STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

RECEIVED
AUG 20 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRAVIS JACQUEESE MCFADDEN,

APPELLANT

APPELLATE CASE NO 2016-002531

BRIEF OF APPELLANT

ROBERT M. PACHAK
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STATEMENT OF ISSUE ON APPEAL

Whether a guilty plea can still be voluntary if the State does not disclose a sentencing recommendation to the plea court?

STATEMENT OF THE CASE

On November 18, 2013, appellant appeared before the Honorable W. Jeffrey Young in Sumter County and pled guilty to voluntary manslaughter, common law robbery, and criminal conspiracy. He was sentenced to thirty (30) years for voluntary manslaughter, to fifteen (15) consecutive years for common law robbery, and to five (5) concurrent years for criminal conspiracy.

A motion to reconsider the sentence dated November 20, 2013, was filed on November 21, 2013. A hearing on the motion was not held until December 12, 2016. The motion was denied by written order dated January 26, 2017. Sharon Clark, Esq. was plea counsel and Eddie Donald, Esq. was the assistant solicitor.

On July 3, 2017, a brief was filed pursuant to Anders v. California, 386 U.S. 738 (1967), along with a motion to be relieved as counsel. On July 19, 2018, this court issued an order denying the motion to be relieved and directed the parties to brief the issue contained herein.

This brief follows.

STANDARD OF REVIEW

Sentencing

"'In criminal cases, the appellate court sits to review errors of law only.'" State v. Vick, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009)(quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is "'bound by the trial court's factual findings unless they are clearly erroneous.'" Id. (quoting Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." State v. Slocumb, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). "A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support." In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

Appellant's guilty plea was not voluntary because the State did not disclose a sentencing recommendation to the plea court.

In Boykin v. Alabama 395 U.S. 238, 89 S. Ct. 1709(1969) the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of rights occurring with the guilty plea.

In this case appellant was indicted on an eleven count indictment on charges surrounding the armed robbery of a convenience store. Seven defendants were listed on the indictment. Appellant pled down from murder to voluntary manslaughter, from armed robbery to strong armed robbery, and to conspiracy. He did not plea to the other charges which included two attempted murder charges. The plea judge did explain what the maximum sentences were and that he could order them to be served consecutively. (11/18/13 tr. p. 10, line 16- p. 11, line 10).

At no time during the guilty plea did the assistant solicitor tell the judge that the State had recommended a twenty year sentence. Plea counsel also did not inform the judge of the recommended sentence.

On November 21, 2013, plea counsel filed a motion to reconsider the sentence. A hearing was not held on that motion until December 16, 2016. The assistant solicitor told the plea judge that at the time of the guilty plea the State had a recommendation of a twenty-year sentence on voluntary manslaughter with all of the sentences to be concurrent (12/16/16 tr. pg. 4, lines 12-14). Plea counsel also testified that the assistant solicitor had recommended a twenty-year sentence and that some of the codefendants got ten-year sentences that were suspended. (12/16/16 tr. p. 9, lines 5-16).

In Gaines v. State, 335 S.C. 376, 517 S.E.2d 439(1999) this Court acknowledged that in State v. Armstrong cited above that at a guilty plea a judge should give a "realistic picture of all the sentencing possibilities." It is obvious appellant came into the guilty plea with knowledge that the assistant solicitor had recommended a twenty-year sentence and that plea counsel passed this information on to appellant. Appellant thereby expected a twenty-year sentence and not the forty-five year sentence he did receive. His plea was, therefore, not knowingly and voluntarily made.

In Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988), the court held a plea attorney ineffective in failing to withdraw a guilty plea after the State reneged on a plea bargain. Perhaps appellant should also ask about counsel's conduct in this case at the guilty plea.

CONCLUSION

Appellant's case should be remanded for specific performance of the plea recommendation.

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Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of August, 2018.