THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Honorable J. Cordell Maddox Jr., Circuit Court Judge

Case No.: 2018-001153

The State, Petitioner,

v.

Fredrick Scott Pfeiffer, Respondent.

RESPONDENT'S RETURN TO THE APPELLANT'S PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Did the trial court err in determining that the Respondent's second Motion to Reconsider was timely filed, where the trial court resentenced Respondent at the October 8, 2013 hearing, and where the Respondent's second Motion to Reconsider, was filed within ten days after that sentencing?
2. Did the State waive its right to appeal Respondent's sentence in the Plea Agreement between Respondent and the State, where the Plea Agreement states that the parties intend for the plea to end litigation, where the State did not specifically retain the right to appeal the sentence, and where an end to litigation was part of the Respondent's bargain?

STATEMENT OF THE CASE

Respondent and a co-defendant were indicted by State Grand Jury. Respondent, pursuant to a written plea agreement with Appellant, plead guilty to three counts of Indictment 2013GS4709 before The Honorable J. Cordell Maddox, Jr. (the "Trial Court") on September 18, 2013. (App. pp. 2-4; R. pp. 16-64). The Trial Court sentenced Respondent to an active sentence of six (6) years, with four years of imprisonment followed by two years of home incarceration on that same day. (App. pp. 2-4). Respondent filed a timely motion for reconsideration of the sentence.

Respondent's first motion for reconsideration was heard by Judge Maddox on October 8, 2013. At that hearing, the Trial Court amended the sentences that day issuing amended sentencing sheets dated October 8, 2013. (R. pp. 5-7). Later on that same day, October 8, 2013, the co-defendant was sentenced by the Trial Court. (R. p. 82, lines 9-17). The co-defendant's sentence resulted in the co-defendant being released almost immediately. Because the co-defendant's almost immediate release created a disparity in sentencing, Respondent filed a motion to reconsider Respondent's sentence, delivered on October 8, 2013 in light of the co-defendant's sentence on October 17, 2013. (App. p. 15).

The Trial Court held a hearing on the second motion to reconsider on July 9, 2014. At that hearing, Appellant argued that the second motion to reconsider was not timely made. The Trial Court found that Respondent's motion was timely made, and issued the Order appealed from increasing the Respondent's total sentence, but reducing the active sentence to five (5) years with four years of imprisonment followed by two years of home incarceration. (App. p. 9). The Trial Court signed the Order appealed from on January 13, 2015 and it was filed on January 23, 2015. Appellant then served its Notice of Appeal on February 2, 2015.

STANDARD OF REVIEW

The court is to review errors of law when reviewing criminal convictions. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006). The court's task is to determine whether the trial court abused its discretion. *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998). An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support. *State v. Pagan*, 369 S.C.201, 208, 631 S.E.2d 262, 265 (2006).

"[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). "On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law," *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

Sound judicial discretion must be exercised in every case with a thorough regard for what is just and proper under the circumstances. *State v. Scates*, 212 S.C. 150, 156, 46 S.E.2d 693, 695 (1948). "The reasonableness of any given sentence will largely depend upon the specific facts of each case and the district court's consideration and application of the § 3553(a) factors to those facts." *U.S. v. Hampton,* 441 F.3d 284, 287 (4th Cir. 2006), (referring to sentencing factors outlined in 18 U.S.C.A. § 3553(a) (2012)).

ARGUMENT

I. THE SENTENCING COURT HAD AUTHOURITY TO RULE ON RESPONDENT'S OCTOBER 17, 2013 MOTION TO RECONSIDER BECAUSE IT WAS TIMELY FILED.

The Court of Appeals, in its Per Curium opinion, has correctly affirmed the trial court's ruling that Respondent's was timely filed. In its Petition, the State incorrectly focuses only on the Court of Appeals reliance on proposition stated in *Collins Music Co. v. IGT*, 353 S.C. 559, 564, 579 S.E.2d 524, 526 (Ct. App 2002) that successive post trial motions are permitted in civil cases if the successive motion seeks "relief on issues coming to light as a result of an order following an initial post-trail motion that alters or amends judgment." This statement in the Per Curium opinion comes right after the Court of Appeals recognition that Rule 29(a) SCRCP permits post-trial motions to be made within ten days after the **imposition of the sentence**, not within ten days of the entry of the plea.

Respondent's October 17, 2013 Motion to Reconsider was timely filed because it was filed 9 days (within 10 days) after the sentencing court's **imposition of the sentence** on October 8, 2013. Rule 29(a) of the SCRCrimP states "Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the **imposition of the sentence**." (emphasis added). When interpreting a court rule the same rules of construction used in interpreting statutes is applied. *Stark Truss Co. v. Superior Construction Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99 (Ct. App. 2004). "Therefore the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." *Id.* at 508. (internal citation omitted.) When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning." *Id.* at 508. Here, the October 17, 2013 motion was made within ten days of the **imposition of**

sentence on October 8, 2013. Therefore, under a plain reading of Rule 29(a) SCRCrimP, the motion was timely. The State argues that the October 17, 2013 motion was untimely because it was made more than ten days after the plea which was also the date of the original sentencing. Rule 29(a) SCRCrimP does not specify that it applies only to the original sentencing. The rule does not mention the plea at all.

The sentencing court imposed a sentence on September 18, 2013. A motion to amend sentence was timely filed and the sentencing court heard that motion on October 8, 2013. The sentencing court granted that motion and **imposed a new sentence** on October 8, 2013. This created a new date for the "imposition of the sentence" contemplated by Rule 29(a) SCRCrimP. A reading of Rule 29(a) SCRCrimP that the grant of a motion to reconsider a sentence is not itself an "imposition of sentence" would produce two absurd results. First, if a sentencing court grants a motion to reconsider a sentence and inadvertently, or on purpose, gives a defendant an illegal sentence, there would be no mechanism for that sentencing court to correct the error and the defendant would have to resolve the matter through appeal. If, for example, the sentencing court gave a thirty day sentence for assault and battery in the third degree[1], then upon a motion to reconsider, intended to change the sentence to fifteen days, but inadvertently marked the sentencing sheet fifteen years, the defendant would have to remain in prison far in excess of the statutory maximum of thirty days while awaiting a ruling on an appeal. Second, Rule 203(b)(2) SCACR requires that an appeal from a Court of General Sessions must be notice "within ten (10) days after the sentence is imposed." However, "[w]hen a ***timely*** post-trial motion is made under Rule 29(a) SCRCrimP the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion." Rule 203(b)(2) SCACR

[1] The maximum imprisonment for assault and batter in the third degree is 30 days. SC Code § 16-3-600(E)(2)

(*emphasis added*). Because of this rule, the defendant in the previous example could not appeal the sentence. In fact, under the State's theory that the October 17, 2013 motion was not timely because it was filed more than ten days after Respondent's original sentencing date of September 18, 2013 and the post-trial motion appealed from was not timely. Therefore, if the State's theory were correct, the State's appeal was also not timely and should have been dismissed on that ground.

In criminal cases, the appellate court reviews only errors of law and is bound by the factual findings of the trial court unless the findings are clearly erroneous. *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge. *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. *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010).

The Appellant admits that the Respondent's initial motion to reconsider was timely filed. (*See* Brief of Appellant at p. 3). Rule 29 SCRCrimP allows a circuit judge to retain jurisdiction over a case when a motion to reconsider is timely filed. Therefore, the trial court had both jurisdiction over the case and had the "claim-processing" power to act on the first motion to reconsider when it held the October 8, 2013 hearing. See *State v. Warren,* 392 S.C. 235, 708 S.E.2d (Ct. App. 2011). When the trial court granted, with the State's consent, Respondent's motion to reconsider and issued new Amended Sentencing Sheets, the court was acting with full authority and jurisdiction. This resentencing created a new ten-day window within which either party could file a timely appeal (see Rule 203(b)(2) SCACR) or motion (see Rule 29,

SCRCrimP). Respondent's second motion to reconsider was filed within that ten-day window, as the trial court held.

Because Respondent's motion to reconsider under Rule 29(a) was filed within ten days after his sentence was amended by the trial court, the motion was timely and the trial court retained both jurisdiction and claim processing authority to consider the second motion to reconsider and to amend Respondent's sentence.

Therefore the Court of Appeals Per Curium opinion should be read to rely on Rule 29(a) SCRCP based on its plain meaning with a reference to successive motions being allowed based on the civil rule that uses the same language, not on the *Collins Music Co. v. IGT* case itself.

However, even if the State were correct to focus only on the Court of Appeal's quote of *Collins Music Co. v. IGT* the State is still incorrect in it's argument. It is clear that the second motion to amend is allowed based on the second part of the quote from the Per Curium opinion in that the second motion sought followed an initial post-trail motion that altered and amends the sentence. However, because it was the interplay of Respondent's sentence at the imposition of sentence on October 8, 2017 with other factors involved with the same case that the Respondent sought to correct, both requirements of the rule in *Collins Music Co. v. IGT* have been met.

II. THE STATE'S APPEAL SHOULD BE DISMISSED BECAUSE THE STATE WAIVED ITS RIGHT TO APPEAL AND BECAUSE THIS APPEAL DEPRIVES THE RESPONDENT OF THE BENEFIT OF HIS BARGAIN WITH THE STATE.

This Petition should not be granted because Appellant waived its right to appeal though the Plea Agreement signed by both Appellant and Respondent and accepted by the Trial Court.

Section (6) of the Plea Agreement is captioned "Waiver of direct appeals and collateral attacks." The second paragraph of Section (6) states:

> It is the intent of the ***parties*** that this agreement and the resulting pleas and sentences finally conclude any and all existing or possible legal proceedings related to indictment 2012-GS-47-0008, 2013-GS-47-0009, and 2013-GS-47-0010 whether direct or collateral, and all that remains is for Mr. Pfeiffer to serve any sentence given by the Court in the manner provided for by state law. (emphasis added). (R. p. 122)

This paragraph makes it clear that the bargain of the "parties" was that the plea was to end all litigation, and not just for the Respondent.

The State is bound by the bargain that it made to obtain a defendant's guilty plea. *State v. Rhinehart*, 312 S.C. 36, 39, 430 S.E.2d at 536, 537 (Ct. App. 1993). "The trial court, having accepted the plea agreement, must honor it also." *Id.* at 39, 430 S.E.2d at 538. The plain language of the plea agreement, that the Respondent's sentence "finally concludes any and all existing or possible legal proceedings, whether direct or collateral" clearly prohibits this direct appeal. The State is bound by this language and this Petition must not be granted.

The State waives its right to appeal where the State demands an appeal waiver from the defendant, and the State does not explicitly preserve its own appeal rights. "Regarding plea bargains generally, this Court has recognized and followed federal precedent. *See, e.g., State v. Thrift,* 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) (discussing *Santobello v. New York,* 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) and *United States v. Ringling,* 988 F.2d 504 (4th Cir. 1993))." *Id.* at 607. Federal precedent from The Fourth Circuit Court of Appeals is that not only may the State waive its appeal rights but that it does waive its rights to appeal if there is a waiver of the defendant's appeal rights in a plea agreement and the State does not explicitly preserve those rights. *United States v. Guevera*, 941 F.2d 1299 (4th Cir. 1991)[2]. In so deciding, the *Guevera* court noted that "[t]he finality of judgments and sentences imposed is no more

[2] In *Guevera* the United States appealed, as the State does here, because the severity of the sentence was "not to its liking."

preserved by appeals by the government than by appeals by the defendant and it strikes us as far too one-sided to construe the plea agreement to permit an appeal by the government for a fancied mistake by the district court, as here, but not to permit an appeal on similar grounds by the defendant. . ." *Id.* Here, the State required as a condition of the plea that Respondent waive his rights to appeal. (R. p 121). The State did not explicitly retain its own appeal rights[3]. Therefore, the State's right to appeal was also waived.

To grant the State's Petition and permit this matter to continue would deprive Respondent of the benefit of his bargain with the State. A "plea bargain rests on contractual principles, and that each party should receive the benefit of the bargain." *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341, 347 (1994) (citing *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993). "[W]here a guilty plea rests on a promise or agreement which can be said to be a part of the inducement or consideration, then the agreement must be fulfilled." *Id.* at 347 (1994) (citing *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971)). Further, the State must "be held to a higher degree of responsibility than the defendant for imprecisions or ambiguities." *Id.* at 347 (citing *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993). The Plea Agreement, in the second paragraph of Section (5) states that "any sentence will be in the discretion of the sentencing court." By bringing its appeal, the State attempted to wrest the sentencing decision from the sentencing court and give that discretion to the appellate courts. To allow this would be to deprive Respondent of the benefit of his bargain with the State.

The State waived its right to appeal the trial court's sentence, failed to explicitly retain any such right, and bargained away that right in order to induce Respondent's plea. For all those reasons, this Petition should not be granted.

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[3] In fact, the State explicitly waived its appellate rights in the second paragraph of Section 6, as shown above.

CONCLUSION

For the reasons stated above, the State's Petition for a Writ of Certiorari to the Court of Appeals should be denied.

Respectfully submitted,

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July 20, 2018

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE OF RESPONDENT'S RETURN TO THE APPELLANT'S PETITION FOR WRIT OF CERTIORARI

I, Ralph Gleaton, certify on this date, July 20, 2018, I served the Respondent's Return to the Appellant's Petition for Writ of Certiorari in this action, dated July 20, 2018 on the below by mailing it to them, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

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Respectfully submitted,

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July 20, 2018