

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

KATHERINE LATHARA ANNE SEABROOK,

APPELLANT

APPELLATE CASE NO 2018-000644

ANDERS BRIEF OF APPELLANT

RECEIVED
OCT 17 2018
SC Court of Appeals

WANDA H. CARTER
Deputy Chief Appellate Defender

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

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial judge erred in issuing an excessive sentence to appellant
in light of her medically documented mental illness.4

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL.....6

TABLE OF AUTHORITIES

Cases

<u>In re M.B.H.</u> , 387 S.C. 323, 692 S.E.2d 541 (2010).....	3
<u>State v. Conally</u> , 227 S.C. 507, 88 S.E. 2d 591 (1955).....	5
<u>State v. Slocumb</u> , 412 S.C. 88, 770 S.E.2d 436 (Ct. App. 2015)	3
<u>State v. Vick</u> , 384 S.C. 189, 682 S.E.2d 275 (Ct App. 2009).....	3
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	3

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in issuing an excessive sentence to appellant in light of her medically documented mental illness.

STATEMENT OF THE CASE

Appellant Katherine Lathara Anne Seabrook was tried in her absence and convicted of criminal domestic violence of a high and aggravated nature per jury trial held during the January 2018 term of the Charleston County Courthouse before Judge J.C. Nicholson, who imposed a sealed sentence in the case. Appellant's sentence of imprisonment for a period of six years, suspended upon the service of eighteen months and five years probation, was published in General Sessions Court on March 15, 2018, and read to appellant who was present for the publication. On April 5, 2018, a sentencing reconsideration motion was presented to Judge Nicholson at the Charleston County General Sessions Court. Judge Nicholson reduced appellant's sentence to imprisonment for a period of nine months, and five years probation. Attorney Michael R. Loignon represented appellant at all three of her court proceedings, and Assistant Solicitor Matthew D. McClellan appeared on behalf of the state at all three proceedings as well. Appellant appealed her conviction and sentence. This brief follows.

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 trial judge erred in issuing an excessive sentence to appellant in light of her medically documented mental illness.

At trial, Ervin Smith testified that he and appellant had been living together in his apartment since 2014, and that when he asked appellant to leave a year later, he claimed that appellant was not happy about having to exit. Then, on May 31, 2015, Smith explained that he and appellant began arguing over where his paintball was located and thereafter, appellant accosted him with a knife, and with a war hammer, and with a sword. R. 75, l. 18- p. 94, l. 17. The police arrived on the scene after the fight ended, and appellant was arrested and jailed.

Initially, the plea judge sentenced appellant to imprisonment for a period of six years, suspended upon the service of eighteen months and five years probation. R. 201, l. 1-5; R. 207, l. 16 – p. 208, l. 8. Subsequently, pursuant to a sentencing reconsideration hearing, the plea judge resentenced appellant to prison for a period of nine months and five years probation based on her recorded mental health issues. R. 233, lines 9-20.

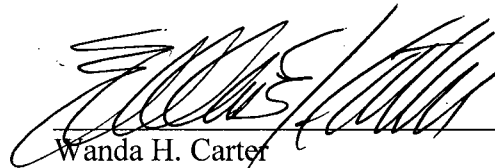
During the sentencing reconsideration hearing, defense counsel apprised the plea judge of appellant's prior hospitalizations for schizophrenia and bipolar disorders and how during that time she was medicated with Seroquel, Celexa, and Lexapro. Apparently, appellant had post-traumatic stress syndrome (due to rape at age 10 and miscarriage at age 15) induced by marijuana dependency, mood disorder, and panic disorder. R. 214, l. 19 – p. 218, l. 7. See appellant's medical records at Tr. 239-242. As a result, the plea judge decided to reduce appellant's sentence. However, although a probation sentence was handed down upon reconsideration; nonetheless, the reduced sentence also included a prison term (albeit for nine

months) in addition to the probation sentence. As a result, then the new reduced sentence was excessive in light of appellant's mental issues.

An appellate court can act on a sentence based on excessiveness if the sentence is in violation of cruel and unusual punishment or it is the result of partiality, prejudice, oppression, or corrupt motive. State v. Conally, 227 S.C. 507, 88 S.E. 2d 591 (1955). Here, in light of appellant's mental health deficiencies, the plea judge's final and reduced sentence still included a prison term, which was the type of excessive sentence in effect that qualified as oppressive and prejudicial.

CONCLUSION

Based on the above raised argument, appellant's sentence should be vacated and her case remanded for a new resentencing hearing.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of October, 2018.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Katherine Lathara Anne Seabrook states that:

1. She is Deputy Chief 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 trial before Judge J. C. Buddy Nicholson, which was held on January 16-17, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
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 trial.

WHEREFORE, She asks the Court to relieve her as counsel for Katherine Lathara Anne Seabrook.

Respectfully Submitted,


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of October, 2018.

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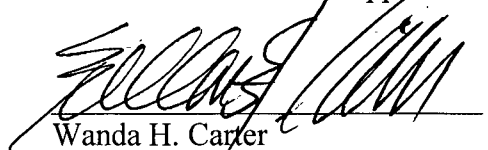
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s):
- (2) Entire Trial Transcript dated January 16-17, 2018
- (3) Entire Trial Transcript dated March 15, 2018
- (4) Entire Trial Transcript dated April 5, 2018
- (5) Court's Exhibit #1 (MUSC Health Summary)

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

October 17, 2018


Wanda H. Carter
Deputy Chief Appellate Defender

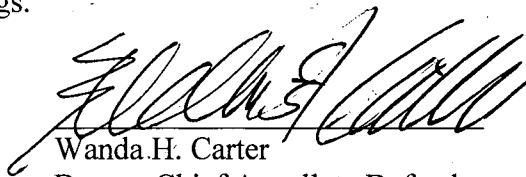
South Carolina Commission on Indigent
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ATTORNEY FOR APPELLANT

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."

October 17, 2018.



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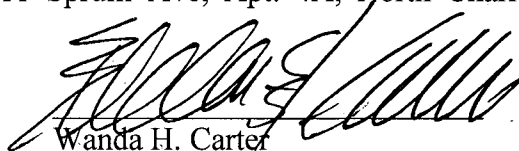
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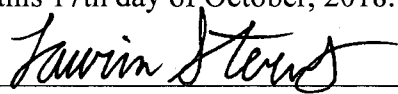
CERTIFICATE OF SERVICE

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 Katherine Lathara Anne Seabrook, at 3211 Spruill Ave, Apt. 4A, North Charleston, SC 29405, this 17th day of October, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of October, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.