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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Bamberg County

Honorable L. Casey Manning, Circuit Court Judge

RECEIVED

JUL 23 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ANTOINE BYARS,

APPELLANT

APPELLATE CASE NO 2017-001722

ANDERS BRIEF OF APPELLANT

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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred in imposing and failing to reconsider Appellant's twenty-year sentence for assault and battery of a high and aggravated nature?

STATEMENT OF THE CASE

On August 1, 2016, Appellant Christopher Byars appeared before the Honorable R. Casey Manning, where he waived presentment of the indictment for assault and battery of a high and aggravated nature (ABHAN) to the Bamberg County grand jury.¹ R. 1; R. 3, ll. 5-9; R. 10, l. 21 – 11, l. 15; R. 53.

Byars was originally charged with attempted murder for the shooting of his on-again/off-again girlfriend with whom he had two children in common. He pled guilty to lesser offense of ABHAN. R. 7, l. 16 – 8, l. 7; R. 13, ll. 13-18; R. 31, l. 22 – 32, l. 5. Byars was represented by Michael Chesser, and the State was represented by deputy solicitor David Miller. R. 1. Judge Manning imposed the maximum twenty-year sentence. R. 34, ll. 13-16.

On August 5, 2016, plea counsel filed a motion to reconsider sentence. R. 50. One year later, on August 4, 2017, Judge Manning filed a written order denying the motion.² R. 51.

This appeal follows.

¹ Appellant waived venue for the purpose of the guilty plea hearing, which was held in Aiken County. R. 9, l. 19 – 10, l. 10.

² The Order denying the motion to reconsider references a *pro se* motion to reconsider that was filed by Byars in addition to the motion filed by counsel. See R. 51. However, the Bamberg County Clerk of Court had no record of any such filing by Byars.

STANDARD OF REVIEW

“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

The plea court erred in imposing and failing to reconsider Appellant's twenty-year sentence for assault and battery of a high and aggravated nature.

Relevant Facts

Appellant Christopher Byars pled guilty to assault and battery of a high and aggravated nature (ABHAN) without a sentencing recommendation. R. 19, ll. 23-24. The solicitor requested imposition of the twenty-year maximum sentence allowable for ABHAN "based on the circumstances of the crime and the defendant's expressed anger since his arrest." R. 20, l. 4-6; see also R. 32, ll. 11-18.

The solicitor averred at the plea hearing that the evidence would have shown that Byars and Jamison had two children in common and shared a home until the month prior to the incident, when Byars was evicted. Sometime after 1:00 a.m. on July 31, 2015, while Byars and Jamison were arguing on the telephone, Byars let himself in the back door of Jamison's house. Byars' two children were there, as well as Jamison's two additional children from other relationships. According to the solicitor, Byars and Jamison went into the bedroom for several minutes. When they came back into the living room area, Jamison demanded return of Byars' key to the home. R. 16, l. 22 – 17, l. 25. Byars became agitated when Jamison told him it was not a good time to discuss his moving back into the home. He told Jamison that the key was on the back porch and walked outside. He returned a few seconds later with a camouflage shotgun. Byars loaded the gun, stuck it close to Jamison's side, and shot her in the left abdomen. R. 18, ll. 1-17. Byars left and was later arrested. He gave various stories to the investigators and solicitor's office denying culpability. R. 18, l. 18 – 19, l. 13.

In addition, the solicitor presented a copy of a threatening letter purportedly sent from Byars to Jamison, indicating his intention to commit suicide in front of their children at their

school. R. 19, ll. 13-22; R. 48 (Court's Exhibit 3). Jamison submitted a letter for the court's consideration, though she and her sister later addressed the court directly. R. 20, ll. 7-24; R. 28, ll. 9-19; R. 29, l. 11 – 30, l. 16; R. 50 (Court's Ex. 4). In response to Judge Manning's inquiry regarding Jamison's level of recovery, the solicitor said she had "reached maximum medical improvement" but had spent three months in the hospital and was still in some pain. R. 20, l. 25 – 21, l. 12. Byars' criminal history included a 2004 conviction for trespassing, a 2007 conviction for first-degree criminal domestic violence, and a 2011 conviction public disorderly conduct. R. 20, ll. 1-3.

Byars agreed that the solicitor's presentation was "substantially accurate and correct," and Judge Manning accepted the plea. R. 21, l. 13 – 22, l. 4. The defense's sentencing presentation was delayed until later in the afternoon so that Byars' mother could be present. R. 22, ll. 4-24. Defense counsel explained that Byars was thirty-two years old and had two children in common with Jamison, with whom he had a romantic relationship for twelve to thirteen years. R. 23, ll. 8-16. Byars education ended in either sixth or eighth grade and included special education courses. R. 23, ll. 17-22. He has held various construction jobs. R. 23, l. 23. Defense counsel observed Byars to be depressed, which was consistent with his diagnosis of "major depression, severe with psychotic features" and his history of suicide attempts. R. 23, l. 23 – 25, l. 9; R. 36 (Court's Ex. 1); R. 42 (Court's Ex. 2).

Byars' mother addressed the court, noting that Byars was a disabled child and the lack of resources to help him once he reached adulthood. She found that Byars functioned much better when properly medicated. R. 25, l. 14 – 26, l. 2. Byars' sister asked for leniency and rehabilitation, explaining that Byars needed to be punished but also suffered from mental health problems. R. 26, ll. 4-22. Defense counsel explained that the local jail was not equipped to

provide mental health treatment. However, mental health care had recently been arranged for Byars through an outside agency and he was benefitting from proper medication and treatment. R. 27, ll. 1-17. He concluded: “But I would ask you to consider the problems that he’s had his whole life. I don’t think he’s a bad person. What he did was horrific, but I’d ask you to consider what you think is a just sentence in the case.” R. 27, l. 24 – 28, l. 2.

The solicitor presented photographs of Jamison’s injuries to the court, along with a list of the procedures she had undergone or still needed. R. 28, l. 22 – 29, l. 10. She noted that Byars’ mental health problems did not affect his criminal responsibility and capacity to conform his conduct. R. 30, l. 22 – 31, l. 7; R. 36 (Court’s Ex. 1); R. 42 (Court’s Ex. 2). Rather, she believed that the incident was fueled by alcohol and anger. R. 31, ll. 8-18. She advised the court that Byars was originally charged with attempted murder, facing zero to thirty years imprisonment, but the State reduced the charge to ABHAN because it still allowed for their desired twenty-year sentence. Thus, she agreed with the court that Byars was benefitting from the reduction in the charge and that was the only “leniency and... mercy that he deserve[d].” She noted that Byas was also charged originally with a second count of attempted murder for Jamison’s fourteen-year-old son, but they determined that the facts would not have supported that charged. R. 31, l. 19 – 33, l. 12.

Prior to imposing the sentence, Judge Manning said:

This has been a difficult case to hear. On one hand, you think about his own children that are shared with Ms. Jamison, but on the other hand, I specifically asked what was the difference in the reduction in the charge and that plays in part of my decision. **And this is very emotional for everybody,** you, for Ms. Byars and for Ms. Jamison. But I’ve concluded from hearing everything that this is a proper sentence and the other avenues you’ve been given when you tried to persuade or not to persuade.

R. 33, l. 16-25 (emphasis added). He then realized that he had not heard from Byars himself, so he allowed him to address the court. Byars apologized for his conduct and asked for an opportunity to show that he was a changed man. R. 34, ll. 1-9. Judge Manning then pronounced the twenty-year sentence. R. 34, ll. 13-16.

Defense counsel timely filed a motion for reconsideration of sentence on the basis of “justice and mercy and such other factors as the Court may deem appropriate.” App. 50. One year later, Judge Manning filed a detailed Order denying the motion without a hearing. App. 51. In the notice of appeal, counsel explained: “[B]ased on the facts adduced in Court, the sentence was unreasonable and excessive.”

Discussion

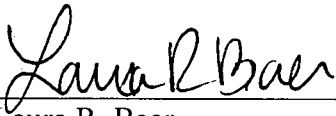
“A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). “A judge is allowed broad discretion in sentencing within statutory limits.” Garrett v. State, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) (citing State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974)). “A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against respondent.” Id. (citing Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979)). “It is well settled in this State that this Court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute itself violates the constitutional injunction, Article I, Sec. 19, against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or

corrupt motive.” Wood v. State, 257 S.C. 179, 184 S.E.2d 702 (1971); see Clark v. State, 259 S.C. 378, 382-83, 192 S.E.2d 209, 210-11 (1972).

Here, the statutory sentencing range for ABHAN is up to twenty years imprisonment. S.C. Code Ann. § 16-3-600(B)(1). Thus, the twenty-year sentence imposed is within the statutory range. However, the sentencing judge commented both that it was “a difficult case to hear” and that it was “very emotional for everybody.” R. 33, l. 16-25. Death penalty jurisprudence is replete with references to the impropriety of basing a sentence upon emotion. Gardner v. Florida, 430 U.S. 349, 358 (1977) (“It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.”); California v. Brown, 479 U.S. 538, 545 (1987) (“[T]he sentence imposed at the penalty stage should reflect a reasoned *moral* response to the defendant’s background, character, and crime rather than mere sympathy or emotion.”). The same holds true in any sentencing. Here, the plea judge’s comments reveal that his sentencing was impacted by emotion. He should have granted the motion to reconsider and reduced Byars’ sentence.

CONCLUSION

Based on the foregoing, Appellant Christopher A. Byars respectfully requests that this Court vacate the sentence imposed by Judge Manning and remand for resentencing.



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of July, 2018.

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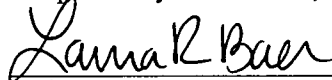
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher A. Byars states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's guilty plea before Judge L. Casey Manning, which was held on August 1, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant resentencing.
3. She 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 plea.

WHEREFORE, she asks the Court to relieve her as counsel for Christopher A. Byars.

Respectfully Submitted,



Laura R. Baer

Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of July, 2018.

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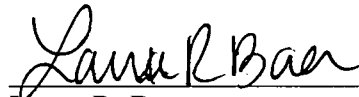
APPELLANT

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

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

- (1) Transcript of Guilty Plea Hearing held August 1, 2016;
- (2) Court's Exhibit 1 (Capacity to Stand Trial Evaluation);
- (3) Court's Exhibit 2 (Criminal Responsibility and Capacity to Conform Evaluation);
- (4) Court's Exhibit 3 (Letter from Defendant to Jamison);
- (5) Court's Exhibit 4 (Letter from Jamison to the Court);
- (6) Motion to Reconsider Sentence;
- (7) Order Denying Motion to Reconsider;
- (8) Indictment (presentment waived); and
- (9) Sentencing sheet.

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



Laura R. Baer
Appellate Defender

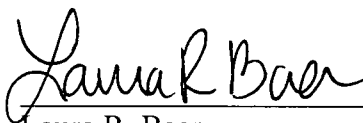
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July 23, 2018

ATTORNEY FOR APPELLANT

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."



Laura R. Baer
Appellate Defender

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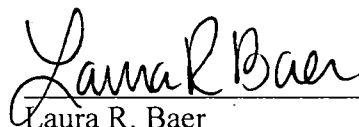
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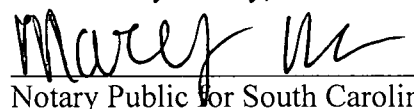
CERTIFICATE OF SERVICE

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 Christopher A. Byars, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of July, 2018.



Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of July, 2018.

 (L.S)
Notary Public for South Carolina

My Commission Expires: May 12, 2027.