

FILED

MAR 6 2018

James R. Parks

Clerk, State Grand Jury

IN THE STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA,

v.

RICHARD M. QUINN, JR.,

Defendant.

STATE OF SOUTH CAROLINA,

v.

RICHARD M. QUINN, SR.,

Defendant.

INDICTMENT NUMBERS:

2017-GS-47-12

2017-GS-47-13

2017-GS-47-33

RECEIVED

MAR 21 2018

SC Court of Appeals

INDICTMENT NUMBERS:

2017-GS-47-42

2017-GS-47-43

**ORDER DENYING STATE'S MOTION
TO RECONSIDER**

THIS MATTER is before the Court on the State's Motion to Reconsider. For the reasons below, the State's Motion to Reconsider is DENIED.

BACKGROUND

On December 13, 2017, the State, by Solicitor David Pascoe, and Defendants Richard M. Quinn, Sr. and Richard M. Quinn, Jr., appeared before this Court for the purpose of entering guilty pleas. The pleas were the result of a plea agreement entered into by the State and Defendants. As the record reflects, pursuant to the agreement, the State agreed to dismiss all charges against Richard Quinn, Sr. personally, with prejudice, and allow First Impressions, Inc. to plead guilty to a single misdemeanor Failure to Register as a Lobbyist. Additionally, the State agreed to dismiss all charges against Defendant Quinn, Jr. with prejudice in exchange for his guilty plea to a single misdemeanor count of Statutory Misconduct in Office based solely on a limited admission of facts regarding the failure to disclose payments made by a lobbyist principal to a related company. The agreement specifically states Defendants Quinn, Sr. and Quinn, Jr.

and First Impressions, Inc., understand the State plans to make arguments about a wider range of conduct, however they deny every allegation and inference beyond their limited admission. The express terms of the plea agreement (Court Ex. 2) state:

2. He (Rick Quinn, Jr.) is pleading guilty to one misdemeanor statutory misconduct in office on the limited allocation below based only on failure to disclose.
3. All other charges against Rick Quinn will be dismissed with prejudice which means that all information and documents obtained in the investigation cannot be used against him...

The terms of the agreement were then entered into the record to include the limited statement of facts to which the Defendants were entering their plea and to which Solicitor Pascoe indicated his agreement, stating, "Also, I'm fine with the limited allocation." The hearing lasted one hour and forty minutes during which the pleas and sentencing arguments were fully presented by both the State and the Defendants. The Court, having accepted both guilty pleas, finding a substantial factual basis existed, and the decisions to plead guilty were reasonably and intelligently made, deferred sentencing due to the late hour (6:52 p.m.).

Thereafter, both parties filed memorandums for consideration by the Court. In the State's memorandum, Solicitor Pascoe again acknowledged: "As part of the package plea agreement, the State permitted the Defendant to accept responsibility for only a limited factual scenario articulated by his attorney during the hearing."

DISCUSSION

The State's Motion to Reconsider and argument before the Court is Solicitor Pascoe's attempt to invalidate a plea agreement that is of his own making.

I. Validity of Guilty Plea

The State's plea agreement with the Defendants was in writing, fully stated on the record, and made a part of the record as an exhibit. See Court Ex. 2. At the December 13, 2017 plea



hearing, Quinn, Jr. admitted his guilt to Statutory Misconduct in Office under a limited statement of facts as agreed upon by the State and accepted as valid by the Court. Additionally, on February 12, 2018, at Quinn Jr.'s sentencing, in an effort to address the State's purported concern raised in its January 25, 2018 letter to the Court, Quinn Jr. once again admitted he was pleading guilty to one count of Statutory Misconduct in Office for intentionally failing to report the name of USC on his ethics disclosure forms, thus providing the State with the relief they sought. I found then, as I do now, that the limited admission of facts Quinn Jr. admitted on the record with the State's agreement, provide a substantial basis for the plea and meet the elements required of Statutory Misconduct in Office.

II. Sentencing Considerations

When sentencing a convicted defendant, in this case by virtue of a guilty plea, a trial court exercises a wide discretion regarding the sources and types of evidence it may use to assist it in determining the kind and extent of punishment to be imposed. "However, the admissibility of evidence is limited by constitutional provisions which require the evidence to be relevant, reliable and trustworthy." *State v. Gullede*, 326 S.C. 220, 487 S.E.2d 590 (1997). Inherent in that consideration is the Court's judicial discretion in determining the particular factual premises upon which a sentence will be based. Vital in this Court's sentencing consideration was the plea agreement entered into by the parties. As the record reflects, the plea agreement was negotiated and established the factual premise for the guilty plea. While the plea agreement includes the State will make allegations of a wider range of conduct, the State incorrectly assumes that in considering this information, the Court must take their averments as fact.

This case is not a typical plea, as the Solicitor suggests, akin to a burglary wherein the Defendant breaks into five houses, pleads guilty to one offense and admits to the other four. The

CA3

charge of Misconduct in Office is far more complex. White collar crimes, such as alleged against Quinn, Jr., often involve fact patterns that are convoluted and controverted. Critical to the State's case was Quinn, Jr.'s involvement in Richard Quinn & Associates, which Quinn, Jr. adamantly denies. While Solicitor Pascoe presented documents and emails suggesting this involvement of Quinn, Jr. with RQA, I am not persuaded to extrapolate the solicitor's inferences to establish such a relationship. What the State presented in its PowerPoint are inferences and conclusions that this Court is not compelled to accept as established facts. This is what the State needed to prove through a trial.

The Court considered the information provided by the State and the Defendants during the December 13, 2017 hearing and sentenced the Defendants according to the evidence the Court found reliable and relevant.

III. Opportunity to Be Heard

The hearing on February 12, 2018 was for the sole purpose of announcing the sentences of the parties, nothing more, and the State and Defense attorneys were both advised accordingly prior to the start of sentencing. All parties were given a full opportunity to argue their case at the December plea hearing. February 12th was not another opportunity for the parties to re-argue their case or pander to the media. A review of the transcript of the December 13, 2017 guilty plea, its exhibits and the filings in this matter before the February 12, 2018 sentencing show that there were no motions before the Court and all that remained was for the Court to issue sentence.

IV. Recusal

During the hearing on the State's Motion, Solicitor Pascoe demanded this Judge recuse herself. To the extent I must address it, the State is unable to demonstrate nor do they have any evidence that the Court's actions have been affected by, or are the product of, bias or prejudice,



because there is none. *Doe v. Howe*, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005). Mr. Pascoe's allegations of improper *ex parte* communications are patently false as his consent to such communications is reflected in the record, to include the State's own filings. *See* State's Mot., Feb. 16, 2018. Most notably here, the fact that a trial judge ultimately rules against a litigant is not proof of prejudice by the judge. *Mortgage Electronic Systems, Inc. v. White*, 384 S.C. 606, 682 S.E.2d 498 (Ct. App. 2009). Curiously, the State's demand for recusal only comes after the Court imposed a sentence different than the State requested. At this point, the plea has been accepted and the sentence imposed. There is nothing pending to recuse from hearing. Solicitor Pascoe's comments impugning the character of both the Court and Defense counsel casts a pall on the judicial process in an unfortunate attempt to vacate a plea agreement that is of his own making.

CONCLUSION

Based on the above, the State's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.



Carmen T. Mullen
Presiding Judge

This 6 day of March, 2018.