

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

**RECEIVED**

CERTIORARI TO CHARLESTON COUNTY  
Court of General Sessions

OCT 23 2017

The Honorable Kristi L. Harrington, Circuit Court Judge S.C. SUPREME COURT

---

Opinion No. 2017-UP-245 (S.C. Ct. App. Filed June 14, 2017)

Appellate Case No. 2017-001958

---

THE STATE, ..... Respondent,

v.

DAMEON THOMPSON, ..... Petitioner.

---

**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

WILLIAM F. SCHUMACHER, IV  
Assistant Attorney General

Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3922

SCARLETT A. WILSON  
Solicitor, Ninth Judicial Circuit

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

Table of Contents ..... i

Statement of Issue on Appeal ..... 1

Statement of the Case.....2

Statement of Facts.....4

Certiorari .....6

Argument:

    The Court of Appeals properly affirmed the plea judge’s denial of  
    his motion for reconsideration his sentences because the judge was  
    not bound by the terms of the plea agreement between Petitioner  
    and the State.....7

CONCLUSION.....10

## STATEMENT OF ISSUE ON APPEAL

The Court of Appeals properly affirmed the plea judge's denial of his motion for reconsideration his sentences because the judge was not bound by the terms of the plea agreement between Petitioner and the State.

## STATEMENT OF THE CASE

Petitioner 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 Petitioner.

On November 3, 2014, Petitioner 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, Petitioner appeared before Judge Harrington for sentencing. Petitioner was again represented by Mr. Shahid. The Charleston County Grand Jury had indicted Petitioner 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). Petitioner 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 Petitioner 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.<sup>1</sup> (R.pp.73–74).

Petitioner's counsel filed a motion for reconsideration on January 9, 2015. (R.pp.77–80).

---

<sup>1</sup> The drug charges were all sentenced as first offenses.

Judge Harrington denied the motion by order filed February 2, 2015. (R.pp.83–84).

Petitioner appealed his convictions and sentences. On June 14, 2017, the Court of Appeals issued an opinion affirming his convictions and sentences. See State v. Thompson, Op. No. 2017-UP-245 (June 14, 2017). (App.p.1–p.2). Petitioner submitted a timely Petition for Rehearing and by Order filed August 28, 2017, the Petition was denied. On September 22, 2017, Petitioner submitted a Petition for a Writ of Certiorari to this Court. This Return, filed on behalf of the State, follows.

## **STATEMENT OF FACTS**

### **Dorchester Plea Hearing**

The assistant solicitor handling Petitioner'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 Petitioner'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 Petitioner'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 Petitioner of the sentence ranges for failure to stop for a blue light and trafficking cocaine base and Petitioner 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 Petitioner to a sentence of 3–10 years and Petitioner said he understood. (R.p.19). The plea judge advised Petitioner that he should assume he would "serve that day for day" on his sentences and Petitioner agreed. (R.pp.19–20). Petitioner stated he was pleading guilty to these charges because he was guilty. (R.pp.26–27; p.30). Petitioner waived the various rights associated with a jury trial. (R.pp.27–28). Petitioner 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, Petitioner pled guilty to seven (7) Charleston County charges before being sentenced on the Dorchester County charges. The plea judge

advised Petitioner of the sentence ranges for these charges and Petitioner stated he understood. (R.pp.40–43). Petitioner waived the various rights associated with a jury trial. (R.pp.45–46). Petitioner stated he was satisfied with plea counsel’s representation. (R.p.46). Petitioner 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). Petitioner 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.<sup>2</sup> (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 Petitioner was on probation when the Charleston County offenses occurred and stated Petitioner “continued to go 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).

---

<sup>2</sup> 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).

## CERTIORARI

Petitioner argues this Court should grant certiorari because the general rule that sentencing recommendations are not binding on judges is not applicable in the instant case because he received a negotiated plea bargain and the “contractual sentencing terms” were not honored. However, the instant case involves the exact scenario in which the general rule is applied: Petitioner and the State entered into a plea agreement, the State fulfilled its portion of said agreement, and the plea judge ignored the sentencing recommendation.

Petitioner supports his position with several cases involving breached plea agreements. However, Petitioner’s cited authority describes breaches committed by prosecuting attorneys, not the plea judge. He fails to provide a single source in his petition demonstrating plea judges can be bound by the terms of a negotiated plea agreement.

Pursuant to Rule 242(b), SCACR, there are no “special and important reasons” for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of reviewing and affirming the plea judge’s application of established precedent, logic, and practical consideration of the particular facts and circumstances of Petitioner’s case. Petitioner fails to provide even a single source disagreeing with the Court of Appeals’ finding the plea judge was not bound to the terms plea agreement. Thus, the State respectfully requests that Petitioner’s petition for a writ of certiorari be denied and dismissed.

## ARGUMENT

**The Court of Appeals properly affirmed the plea judge's denial of his motion for reconsideration his sentences because the judge was not bound by the terms of the plea agreement between Petitioner and the State.**

Petitioner argues the Court of Appeals erred in finding the plea judge exercised proper discretion at the sentencing hearing because he received a negotiated plea bargain, which bound the plea judge to the “contractual sentencing terms” of the bargain. (Pet. for Writ of Cert., p.4). Petitioner contends “the [assistant] solicitor promised that [Petitioner]’s guilty plea on the drug charges would result in an eight-year sentence per the terms of the plea bargain, but [Petitioner] did not receive the benefit of the plea bargain as he received a fifteen-year sentence . . . .” (Pet. for Writ of Cert., p.8).<sup>3</sup> Petitioner’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 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.

---

<sup>3</sup> Petitioner is only challenging the Charleston County charges.

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 Petitioner’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 Petitioner’s case was not bound by the sentence recommendations. The plea judge even advised Petitioner 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 Petitioner’s sentences, this was clearly permissible and within her discretion. The record makes it clear that the plea judge was disturbed by Petitioner’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). A 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 Petitioner’s case.

Furthermore, the plea judge advised Petitioner of the sentence ranges for the Dorchester County and Charleston County charges and Petitioner stated he understood. (R.pp.17–18; pp.40–43). The plea judge also told Petitioner 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). Petitioner stated he understood. (R.p.19). As such, Petitioner 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, Petitioner 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).

The plea judge had wide discretion to consider the facts and evidence before her in determining Petitioner’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 Court of Appeals properly affirmed Petitioner’s conviction and sentences.

## CONCLUSION

Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM F. SCHUMACHER, IV  
Assistant Attorney General

SCARLETT A. WILSON  
Solicitor, Ninth Judicial Circuit

BY: 

William F. Schumacher, IV  
Bar # 100231  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3922

ATTORNEYS FOR RESPONDENT

October 23, 2017

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

OCT 23 2017

S.C. SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY  
Court of General Sessions

The Honorable Kristi L. Harrington, Circuit Court Judge

Opinion No. 2017-UP-245 (S.C. Ct. App. Filed June 14, 2017)

Appellate Case No. 2017-001958

THE STATE, ..... Respondent,

v.

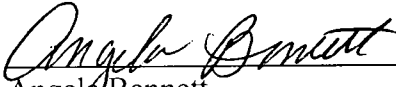
DAMEON THOMPSON, ..... Petitioner.

**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the within Return to Petition for a Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, 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 23<sup>rd</sup> day of October, 2017.

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