STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
William H. Seals, Circuit Court Judge

Appellate Case No. 2016-000965

THE STATE, ...RESPONDENT,

v.

JONATHAN CHRISTIAN HUGHES,.....APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

Post Office Box 874
Lexington, SC 29071
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The plea judge properly denied Appellant's motion to reconsider his sentence where the sentence fell within the permissible statutory limits and Appellant failed to provide evidence that partiality, prejudice, oppression, or corrupt motive factored into the sentence.

STATEMENT OF THE CASE

On April 13, 2015, the Lexington County Grand Jury indicted Appellant for armed robbery, first-degree burglary, two counts of kidnapping, and possession of a weapon during a violent crime. On April 14, 2016, Appellant appeared before the Honorable William H. Seals and pled guilty to the armed robbery and first-degree burglary charges. The remainder of Appellant's charges were dismissed by the State. Jason Chehoski, Esquire, represented Appellant; Assistant Solicitor Angela Martin, Esquire, represented the State. The plea judge sentenced Appellant to forty years' imprisonment on the burglary charge and thirty years' imprisonment on the armed robbery charge. Plea counsel filed a motion to reconsider the sentence immediately following the plea hearing. He prepared a memorandum in support of the motion to reconsider the sentence dated April 26, 2016.[1] The State filed a memorandum in opposition to the motion on Aril 29, 2016. On May 3, 2016, the plea judge denied the motion.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

[1] The memorandum is not on file with the clerk of court's office. However, the memorandum was referenced in the plea judge's order denying the motion.

STATEMENT OF FACTS

On February 14, 2015, David Quintana, Alva Valdez, and their three children were asleep at home when Quintana, hearing a noise, went to the den and discovered an armed gunman. The gunman forced Quintana and Valdez into the bathroom while two men entered the home and stole several items, including: (1) X-box video game consoles; (2) a Wii video game console; (3) Valdez's pocketbook, containing her credit cards; and (4) an old Bible, considered a family heirloom. When the three burglars left, Quintana called the police, who began an investigation of the area. They found Appellant and codefendant Antonio Johnson walking through the neighborhood. Officers, not in possession of evidence implicating the two men in the robbery, allowed Appellant and Johnson to head home after obtaining their identification information. The two men returned home and hid some of the stolen items, buried the clothes they were wearing and tried to dispose of their shoes after observing the officers' interest in their footwear.[2] (Tr.p.6, line 11–Tr.p.8, line 11; Tr.p.9, lines 13–17).

Jahmad McNeil, one of the three burglars, attempted a second home invasion a few hours later in that same general area. However, the homeowner caught McNeil and held him there until police arrived. When McNeil was arrested, officers found Valdez's credit cards and other items of hers on his person. McNeil told officers Appellant and Antonio Johnson were his accomplices in the earlier robbery. Officers eventually recovered the buried clothes and other stolen items from Appellant and Johnson. (Tr.p.8, line 15–Tr.p.9, line 12).

At the plea hearing, the solicitor informed the plea judge he did not believe Appellant was the gunman in the robbery, claiming McNeil was arrested carrying a "long-armed gun." However, he noted Appellant did not cooperate with law enforcement. He "gave different

[2] The record indicates officers were interested in the men's shoes because they knew the door to the home was kicked in during the burglary.

statements and each time [officer's] confront[ed] him" with newly discovered evidence. His story evolved from participating in the crime as a lookout to an eventual admission he had entered the home and stolen one of the video game consoles. The solicitor told the plea judge the victims were in attendance at the hearing and were traumatized by the crime. The solicitor recalled one of the children woke up during the crime after hearing the commotion and pretended like he was asleep when one of the burglars opened the door to his room. (Tr.p.7, lines 1–8, 21–24; Tr.p.9, line 24–Tr.p.10, line 7).

Detective Spivey, one of the investigating officers, also spoke at the hearing. He reiterated that the victims were extremely traumatized by the crime, stating Quintana and Valdez recalled one or more of the burglars threatening to harm their children and reminding the plea judge the children were also harmed by the burglars' actions. He concluded his remarks by requesting the plea judge give Appellant the maximum sentences possible. (Tr.p.10, line 18–Tr.p.11, line 16).

Plea counsel addressed the court, requesting lenity for his client. Counsel noted Appellant was only twenty years old, had worked as a caretaker for an elderly person, was not armed during the burglary, and had no prior criminal record. He claimed Appellant cooperated with police when confronted by the officers by providing the locations of buried items. Plea counsel also noted Johnson, who had a "minimal prior record" and was armed with a BB gun, had already pled in front of a different judge and had received concurrent sentences of twenty years' incarceration on his first-degree burglary and armed robbery charges. After presenting his arguments to the plea judge, he asked the court to consider a sentence lower than Johnson's, approximately fifteen years' incarceration. (Tr.p.11, line 22–Tr.p.15, line 7).

The plea judge disregarded the recommended sentence and sentenced him to a total of forty years' incarceration. (Tr.p.15, line 8–17).

Immediately after the hearing, plea counsel filed a motion to reconsider Appellant's sentence. On April 21, 2016, the plea judge requested written grounds for reconsideration of the sentence. Pursuant to that request, plea counsel submitted its memorandum in support of the motion. In the memorandum, plea counsel rooted his argument for reconsideration on the disparity between Appellant and Johnson's sentences: Johnson received two concurrent twenty-year sentences for the same charges as Appellant. Plea counsel claimed Appellant's sentence was disproportionate to Johnson's because: (1) the former was not more culpable, and was likely less culpable in the burglary than the latter; (2) Appellant cooperated with police by providing two confessions and otherwise could not have been identified by the victims; and (3) Appellant was not armed during the incident. (Motion to Reconsider Sentence; Memorandum in Support of Motion to Reconsider Sentence).

In his memorandum, plea counsel cited two out-of-state cases in which appellate courts found the evidence did not support the trial court's disparate sentencing of codefendants. In State v. Moore, 24 N.E.3d 1197 (Ohio Ct. App. 2014), the defendant went to trial and was convicted of two counts of kidnapping and one count of aggravated robbery. The trial court sentenced defendant to eight years' incarceration on each charge, added an additional three-year sentence for the use of the firearm, and ran each sentence consecutively for a total term of twenty-seven years' imprisonment. Id. at 1200. By contrast, the codefendant, who masterminded the robbery and was the only one in the group who carried a gun, pled guilty and was sentenced to nine years' incarceration on the same charges, but the plea judge excluded the firearm specification and ran all sentences concurrently. Id. at 1199. The Ohio Court of

Appeals, reviewing the defendant's sentence under Ohio Rev. Code Ann. § 2929.14(C)(4) (West 2012)—a statute requiring a trial judge to make specific findings on the record before ordering a defendant serve consecutive sentences—found the evidence did not support the imposition of consecutive sentences on Moore, finding the trial court failed to demonstrate in the record why Moore's consecutive sentences were "not disproportionate to Moore's conduct in light of the facts in [the] case." Id. at 1206–08. Accordingly, the court modified the sentences so that all charges, absent the firearm specification, were to be served concurrently. Id. at 1208.

In State v. Bailey, 834 P.2d 1353 (Kan. 1992), the defendant and his codefendant Jeffries were convicted of four counts of aggravated robbery and one count of first-degree felony murder. The evidence indicated Jeffries was most likely the individual who directly committed the crimes while Bailey was his driver. Id. at 1354. Bailey and Jeffries were tried and sentenced separately. Id. Jeffries was sentenced to two terms of fifteen years to life for two of the aggravated robberies and to one term of life for first-degree felony murder. Id. Jeffries received an additional two sentences of fifteen years to life on the remaining two counts of aggravated robbery, but those sentences were ordered to be served concurrently with each other and the other three sentences, making Jeffries parole-eligible in thirty years. Id. Bailey, however, was given an identical length of sentence on each charge, but each of his sentences was ordered to run consecutively, meaning he had to serve a minimum of forty-five years before becoming eligible for parole. Id. The Supreme Court of Kansas found Bailey's trial judge, while not bound by the sentence given by Jeffries's judge, erred in failing to consider the fifty percent disparity in parole eligibility between the two men's sentences. Id. at 1356.

ARGUMENT

The plea judge properly denied Appellant's motion to reconsider his sentence where the sentence fell within the permissible statutory limits and Appellant failed to provide evidence that partiality, prejudice, oppression, or corrupt motive factored into the sentence.

Appellant argues the plea judge erred in denying plea counsel's motion to reconsider Appellant's sentence because it was disparate to Johnson's. The State disagrees with Appellant's allegation of error. Initially, the State contends Appellant's issue should not be reviewed by this Court because Appellant failed to allege it was the result of partiality, prejudice, oppression, or corrupt motive. Moreover, the plea judge did not err in denying Appellant's motion because he was not required to consider Johnson's sentence when determining Appellant's, and the sentence was justified by Appellant's failure to cooperate with law enforcement's investigation of the crime.

Generally, a knowing and voluntary guilty plea waives all non-jurisdictional defects and defenses, including claims of constitutional violations. State v. Snowdon, 371 S.C. 331, 333, 638 S.E.2d 91, 92 (Ct. App. 2006). A guilty plea admits all elements of the charged offense, waives all other defenses, and leaves open for review only the sufficiency of the indictment. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000). "A plea of guilty is a confession of guilt, made in a formal manner and has the same effect in law as a verdict of guilty and authorizes the imposition of the punishment prescribed by law." Sanders v. Leake, 254 S.C. 444, 447, 175 S.E.2d 796, 797 (1970).

The trial judge has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). "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). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is within the limits prescribed by statute." State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

The mere fact a defendant receives a sentence disparate to the sentences received by his accomplices for the same offense does not automatically render the defendant's sentence an abuse of the trial judge's discretion. See State v. Fleming, 228 S.C. 129, 133–34, 89 S.E.2d 104, 106 (1955) ("In this question, appellants complain of the sentence in that their accomplice received a sentence of 18 months while they received a sentence of 10 years. This Court has no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law in the discretion of the trial judge and is not the result of partiality, prejudice, oppressive or corrupt motive."). A sentencing judge can properly consider the relative degree of participation of different co-defendants in a single incident along with any other relevant factors before issuing differing sentences appropriate for each individual defendant. See State v. Dozier, 263 S.C. 267, 271–72, 210 S.E.2d 225, 226 (1974) (finding no abuse of discretion in the trial judge's issuance of a greater sentence to Dozier than to his co-defendants for the same offenses where the trial judge concluded Dozier's co-defendants "were not tainted with the same degree of guilt" as Dozier). "[W]hen the record clearly reflects an appropriate basis for a disparate sentence, the sentencing judge may impose a different sentence on a co-defendant in a criminal trial." State v. Follin, 352 S.C. 235, 257, 573 S.E.2d 812, 824 (Ct. App. 2003).

Initially, the State notes Appellant has failed to allege any grounds meriting appellate review of his sentence. Appellant pled to the armed robbery and burglary charges after the State dropped the kidnapping and possession of a weapon during a violent crime charges. Appellant's burglary charge had a possible maximum sentence of life imprisonment. S.C. Code Ann. § 16-11-311(B) (2015) (stating the maximum sentence for first-degree burglary is life imprisonment). Additionally, the plea judge sentenced Appellant to the maximum sentence allowed under the armed robbery statute, thirty year's incarceration. S.C. Code Ann. § 16-11-330(A) (2015) (stating the maximum sentence for armed robbery is thirty years' incarceration). The plea judge could have ordered Appellant serve his forty-year and thirty-year sentences consecutively. Instead, the plea judge ordered Appellant serve his sentences, both of which were within the permissible statutory sentencing range, concurrently. Moreover, Appellant fails to allege his sentence is the result of prejudice, oppression, or corrupt motive from the plea judge. Thus, there is no justifiable basis for this Court to review the merits of Appellant's claim. See State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("[T]his Court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the [plea] court, and is not the result of prejudice, oppression[,] or corrupt motive.").

Further, Appellant's reliance on Moore and Bailey is inapposite: the Supreme Court of South Carolina has specifically found sentencing judges **may** consider a codefendant's sentence when determining the proper punishment for a defendant, but they are **not required** to do so. State v. Charping, 333 S.C. 124, 131, 508 S.E.2d 851, 855 (1998).

Regardless, the record does not support Appellant's argument that he and Johnson were "similarly situated" codefendants. The facts presented at Johnson's plea hearing regarding his involvement were not presented at Appellant's plea hearing or in the memorandum in support of

the motion to reconsider his sentence. Instead, the only information regarding Johnson's participation in the crime comes from a few noncommittal assertions from plea counsel in which he attempted to distinguish Appellant's behavior from Johnson's by claiming Johnson "may" have been armed with a BB gun at the time and he "[didn't] think" Hughes had contact with any of the victims. However, plea counsel never claimed Johnson had contact with the victims or that he displayed the BB gun to the victims. In fact, the record implies Appellant and Johnson were the two men who stole the items while McNeil restrained the homeowners in the bathroom.

If anything, the facts offered by the State present a less-than-favorable image of Appellant. The solicitor stated Appellant was not cooperative with law enforcement and incrementally admitted his involvement in the crime each time officers confronted him with newly-discovered evidence. Moreover, when Appellant finally admitted some involvement in the crime, he claimed he had only acted as a lookout. Only later, after officers confronted him with additional evidence, did Appellant admit he had entered the victims' home and removed some of the stolen items. Additionally, Detective Spivey specifically requested to be heard at the hearing and asked the plea judge to give Appellant the maximum sentence possible.

The plea judge was not required to consider Johnson's sentence at the plea hearing. See Charping, 333 S.C. at 131, 508 S.E.2d at 855. Additionally, the plea judge's sentence was supported by the facts presented. See Follin, 352 S.C. at 257, 573 S.E.2d at 824. Accordingly, the plea judge did not err in denying Appellant's motion to reconsider his sentence.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

BY: _____
William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

ATTORNEYS FOR RESPONDENT

July 19, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
William H. Seals, Circuit Court Judge

Appellate Case No. 2016-000965

THE STATE, ...RESPONDENT,

v.

JONATHAN CHRISTIAN HUGHES,.....APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 19th day of July, 2017.

Angela Bennett
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0368

ALAN WILSON
ATTORNEY GENERAL

July 19, 2017

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: State v. Jonathan Christian Hughes
Appellate Case No. 2016-000965

Dear Mr. Pachak:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William F. Schumacher, IV
Assistant Attorney General
S.C. Bar No. 100231

Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Advocacy Division