

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

QUASEAN DAVID MARSHALL,

APPELLANT

APPELLATE CASE NO 2017-000814

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
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

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by not granting Appellant's Motion to Reconsider Appellant's sentence, where Appellant feared that danger would befall his ex-girlfriend and her child following Appellant's father's credible threat that he would harm them?

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Appellant for murder and burglary, first degree, during its February 2016 term of court. R. 46 - 49. On March 1, 2017, before the Honorable Letitia H. Verdin, Appellant pled guilty to voluntary manslaughter and burglary in the first degree. R. 4, ll. 4 - 9.

Cassandra Gorton represented Appellant, and Lisa Bentley appeared on behalf of the State. Judge Verdin accepted Appellant's guilty plea and sentenced him to twenty-four years' incarceration on each charge. R. 12, l. 17 - R. 13, l. 1; R. 28, ll. 18 - 20.

On March 3, 2017, counsel for Appellant filed a Motion to Reconsider Sentence. R. 30 - 40. The same day, the State filed a Response to Defendant's Motion. R. 41. On March 28, 2017, Judge Verdin denied Appellant's Motion to Reconsider Sentence. R. 42.

This appeal follows.

ARGUMENT

The trial court erred by not granting Appellant's Motion to Reconsider Appellant's sentence, where Appellant feared that danger would befall his ex-girlfriend and her child following Appellant's father's credible threat that he would harm them.

Appellant shot his father, Michael Shiwdin, on or about December 4, 2014. R. 9, l. – R. 12, l. 9. Shiwdin was on house arrest for the attempted murder of Appellant. Id. According to the facts presented by the State during Appellant's guilty plea, Shiwdin passed away as a result of his injuries. Id.

Prior to his death, Shiwdin lived with Appellant for twenty years. R. 16, ll. 6 – 17. Those two decades entailed multiple instances of violence between Shiwdin and Appellant's mother. Id. After Appellant intervened one time, Shiwdin shot him. R. 17, l. 2 – 22. Appellant was hospitalized for two weeks as a result of his injuries. R. 17, l. 23 – R. 18, l. 12.

According to defense counsel, Shiwdin made thinly veiled threats against Appellant's ex-girlfriend and her child over the telephone to Appellant on December 3, 2014. R. 19, l. 7 – 20, l. 8. The next morning, Appellant went to Shiwdin's house and shot him, because he believed "two innocent people were in danger." Id.; R. 22, l. 17 – R. 23, l. 25.

The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) 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. Wasman v. United States, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984).

The cruel and unusual punishment clause requires the duration of a sentence not be grossly out of proportion with the severity of the crime. Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983). Pursuant to Solem, an appellate court reviews three factors in assessing proportionality: (1) the gravity of the offense compared to the harshness of the penalty; (2) sentences imposed on other criminals in the same jurisdiction; and (3) sentences for the same crime in other jurisdictions. State v. Kiser, 288 S.C. 441, 343 S.E.2d 292 (1986).

The sentence for manslaughter ranges from two to thirty years. S.C. Code Ann. § 16-3-50. The sentence for burglary in the first degree ranges from fifteen years to life imprisonment. S.C. Code Ann. § 16-11-311(B).

Appellant filed a timely notice of appeal wherein he sought to appeal the imposed sentence. As evidenced above, the sentence was harsh and disproportionate. Appellant received an identical sentence to another man convicted of murder the same day of Appellant's plea:

Wherein that murder involved the shooting of a bouncer trying to evict the Defendant, without cause [or] justification, and without unlawful provocation by the victim, which suggests that the court did not consider the mitigating circumstances in [Appellant's] case, including the fact [that] the victim ([Appellant's] step father) had shot [Appellant] (age 19 years) six months prior, and failed to consider evidence that was offered in the Motion to Reconsider that the victim was in violation of his house arrest conditions and causing [Appellant] to be fearful.

R. 43 - 45

Appellant received a harsh sentence even though multiple extenuating circumstances provided context to his actions. Mitigation as provided by counsel indicated that Appellant and his family members had suffered abuse at the hands of Shiwadin. Furthermore, Appellant was acting in order to prevent future harm. Because he did not trust Shiwadin to abide by the parameters set forth in the home incarceration program, Appellant feared for the life of others.

Appellant had a “misguided but genuine belief that the judicial system was unable to offer the necessary protection for his family.” R. 32 – 33.

CONCLUSION

Appellant's sentence should be reconsidered, or in the alternative, his case remanded to the Greenville County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of February, 2018.

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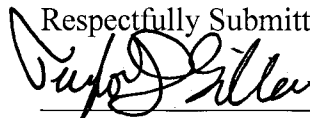
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quasean David Marshall states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Letitia H. Verdin, which was held on March 1, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Quasean Marshall.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

This 1st day of February, 2018.

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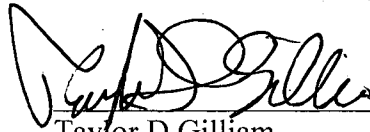
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire guilty plea dated March 1, 2017;
- (3) Motion to Reconsider Sentence;
- (4) State's Response to Defendant's Motion;
- (5) Order Denying Defendant's Motion to Reconsider Sentence;
- (6) Amended Notice of Appeal

I certify that this designation contains no matter which is irrelevant to this appeal.

February 1, 2018



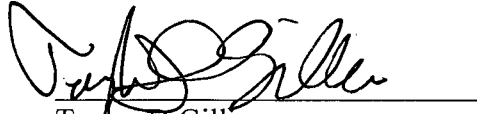
Taylor D Gilliam
Appellate Defender

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

February 1, 2018.



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Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Quasean Marshall, 371676, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 1st day of February, 2018.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of February, 2018.

 (L.S)

Notary Public for South Carolina
My Commission Expires: 10/30/2022.