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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Calhoun County

Maite Murphy, Circuit Court Judge

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MAR 21 2017

SC Court of Appeals

The State of South Carolina, Respondent

v.

Bryant McKnight, Appellant

APPELLATE CASE NO.: 2015-000569

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF THE CASE.....3

STATEMENT OF ISSUE ON APPEAL.....4

ARGUMENT

**THE CIRCUIT COURT ERRED IN SENTENCING THE APPELLANT
FOR KIDNAPPING PURSUANT TO S.C. CODE ANN. §16-3-910 (2003),
WHEN APPELLANT WAS ALSO SENTENCED SIMULTANEOUSLY
FOR MURDER AND APPELLANT’S SENTENCE FOR KIDNAPPING
SHOULD BE VACATED**
.....5

CONCLUSION.....8

TABLE OF AUTHORITIES

Cases

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).....3

Jeter v. S.C. Dep't of Transp., 369 S.C. 433, 441 n.6, 633 S.E.2d 143, 147, n.6 (2006)
.....7

State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999).....6

State v. McCall, 304 S.C. 465, 405 S.E.2d 414 (Ct. App. 1991).....7

Owens v. State, 331 S.C. 582, 503 S.E.2d 462 (1998).....6

State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009).....3,4,6,7

Statutes

S.C. Code Ann. § 16-3-910 (2003).....4,6

STATEMENT OF THE CASE

Appellant, Bryant McKnight, was indicted on January 5, 2015 for the murder and kidnapping of Kymarra Randolph.

Appellant's case was tried before the Honorable Maite Murphy during the March 2-6, 2015 term of court. Appellant was tried with co-defendant, Jerry McKnight, and both were convicted by a jury on all counts, and sentenced to life imprisonment.

There were no objections to the jury charges. Tr. 825, ll.1-4. There were no pre-trial or post-trial motions. Appellant did not testify. Tr. 635, ll. 11-12.

Appellant filed an Anders¹ brief raising the issue of sufficiency of the evidence to uphold Appellant's conviction on March 28, 2016.

This Court issued an Order to rebrief the issue as framed below:

Whether the Appellant's sentence for Kidnapping should be vacated in light of S.C. Code Ann. §16-3-910 (2003) and State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009)?

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967)

STATEMENT OF ISSUE ON APPEAL

- I. **SHOULD THE APPELLANT'S SENTENCE FOR KIDNAPPING BE VACATED PURSUANT TO S.C. CODE ANN. § 16-3-910 (2003) AND STATE V. VICK, 384 S.C. 189, 682 S.E.2D 275 (CT. APP. 2009)?**

ARGUMENT

- I. **THE CIRCUIT COURT ERRED IN SENTENCING THE APPELLANT FOR KIDNAPPING PURSUANT TO S.C. CODE ANN. §16-3-910 (2003), WHEN APPELLANT WAS ALSO SENTENCED SIMULTANEOUSLY FOR MURDER AND APPELLANT'S SENTENCE FOR KIDNAPPING SHOULD BE VACATED.**

RELEVANT FACTS

On February 2, 2014, Defendant's mother's home was invaded and robbed. Tr. 686-687. Subsequently, on February 13, 2014, Defendant met with his girlfriend², Kymarra Randolph, the victim, to hang out. Tr. 156, ll. 4-13. The victim was last seen or heard from on or about 6:00 p.m. on the afternoon of February 13, 2014. Tr. 89, ll. 3-15. After a missing person search by her mother and subsequent police investigation, witnesses gave information and statements regarding the victim and the location of her body.

As a result of this information, Defendant and his brother, co-defendant, Jerry McKnight, were arrested for the Murder and Kidnapping of the victim.³ Defendant was subsequently indicted on January 5, 2015. Defendant pled Not Guilty. The case was tried during the week of March 2-6, 2015 before the Honorable Maite Murphy. Defendant made motions for a Directed Verdict at the conclusion of the State's case and the trial. Defendant was convicted on both charges and sentenced to concurrent sentences of life imprisonment.

² Victim is alleged to be Defendant's girlfriend at the time. Or, at least they were "knowing each other".

³ Jerry McKnight was also a Defendant. However, for purposes of this brief, Defendant shall mean Bryant McKnight, Appellant. Jerry McKnight was charged with Murder, Kidnapping, and Possession of a Weapon by a Felon.

DISCUSSION OF LAW

S.C. Code Ann. § 16-3-910 (2003) provides:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by a parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years *unless sentenced for murder as provided in Section 16-3-20.*

S.C. Code Ann. § 16-3-910 (2003) (emphasis added).

Case law is well-settled that where an appellant has been sentenced for murder of a victim, this code section precludes a sentence for kidnapping of that victim, and any such sentence should be vacated. State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009); see Owens v. State, 331 S.C. 582, 503 S.E.2d 462 (1998).

A question of subject matter jurisdiction may be raised at any time. See State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999) (considering convictions for Possession with Intent to Distribute and Conspiracy). However, the South Carolina Supreme Court has held consistently that a challenge to sentencing does not fall under the court's subject matter jurisdiction, and must be raised at trial or the issue is not preserved for appellate review. Johnston, 333 S.C. at 462.

In Vick, the Defendant was sentenced concurrently for murder, kidnapping, and first-degree criminal sexual conduct. He was sentenced concurrently to life imprisonment for murder and thirty (30) years for kidnapping and CSC. Vick, 682 S.E.2d at 276. No challenge to the sentence was raised by objection or motion at the trial court level. Id. at 681. Also in Vick, unlike Johnston, because of the nature of the sentence, there was no chance the Defendant could remain incarcerated beyond the legal sentence. Id. at 682. However, the Court of

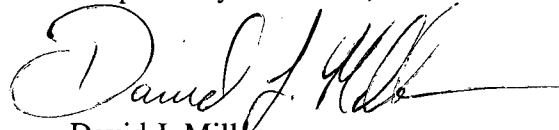
Appeals still recognized that such a kidnapping sentence could be summarily vacated, as it had done in the past. Id.; See State v. McCall, 304 S.C. 465, 405 S.E.2d 414 (Ct. App. 1991). And, the Court of Appeals in Vick determined it *should* be vacated in the interest of judicial economy. Id.; See Jeter v. S.C. Dep't of Transp., 369 S.C. 433, 441 n.6, 633 S.E.2d 143, 147, n.6 (2006).

As in Vick, in the instant case, Appellant was indicted for Murder and Kidnapping. R. 837-40. At trial, Appellant was sentenced concurrently to life imprisonment for murder and thirty (30) years for kidnapping. R. 835. No challenges were made to sentencing by objection or motion. R. 835. Thus, as in Vick and its progeny, the Defendant's sentence for kidnapping, here, should be summarily vacated in the interest of judicial economy.

CONCLUSION

Appellant's kidnapping sentence should be summarily vacated in the interest of judicial economy.

Respectfully submitted,



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March ²¹~~16~~, 2017.

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THE STATE,

RESPONDENT,

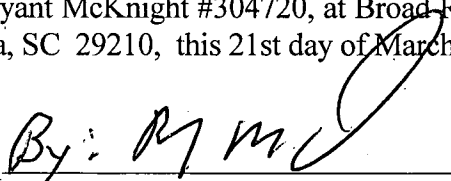
V.

BRYANT MCKNIGHT,

APPELLANT

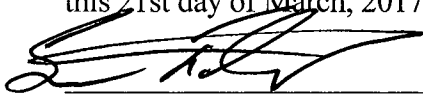
CERTIFICATE OF SERVICE

I certify that a true copy of the Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Bryant McKnight #304720, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 21st day of March, 2017.

By: 

David J. Miller
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 21st day of March, 2017.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.