

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

RECEIVED

OCT 09 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

KENNETH STROTHER COLLINS,

APPELLANT

APPELLATE CASE NO. 2017-002282

INITIAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether, in the interests of judicial economy, this Court should vacate appellant's sentence for kidnapping because he was also sentenced for the same victim's murder?

STATEMENT OF THE CASE

On April 13, 2015, an Oconee County grand jury indicted appellant for murder, kidnapping and a weapons charge. R. _____. On October 17, 2017, appellant's trial began after conducting jury selection and pretrial motions the day before. Tr. 1. Appellant was tried before the Honorable R. Scott Sprouse and a jury. Tr. 1. Lindsey Satterfield Simmons and Jason C. Alderman represented the State. Tr. 1. Angela Lane represented appellant. Tr. 1. The jury convicted appellant on all counts. Tr. 118, l. 11 – 119, l. 13. Judge Sprouse sentenced appellant to thirty years' imprisonment for murder, a consecutive twenty years' imprisonment for kidnapping, and a concurrent five years' imprisonment on the weapons charge. Tr. 126, l. 12 – 127, l. 13. This appeal follows.

STANDARD OF REVIEW

“Determining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law de novo.” First Citizens Bank & Tr. Co., Inc. v. Blue Ox, LLC, 422 S.C. 461, 466, 812 S.E.2d 418, 420 (Ct. App. 2018), reh'g denied (Apr. 26, 2018), cert. denied (Aug. 3, 2018) (internal quotations omitted).

ARGUMENT

In the interests of judicial economy, this Court should vacate appellant's sentence for kidnapping because he was also sentenced for the same victim's murder.

Appellant was indicted for the murder of Jeremy Lee Little ("Little"). R. ___ (Indictment for Murder). Appellant was convicted of Little's murder. Tr. Oct. 18. 118, l. 14 – 119, l. 1. Judge Sprouse sentenced appellant to thirty years' imprisonment for Little's murder. Tr. Oct. 18. 127, ll. 4 – 6. R. ___ (Sentencing Sheet on Indictment 2015-GS-37-00348)

Appellant was also indicted for kidnapping Little. R. ___ (Indictment for Kidnapping). The jury convicted appellant of kidnapping Little. Tr. Oct. 18. 119, ll. 2 – 4. Judge Sprouse sentenced appellant to a consecutive term of twenty years' imprisonment for kidnapping Little. Tr. Oct. 18. 127, ll. 7 – 9. R. ___ (Sentencing Sheet on Indictment 2015-GS-37-00349).

Appellant's kidnapping sentence is improper because the kidnapping statute forbids such a sentence when a defendant is also sentenced for the murder of the same victim. S.C. Code Ann. § 16-3-910. The kidnapping statute provides:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years **unless sentenced for murder** as provided in section 16-3-20.

S.C. Code Ann. § 16-3-910 (emphasis added). "Our courts have long held, where an appellant has been sentenced for murder of a victim, this code section precludes a sentence for kidnapping of that victim, and any such sentence should be vacated." State v. Vick, 384 S.C. 189, 201-202, 682 S.E.2d 275, 281 (Ct. App. 2009); see also Owens v. State, 331 S.C. 582, 584-585, 503 S.E.2d 462, 463 (1998); State v. McCall, 304 S.C. 465, 470, 405 S.E.2d 414, 416-417 (Ct. App. 1991), overruled on other grounds by Brightman v. State, 336 S.C. 348, 352, 520 S.E.2d 614, 616 (1999);

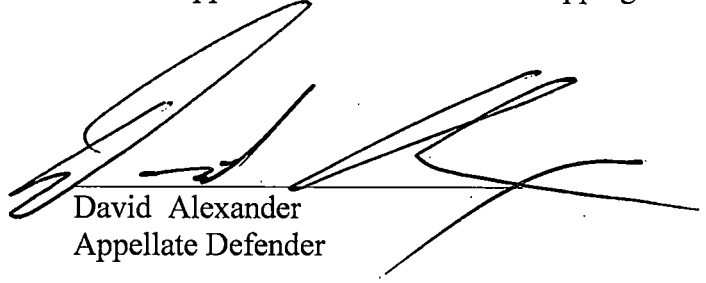
State v. Livingston, 282 S.C. 1, 8, 317 S.E.2d 129, 133 (1984); State v. Perry, 278 S.C. 290, 495, 299 S.E.2d 324, 327 (1983); State v. Copeland, 278 S.C. 572, 597, 300 S.E.2d 63, 77-78 (1982). In Perry, the Court vacated consecutive life sentences for kidnapping and murder. Perry at 324, 327, 299 S.E.2d at 491, 495-96. See also State v. Joyner, 289 S.C. 436, n.1, 346 S.E.2d 711, n.1 (1986) (calling trial court's attention on remand to the kidnapping statute where trial judge sentenced defendant to consecutive sentences for kidnapping and murder).

In Vick, the State acknowledged it was "error to sentence a defendant for the kidnapping of a victim whom he is also convicted of murdering, and that when a defendant is convicted of murder, any sentence for kidnapping of the victim should be vacated." Vick at 201, 682 S.E.2d at 281. Despite its acknowledgment, the State opposed vacating the admittedly improper sentence because no objection was raised at trial. Id. This Court vacated the kidnapping sentence over the State's preservation objection.

Just as in Vick, this Court should address the merits of the issue in the interest of judicial economy. Should this Court decline to reach this issue, appellant could raise this issue in an application for post-conviction relief as a claim of ineffective assistance of trial counsel for failing to object to an improper sentence. Based upon section 16-3-910 and its interpretation, appellant's sentence for kidnapping is improper. Thus, judicial economy weighs heavily in favor of this Court addressing the merits of the claim at this time. Appellant respectfully requests this Court address the merits of the issue and vacate the kidnapping sentence.

CONCLUSION

For the foregoing reasons, this Court should vacate appellant's sentence for kidnapping.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of October, 2018.

STATE OF SOUTH CAROLINA
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THE STATE,

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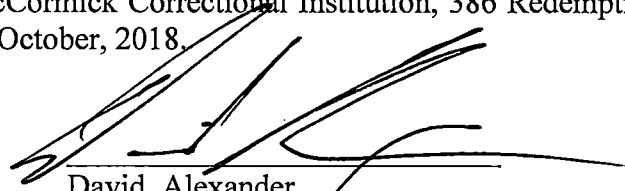
V.

KENNETH STROTHER COLLINS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Kenneth Strother Collins, #352545, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 9th day of October, 2018.



David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2018.

Courtney Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.