16 it's the one that you anticipate that he would be serving
17 first. Are there any charges that will run concurrent with
18 that?

19 THE COURT: The simple answer is no.

20 MS. GAY: And then the next one is 1508, where he
21 would also serve 30 years. And are there any concurrent with
22 that?

23 THE COURT: Again, the simple answer is no.

24 MS. GAY: So then the next controlling sentence will
25 be 1509 for 30 years. And everything else will run

1 concurrent with that?

2 THE COURT: Correct.

3 MS. GAY: Okay. So all the other charges run
4 concurrent with 1509?

5 THE COURT: Correct. The way that -- when I spoke
6 to the Department of Corrections, he will serve his time.
7 And there was no significance necessarily in the way that I
8 crafted the concurrent sentence. My focus was on the
9 consecutive sentences. He will serve his time 85 percent off
10 1505. Then he will be -- then he will serve his 1508 time at
11 85 percent. He will be given credit only for the time that
12 he has served as of today on the 1508 sentence.

13 Then once he has completed those two sentences, he
14 will begin serving his time on the 1509 sentence for 30
15 years. And all remaining indictments will run concurrent to
16 that time that he has been serving. All right?

17 MS. GAY: I understand.

18 THE COURT: Any questions now, Ms. Williams, based
19 upon my clarification?

20 MS. WILLIAMS: So the total sentence will be 90
21 years?

22 THE COURT: Again, I want to make this clear.
23 Defendant should always assume that they are going to serve
24 day for day. I make no determination of Department of
25 Corrections' time. The calculation that I was given as of

1 today, based upon what I understood the time that he had
2 served, the arrest date of August 5th, the shortest amount of
3 time that Mr. Fraley will serve as of today's date, it was
4 76.7 years.

5 MS. WILLIAMS: Thank you, Your Honor.

6 MS. GAY: Thank you, Your Honor. That's all. Thank
7 you.

8 THE COURT: Let's take just a moment, because this
9 is an abundance of sentencing sheets with a lot of
10 classifications and a lot of clarifications. So I want to
11 make sure now that since everybody has had significant time
12 to rest and that we are not here with other interests and
13 that we are focused only on the paperwork at this point.

14 MS. GAY: Yes, ma'am.

15 THE COURT: Because people don't ask the appropriate
16 source. I am right here with the sentencing sheets in front
17 of me. While I'm sure that Ms. Williams wrote down
18 everything correctly, ask me. Thank you.

19 MS. GAY: 1506 is 5 years. 1507 is 10 years. 1511
20 is 20 years.

21 THE COURT: Hold on one second. 1506 is the
22 possession of weapon during the commission of a violent
23 crime. It is 5 years.

24 MS. GAY: 1507 is 10.

25 THE COURT: 1507 is now amended to reflect the

1 unlawful conduct towards a child. And I have sentenced
2 Mr. Fraley to 10 years in the Department of Corrections.

3 MS. GAY: 1511, 20.

4 THE COURT: And that is a violent and a most serious
5 offense. And I have sentenced Mr. Fraley to 20 years in the
6 Department of Corrections.

7 MS. GAY: 1684 is also 20.

8 THE COURT: Correct, also violent and a most
9 serious, 20 years.

10 MS. GAY: 1685 another 20?

11 THE COURT: Correct.

12 MS. GAY: 17 -- 1874 is 15?

13 THE COURT: Correct. And 1874 is a violent and a
14 most serious offense.

15 MS. GAY: Yes, ma'am.

16 1934 is a nonviolent sentence because it's the last
17 gun charge and it's 5 years.

18 MS. GAY: It is nonviolent because the statute says
19 so. And I have sentenced him to 5 years.

20 MS. GAY: Yes, ma'am. Thank you. I think I'm
21 clear.

22 THE COURT: All right. Take just a moment.

23 MS. GAY: I do have a request, Your Honor. Can you
24 ask them not to send him back to the jail right this second?
25 I have a paperwork that's getting faxed here that he needs to

1 have pursuant to his appeal. And I asked my office to fax it
2 to me, and I will have him sign it. And if they would just
3 not take him back to the jail for just a few minutes while I
4 go downstairs instead of taking him straight out. Thank
5 you.

6 THE COURT: All right. One more time, just take a
7 few moments.

8 (Off-the-record conference.)

9 MS. GAY: Thank you, Your Honor.

10 THE COURT: Thank you. Anything further?

11 MS. WILLIAMS: Not from the State, Your Honor.

12 THE COURT: Thank you.

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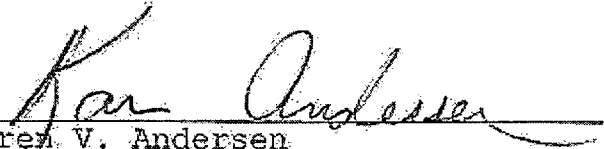
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 12th day of July, 2016, at Charleston, Charleston
County, South Carolina.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

Respectfully Submitted,



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ATTORNEY FOR APPELLANT

This 31st day of August, 2016.

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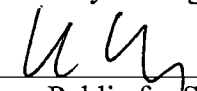
CERTIFICATE OF SERVICE

I certify that a copy of the Supplemental Record on Appeal in the above-referenced case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 31st day of August, 2016.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 31st day of August, 2016.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires 5/12/2025.