

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Lexington County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JONATHAN CHRISTIAN HUGHES,

APPELLANT.

APPELLATE CASE NO 2016-000965

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT3

CONCLUSION.....5

TABLE OF AUTHORITIES

Cases

Ohio v. Moore, 2014 Ohio 513 (Ohio App., 2014) 4

State v. Bailey, 251 Kan. 527, 834 P.2d 1353 (1992)..... 4

Constitutional Provisions

S.C. Const. Art. I § 15..... 3

U.S. Const. Amend. VIII 3

STATEMENT OF ISSUE ON APPEAL

Whether the plea count erred in denying plea counsel's motion to reconsider the sentence when his sentence was disparate to that of a co-defendant?

STATEMENT OF THE CASE

On April 14, 2016, appellant appeared before the Honorable William H. Seals in Lexington County and pled guilty to burglary in the first degree and armed robbery. He was sentenced to respective terms of imprisonment of forty (40) years and ten (10) years. Jason Chehoski, Esq. was plea counsel. Angela Martin, Esq. was the assistant solicitor.

Plea counsel filed a motion to reconsider the sentence on the same day appellant was sentenced. He filed a memorandum in support of the motion to reconsider the sentence that was dated April 26, 2016. Respondent filed a memorandum in opposition to the motion which was dated April 29, 2016. On May 3, 2016, Judge Seals denied the motion to reconsider.

This appeal follows.

ARGUMENT

The plea court erred in denying plea counsel's motion to reconsider the sentence because his sentence was disparate to that of a co-defendant.

Plea counsel explained the following in his memorandum in support of his motion to reconsider the sentence:

The Defendant, through his attorney, bases this motion on the grounds of the disparity of the sentence given to the Defendant as compared to a similarly situated codefendant. The codefendant pled on December 14, 2015 in front of the Honorable Frank R. Addy, Jr. to one count of Burglary First Degree and one count of Armed Robbery and received a 20 year sentence to run concurrently with each other. As with the Defendant, the State dismissed two counts of Kidnapping charges and one count of Possession of a Weapon in the Commission of a Violent Crime with no other recommendations or negotiations from the State. The sentencing sheets from that plea are attached to this memorandum. The Defendant, through his attorney stated during the plea that he has no prior record, cooperated with the police during the course of their investigation by giving two confessions, and was never armed during the incident. The Defendant had no contact with the victims involved in this incident and could not have been identified by the victims. In confessing to the police, the Defendant was able to tell the investigators where many of the items taken from this incident were located and subsequently recovered. During the plea, the State referred to another home invasion that led the police to break the case against the Defendant and his codefendant. The record reflects that this second incident was the work of a third codefendant, whose case has not yet been heard, and was solely the work of that third codefendant. The Defendant, through his attorney, submits to the court that there is no rational basis for the Defendant to receive a sentence double the length of that of a similarly situated codefendant and that the sentence given to the Defendant violates the Eighth Amendment to the United States Constitution and the Article I, Section 15 of the South Carolina Constitution.

Plea counsel noted during the plea that the codefendant, Antonio Johnson, went before Judge Addy and was sentenced to twenty (20) years. (R. p. 12, lines 6-12). Plea counsel cited in

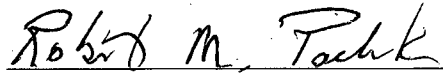
his memorandum Ohio v. Moore, 2014 Ohio 513 (Ohio App., 2014) and State v. Bailey, 251 Kan. 527, 834 P.2d 1353 (1992) for the proposition that when disparate sentences are given the record must support reasons for giving disparate sentences.

Plea counsel also wrote the following in his memorandum:

In the present case, both the Defendant and the codefendant have pled guilty to the exact same charges with the exact same position taken by the State and thus are similarly situated. The record shows that the Defendant was no more culpable, and perhaps less culpable in conduct, than the codefendant who received a 20 year sentence. The *Moore* and *Bailey* cases are compelling because the court performs a culpability analysis based on the defendant's conduct as compared to the codefendant. In doing so, they noted that while both the defendant and his codefendant in that case were equally liable, their disparate sentences were out of proportion with their respective conduct. Had the court performed a likewise analysis, it would not have seen anything on the record to suggest that the Defendant's conduct warranted twice the sentence of a similarly situated codefendant. Fundamental fairness requires that such a wide disparity be discussed on the record given the totality of the circumstances.

CONCLUSION

The plea judge gave no reason for his disparate sentencing at appellant's guilty plea or in his order denying reconsideration of the sentence. Appellant's case should be remanded so the plea judge can put his reasons on the record.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of August, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, 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 Filings."

August 23rd, 2017



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED
AUG 23 2017
SC Court of Appeals