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STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2015-001029

State of South Carolina, ... Respondent,

v.

DAMEON LAMAR THOMPSON .... Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. The plea judge did not abuse her discretion in denying Appellant's motion for reconsideration.

STATEMENT OF THE CASE

Appellant was indicted by the Dorchester County Grand Jury for failure to stop for a blue light (2013-GS-18-0437) and trafficking cocaine base (2013-GS-18-0438). Peter Shahid, Esquire represented Appellant.

On November 3, 2014, Appellant pled guilty to these charges as indicted before the Honorable Kristi L. Harrington. (R.pp.17-35). Sentencing was deferred. (R.p.35).

On January 8, 2015, Appellant appeared before Judge Harrington for sentencing. Appellant was again represented by Mr. Shahid. The Charleston County Grand Jury had indicted Appellant during the December 2014 term for the following charges: two counts of trafficking cocaine base (2013-GS-10-7493, 2014-GS-10-7267), trafficking cocaine (2014-GS-10-7270), two counts of failure to stop for a blue light (2014-GS-10-7271, 2014-GS-10-7275), possession with intent to distribute (PWID) marijuana (2014-GS-10-7273), and leaving the scene of an accident (2014-GS-10-7276). (R.pp.93-106). Appellant pled guilty to the Charleston County charges as indicted with three exceptions: the three trafficking charges were all reduced to PWID. (R.pp.40-72).

Judge Harrington then sentenced Appellant for both his Dorchester County and Charleston County charges. For the Dorchester County charges, Judge Harrington levied concurrent sentences of three (3) years for failure to stop for a blue light and ten (10) years for trafficking cocaine base. For the Charleston County charges, Judge Harrington levied concurrent sentences of fifteen (15) years for each count of PWID cocaine base, fifteen (15) years for PWID cocaine, five (5) years for each count of failure to stop for a blue light, second offense, five (5)

years for PWID marijuana, and one (1) year for leaving the scene of an accident.[1] (R.pp.73-74).

Appellant's counsel filed a motion for reconsideration on January 9, 2015. (R.pp.77-80). Judge Harrington denied the motion by order filed February 2, 2015. (R.pp.83-84).

[1] The drug charges were all sentenced as first offenses.

STATEMENT OF FACTS

Dorchester Plea Hearing

The assistant solicitor handling Appellant's Dorchester County charges noted he had made a recommendation in this case to dismiss three (3) charges and recommend a 5-6 year sentence for the remaining charges of failure to stop for a blue light and trafficking cocaine base. (R.p.7). Both the assistant solicitor and plea counsel stated their preference was for the plea judge to accept Appellant's guilty pleas to the Dorchester charges that day but defer sentencing in order to allow plea counsel to attempt to obtain a recommendation on Appellant's pending Charleston County charges. (R.pp.6-7). The plea judge agreed to proceed in this manner. (R.p.9).

The plea judge advised Appellant of the sentence ranges for failure to stop for a blue light and trafficking cocaine base and Appellant stated he understood and wished to plead guilty. (R.pp.17-18). The plea judge noted the solicitor's recommendation was for 5-6 years but stated that she could sentence Appellant to a sentence of 3-10 years and Appellant said he understood. (R.p.19). The plea judge advised Appellant that he should assume he would "serve that day for day" on his sentences and Appellant agreed. (R.pp.19-20). Appellant stated he was pleading guilty to these charges because he was guilty. (R.pp.26-27; p.30). Appellant waived the various rights associated with a jury trial. (R.pp.27-28). Appellant agreed with the assistant solicitor's recitation of the facts of his case. (R.pp.31-34). As agreed to before the plea hearing, the plea judge deferred sentencing on these charges to a later date.

Charleston Plea Hearing

At the subsequent hearing two months later, Appellant pled guilty to seven (7) Charleston

County charges before being sentenced on the Dorchester County charges. The plea judge advised Appellant of the sentence ranges for these charges and Appellant stated he understood. (R.pp.40-43). Appellant waived the various rights associated with a jury trial. (R.pp.45-46). Appellant stated he was satisfied with plea counsel's representation. (R.p.46). Appellant stated he had not been promised anything in exchange for his guilty pleas, that it was his decision to plead guilty, and that he was guilty. (R.pp.46-47). Appellant agreed with the assistant solicitor's recitation of the facts of his case. (R.pp.53-54). The assistant solicitor stated the plea agreement was for a recommendation of an eight-year sentence.[2] (R.pp.52-53). After speaking in mitigation, plea counsel asked the plea judge to accept the recommendation. (R.p.67).

Before imposing sentence, the plea judge noted Appellant was on probation when the Charleston County offenses occurred and stated Appellant "continued to gó out and put people in danger and put others at risk." (R.p.73). The plea judge then levied an aggregate sentence of fifteen (15) years imprisonment for both the Dorchester County and Charleston County charges. (R.pp.73-74).

[2] The assistant solicitor noted that, as part of the plea agreement, she dismissed several charges and reduced the trafficking charges to PWID. (R.pp.48-50).

ARGUMENT

The plea judge did not abuse her discretion in denying Appellant's motion for reconsideration.

Appellant argues "[t]he trial judge erred in denying [A]ppellant's request for a hearing on his sentencing reconsideration motion to argue for specific performance per the sentencing terms of the plea agreement that reflected an eight-year sentencing cap or to withdraw the guilty pleas because the outcome of the case did not reflect the terms agreed upon via the plea bargain." (Final Brief of Appellant, p. 5). Appellant argues "the [assistant] solicitor promised that [A]ppellant's guilty plea on the drug charges would result in an eight-year sentence per the terms of the plea bargain, but [A]ppellant did not receive the benefit of the plea bargain as he received a fifteen-year sentence in the case." (Final Brief of Appellant, p. 8).[3] Appellant's argument is without merit.

"In criminal cases, appellate courts sit to review errors of law only, and are therefore bound by the trial court's factual findings unless clearly erroneous." State v. Robinson, 410 S.C. 519, 526, 765 S.E.2d 564, 568 (2014) (citations omitted). "A judge or other sentencing authority is to be accorded very 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." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing Wasman v. United States, 468 U.S. 559, 563, 104 S. Ct. 3217, 3220 (1984)); see also In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) ("A judge must be permitted to consider any and all information that reasonably might bear on the

[3] Appellant is only challenging the Charleston County charges.

proper sentence for a particular defendant.") (citation omitted).

"The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge." State v. Warren, 392 S.C. 235, 237-38, 708 S.E.2d 234, 235 (Ct. App. 2011) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support." Id. at 238, 708 S.E.2d at 235 (citing State v. Winkler, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010)).

The plea judge did not abuse her discretion in denying Appellant's motion to reconsider sentence. As noted supra, the assistant solicitor handling the Dorchester County charges stated there was a sentence recommendation of 5-6 years on those charges and the assistant solicitor handling the Charleston County charges stated there was a sentence recommendation of 8 years on those charges. (R.p.19; pp.52-53). While the parties may have agreed to these sentence recommendations, it is the sentencing judge – not the parties – who decides a defendant's sentence. "A trial judge has broad discretion in sentencing within statutory limits." In re M.B.H., 387 S.C. at 326, 692 S.E.2d at 542 (citing Brooks v. State, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997)). "A court is not required to accept a plea agreement reached by the State and the defendant." See Brooks, 325 S.C. at 272, 481 S.E.2d at 713 (citing State v. Rosier, 312 S.C. 145, 148, 439 S.E.2d 307, 309-10 (Ct. App. 1993)). The plea judge in Appellant's case was not bound by the sentence recommendations. The plea judge even advised Appellant of such during the Dorchester County plea hearing. (R.p.19). It was clearly within the plea judge's discretion to levy a 15-year sentence instead of following the recommendations from the parties. There was no error of law in levying these sentences because they were within statutory limits.

And, while it was clear the plea judge considered the facts of the offenses in determining Appellant's sentences, this was clearly permissible and within her discretion. The record makes it clear that the plea judge was disturbed by Appellant's decision to continually engage in criminal acts while on probation, especially since these acts resulted in a danger to the public. (R.p.73). The plea judge is "permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." Hicks, 377 S.C. at 325, 659 S.E.2d at 500. The plea judge simply weighed this information against the sentence recommendations and determined a harsher sentence was more appropriate in Appellant's case.

Furthermore, the plea judge advised Appellant of the sentence ranges for the Dorchester County and Charleston County charges and Appellant stated he understood. (R.pp.17-18; pp.40-43). The plea judge also told Appellant at the Dorchester plea that "the recommendation that the solicitor has made is from five to six years. So I can sentence you up to ten years in the department of corrections." (R.p.19). Appellant stated he understood. (R.p.19). As such, Appellant was clearly on notice that the plea judge was not bound by the recommendation and could levy a sentence in excess of that recommendation. Based on the clear record before this Court, Appellant could not have had any misconceptions about the possible sentences he could receive. See, e.g., Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007) (noting the guilty plea transcript clearly refuted a post-conviction relief applicant's allegation that he did not understand the terms of the guilty plea) (citations omitted).

Appellant also argues the plea judge erred in denying him the opportunity to withdraw his guilty pleas (as the request to do so was contained in the motion for reconsideration). (Final

Brief of Appellant, p. 3; p. 5; p. 6; p. 8). This argument is similarly without merit. The plea judge did not abuse her discretion in denying Appellant's motion for reconsideration and the request to withdraw the guilty pleas. In State v. Thomason, 355 S.C. 278, 584 S.E.2d 143 (Ct. App. 2003), the defendant did not dispute the facts presented at his guilty plea and the judge accepted his pleas. After defense counsel presented mitigation, the defendant wanted to withdraw his guilty pleas. The judge refused to allow the withdrawal and the Court of Appeals affirmed. The Court found that, once a defendant enters a guilty plea, it is within the plea judge's discretion whether to allow it to be withdrawn. Id. at 283, 584 S.E.2d at 146 (citing State v. Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982)). "An accused is not permitted to speculate on the supposed clemency of the judge and enter a plea of guilty with the right to retract it if he finds that his expectation was not realized." State v. Cantrell, 250 S.C. 376, 380, 158 S.E.2d 189, 191-92 (1967). Appellant has failed to demonstrate the plea judge abused her discretion in this matter. The issue of whether Appellant should be permitted to withdraw his guilty pleas was brought before the plea judge and she found "the sentence imposed January 8, 2015, shall remain in place and hereby denies [Appellant]'s Motion." (R.p.80; p.84). Appellant cannot demonstrate the plea judge's denial was controlled by an error of law or lacked evidentiary support. As such, the plea judge did not abuse her discretion in denying Appellant's motion for reconsideration and the request to withdraw the guilty pleas. See Warren, 392 S.C. at 238, 708 S.E.2d at 235.

The plea judge had wide discretion to consider the facts and evidence before her in determining Appellant's sentence. The aggregate sentence levied was within statutory limits and supported by the evidence provided to the plea judge. The plea judge did not abuse her discretion in deviating from the sentence recommendations and levying a harsher sentence.

Accordingly, the plea judge did not abuse her discretion in denying Appellant's motion to reconsider sentence and this Court must affirm.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCAR, 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 Findings."

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