

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SEAN L. STROMAN,

APPELLANT

APPELLATE CASE NO. 2017-001430

ANDERS BRIEF OF APPELLANT

RECEIVED
NOV 26 2018
SC Court of Appeals

VICTOR R. SEEGER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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 REVIEW	3
ARGUMENT	
The court abused its discretion when it failed to take into account, for sentencing purposes, the mitigation evidence that appellant and his family were homeless, and that he stole to feed his family.....	4
Relevant Facts	4
Discussion	6
CONCLUSION.....	8
PETITION TO BE RELIEVED AS COUNSEL	9

TABLE OF AUTHORITIES

Cases

<u>Hayden v. State</u> , 283 S.C. 121, 322 S.E.2d 14 (1984)	7
<u>In re M.B.H.</u> , 387 S.C. 323, 692 S.E.2d 541 (2010).....	3
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	5
<u>State v. Black</u> , 400 S.C. 10, 732 S.E.2d 880 (2012)	6
<u>State v. Commander</u> , 396 S.C. 254, 721 S.E.2d 413 (2011)	6
<u>State v. Franklin</u> , 267 S.C. 240, 226 S.E.2d 896 (1976)	7
<u>State v. Page</u> , 406 S.C. 272, 750 S.E.2d 623 (Ct. App. 2013).....	6
<u>State v. Pope</u> , 410 S.C. 214, 763 S.E.2d 814 (Ct. App. 2014).....	6
<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

Whether the court abused its discretion when it failed to take into account, for sentencing purposes, the mitigation evidence that appellant and his family were homeless, and that he stole to feed his family?

STATEMENT OF THE CASE

During the December 2015 term, the Lexington County Grand Jury indicted Appellant for two counts of armed robbery and three counts of kidnapping. R.45 – 54. On April 5, 2016, Appellant pled guilty as indicted before the Honorable R. Knox McMahon. R. 1. Derrick E. Mobley represented Appellant. Id. J. Angela Garrick-Martin represented the state. Id.

Judge Knox sentenced Appellant to thirty years' imprisonment for armed robbery and twenty years' imprisonment for kidnapping, to run consecutive. R. 29, ll. 5 – 16.

On May 31, 2016, Appellant had a reconsideration hearing before Judge McMahon. R. 31. Derrick E. Mobley represented Appellant. Id. J. Angela Garrick-Martin represented the state. Id.

In an order issued on June 26, 2017, Judge McMahon reconsidered Appellant's sentences to run concurrent with one another. R. 44. Judge McMahon lowered one of the armed robbery sentences from thirty years' imprisonment to twenty years' imprisonment as well. Id.

This appeal 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 court abused its discretion when it failed to take into account, for sentencing purposes, the mitigation evidence that appellant and his family were homeless, and that he stole to feed his family.

Relevant Facts

The facts alleged by the state are as follows. On July 27, 2015, Appellant brought a firearm into the Bush River Road location of the Kangaroo Express and demanded money from the register. R. 14, ll. 11 – 17. Appellant took “about \$150” and some various items from the store. R. 14, ll. 18 – 20. Appellant provided a written confession for this incident. R. 15, ll. 1 – 7.

On August 10, 2015 Appellant entered a Domino’s Pizza location in Irmo. R. 15, ll. 8 – 10. Appellant, with a firearm, demanded money from the register and safe. R. 15, ll. 11 – 25. During the incident, Appellant went into the back of the store and brought the dish washer, Vasquez, out to the dining area. Id.

On August 19, 2015, Appellant entered the, “St. Andrews location,” of Domino’s Pizza at 10:30pm. R. 16, ll. 1 – 5. Appellant, with a firearm, demanded money from the register and safe. R. 16, ll. 5 – 18. Appellant moved the dishwasher employee, Humphrey, from the back area to the dining area during the incident. Id. The assistant manager, Ron Turner, and another employee, Taylor, were held at gun-point while Appellant waited for the safe to open. R. 16, ll. 13 – 18. Appellant left with, “a little over \$1,000.” R. 17, ll. 1 – 4.

Appellant was recorded on the surveillance systems of both Domino’s Pizza locations. R. 17, ll. 11 – 16. Employees during the incidents told law enforcement that the suspect had a tattoo of the name, “Vicky” on his neck. R. 17, ll. 17 – 20.

Appellant was brought in on a separate case involving a “domestic incident,” between Appellant and his girl-friend, Brittany Felder. R. 18, l. 10 – 19, l. 17. Appellant was taken into custody and gave law enforcement consent to search his car. R. 19, ll. 18 – 19. Appellant had over \$2,000 on his person and in his car was a firearm. R. 19, ll. 18 – 23. Appellant was given his Miranda v. Arizona, 384 U.S. 436 (1966) warnings and gave a written confession, “indicating the robberies he did.” R. 20, ll. 3 – 10.

At Appellant’s plea hearing, plea counsel gave a plea in mitigation. R. 22, l. 12 – 28, l. 2. Appellant had two biological children and two step children. R. 24, ll. 2 – 9. Appellant was the, “sole bread winner,” for his newest child, who was “eight days old” at the time of the plea hearing. R. 24, ll. 7 – 9; R. 25, ll. 3 – 12.

Appellant lost his job and his family was evicted, “they didn’t have money to eat with.” R. 25, ll. 13 – 14. They didn’t have anywhere to stay, so they began to sleep outside. They began to live out of their car. They would do anything they could at that time to keep warm and try to get any type of food that they could for their infant.” R. 25, ll. 13 – 19. Appellant was trying to provide for his family. R. 25, ll. 23 – 24; R. 26, ll. 3 – 5.

Appellant, “had no intentions of firing any shots.” R. 26, ll. 6 – 7. During the incidents, there was not, “any type of battery.” R. 26, ll. 8 – 9. Appellant’s trial was scheduled for a week after the plea hearing, but Appellant pled guilty, “to spare the State the expense of going through a trial, subpoenaing witnesses, [and] taking up the Court’s time.” R. 27, ll. 7 – 11. Appellant was remorseful and accountable. R. 27, ll. 22 – 24.

Judge McMahon accepted Appellant’s guilty plea to three counts of armed robbery and two counts of kidnapping as freely, voluntarily, knowingly, and intelligently made. R. 22, ll. 2 –

6. Judge McMahon sentenced Appellant to twenty years' imprisonment for kidnapping and thirty years' imprisonment for armed robbery, consecutive. R. 29, ll. 5 – 16.

During Appellant's reconsideration hearing, plea counsel reiterated the mitigating points he made at the plea hearing. R. 33, l. 6 – 35, l. 3. Plea counsel emphasized the fact that the state did not oppose the imposition of concurrent sentences. R. 36, ll. 4 – 10. Plea counsel requested that Judge McMahon consider altering Appellant's sentence to a term of a, "10 to 15 year" term of imprisonment. R. 36, ll. 21 – 24.

Appellant also spoke at the Reconsideration Hearing. R. 37, ll. 5 – 11. Appellant was "young at the time," and accepted responsibility for what he did. Id. Appellant requested that Judge McMahon sentence him to, "10 to 15 years' [imprisonment]." Id. Appellant explained to the court that he was not a violent criminal and that this was the first incident of violent crime that he ever committed. R. 40, ll. 9 – 21.

In an order filed June 26, 2017 Judge McMahon ordered that Appellant's sentences run concurrent with one another and that one of his armed robbery charges be lowered from thirty years' imprisonment to twenty years' imprisonment. R. 44.

Discussion

In criminal cases, the role of the appellate court is to determine whether the trial court abused its discretion. State v. Page, 406 S.C. 272, 282, 750 S.E.2d 623, 628 (Ct. App. 2013) An abuse of discretion occurs when the court has made a decision that is controlled by an error of law or unsupported by the evidence presented. State v. Pope, 410 S.C. 214, 221, 763 S.E.2d 814, 818 (Ct. App. 2014) (quoting State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012)). To warrant a reversal of the lower court, such an error of law or decision lacking evidentiary support must prejudice the defendant. State v. Commander, 396 S.C. 254, 721 S.E.2d 413 (2011).

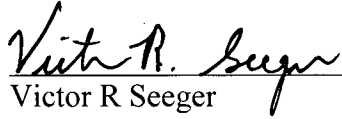
At sentencing, a judge has an obligation to consider information that is material to punishment of the defendant. Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984). Justice demands that a sentencing judge listen and give serious consideration to any information material to punishment. State v. Franklin, 267 S.C. 240, 245, 226 S.E.2d 896, 897 (1976). In addition, a judge must impose sentences with insight and understanding. Id.

Here, the judge erred by not taking into account Appellant's mitigating evidence and sentencing him to the requested term of ten to fifteen years' imprisonment. Defense counsel and Appellant both explained he committed the crimes to because he was trying to support his family. R. 34, ll. 17 – 19. Appellant took responsibility for his actions and was cooperative with law enforcement throughout the investigation. R. 35, ll. 4 – 10.

Although he reconsidered the de facto life-sentence initially imposed upon Appellant by changing Appellant's sentences from consecutive to concurrent, Judge McMahon nevertheless maintained the thirty-year sentence for two counts of armed robbery and the twenty-year sentence the counts of kidnapping. R. 44. Therefore, the lower court abused its discretion by sentencing Appellant to a period that was not warranted or supported by the evidence presented during the plea, thereby prejudicing Appellant.

CONCLUSION

By reason of the foregoing arguments, Appellant respectfully requests that his case be remanded to the lower court for a new reconsideration hearing and resentencing.

_____

Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of November, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED
NOV 26 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SEAN L. STROMAN,

APPELLANT

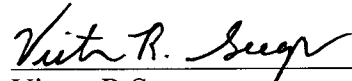
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sean Larmont Stroman states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on April 5, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for Sean Larmont Stroman.

Respectfully Submitted,



Victor R Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

This 26th day of November, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED
NOV 26 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SEAN L. STROMAN,

APPELLANT

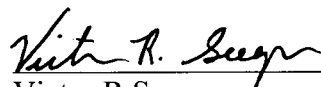
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments;
- (2) Plea Hearing Transcript (April 5, 2016);
- (3) Reconsideration Hearing Transcript (May 31, 2016);
- (4) Order Reconsidering Sentence.

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

November 26, 2018



Victor R Seeger
Appellate Defender

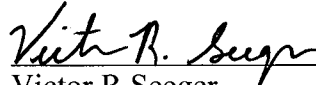
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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."

November 26, 2018.



Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
NOV 26 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED
NOV 26 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

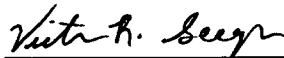
V.

SEAN L. STROMAN,

APPELLANT

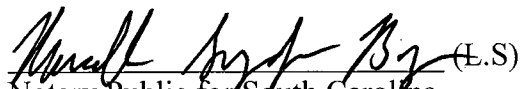
CERTIFICATE OF SERVICE

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 Sean Larmont Stroman, 367691, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 26th day of November, 2018.



Victor R Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of November, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028