

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of General Sessions

The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2016-002531

THE STATE,

Respondent,

v.

TRAVIS JACQUEESE MCFADDEN,

Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's guilty plea was not invalid where the State disclosed its sentencing recommendation to the trial judge, the trial judge elected not to follow that recommendation, and the trial judge subsequently exercised his discretion in sentencing Appellant to forty-five years' imprisonment.

STATEMENT OF THE CASE

Appellant was indicted during the July 2012 term of the Grand Jury for Sumter County for murder, three counts of possession of a weapon during the commission of a violent crime, two counts of attempted murder, armed robbery, criminal conspiracy, carjacking, accessory before the fact to a felony, and accessory after the fact to a felony (2012-GS-43-0781). On November 18, 2013, Appellant pled guilty to voluntary manslaughter, strong-arm robbery, and criminal conspiracy before the Honorable W. Jeffrey Young in Sumter, South Carolina. Appellant was sentenced by Judge Young to thirty years' imprisonment for voluntary manslaughter, fifteen years' imprisonment for strong-arm robbery to be served consecutively to the sentence for voluntary manslaughter, and five years' imprisonment for criminal conspiracy to be served concurrently with the other sentences. On November 21, 2013, Appellant filed a Motion to Reconsider Sentence. Judge Young subsequently held a hearing on the matter on December 16, 2016 in Sumter, South Carolina. Judge Young issued an order denying the Motion to Reconsider Sentence on February 8, 2017. Petitioner timely filed a notice of appeal.

Appellant's appellate counsel initially filed an Anders brief and a petition to be relieved as counsel. Thereafter, on July 19, 2018, the Court of Appeals denied the petition to be relieved as counsel and directed the parties to brief the following issue from the plea hearing along with any other issues counsel believed were present and of arguable merit: "Whether a guilty plea can still be voluntary if the State does not disclose a sentencing recommendation to the plea court."

STATEMENT OF FACTS

At Appellant's guilty plea hearing, the solicitor explained that Appellant's charges stemmed from a conspiracy by Appellant and five others to carjack someone in front of the Money Saver Convenience Store in Sumter. R. p. 8. Appellant and his co-conspirators ultimately decided to rob the convenience store and effected an armed robbery. R. p. 8. The convenience store clerk, Bahader El-Sokkary, drew his own weapon and began shooting back and forth with the robbers. R. p. 9. Aarons Smalls was shot in the back as he fled the convenience store. R. p. 8. Smalls believed Appellant was the individual who shot him. R. p. 9. Smalls is paralyzed as a result of his injuries. R. pp. 25, 35. Another victim, Jayshawn Thompson, was also shot during the robbery and ultimately died from his injuries. R. pp. 6, 10.

After the solicitor's recitation of the facts, Appellant stated he agreed with the facts as stated by the solicitor. R. p. 10. Appellant stated that he understood he could be sentenced up to thirty years in jail, for voluntary manslaughter, up to fifteen years in jail for strong-arm robbery, and up to five years in jail for conspiracy. R. pp. 10-11. Appellant also indicated he understood that, if the trial judge ran the sentences consecutively, he could be sentenced to a total of fifty years. R. p. 11. Appellant subsequently pled guilty to voluntary manslaughter, strong-arm robbery, and criminal conspiracy. R. pp. 14-15. After hearing statements from Defense Counsel and Appellant's family, the trial judge sentenced Appellant to an aggregate of forty-five years' imprisonment. R. p. 26.

Appellant later filed a Motion to Reconsider sentence on November 21, 2013, requesting that the court review the record and its sentence and reconsider the sentence imposed. R. p. 29. During the hearing on the motion, Defense Counsel asked the court to consider the fact that Appellant and his co-conspirators were all young men. R. p. 38. Defense Counsel also argued:

I'm just asking that if the Court would consider reconsidering the sentence in light of the fact that at the time the Solicitor did recommend the 20 years concurrent that [Appellant] did not have an extensive record. . . . I would just ask the court to possibly consider - - even if you're not willing to consider reduction of the sentence - - to possibly consider changing it to a concurrent sentence, Your Honor.

R. pp. 38-39. During the hearing, the solicitor noted, "the State's recommendation and with going through the victims and everybody involved was for a 20-year sentence, as I have said. Now, as you know, and the reason I handed up the Explanation of Rights is because you're certainly not bound by any recommendation that I made." R. p. 36. The trial judge replied, "No. **And I specifically said in this case that I was not bound.**" R. p. 36. The solicitor agreed, stating, "yes." R. p. 36. The trial judge added, "I made sure everybody knew that." R. p. 36. The trial judge noted that Appellant and one of his co-defendants, Tobias McFadden, were given lengthy sentences because they were the shooters in the crime and one person died and another was permanently disabled. R. p. 39. The trial judge subsequently ruled:

And I think the Solicitor's Office by letting him plead reduced his exposure from what I would have had no reservation giving him a life sentence without the possibility of parole. I intended for him to get 45 years, and that is going to be my sentence. Now, I appreciate you bringing this forward, but what they did that afternoon was so despicable. I mean, it's one thing to have somebody die. That's terrible, but you made another man live with being a paraplegic for the rest of his life, so I intended for him to serve every day of the 45 years I sentenced him to. So your motion is respectfully denied. Thank you.

R. pp. 39-40.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). “On appeal, the trial court’s ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs where the trial court’s conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010). A trial judge has broad discretion when sentencing within statutory limits. In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

Appellant's guilty plea was not invalid where the State disclosed its sentencing recommendation to the trial judge, the trial judge elected not to follow that recommendation, and the trial judge subsequently exercised his discretion in sentencing Appellant to forty-five years' imprisonment.

Appellant asserts his guilty plea was not voluntary because the State did not disclose a sentencing recommendation to the plea court. Appellant specifically argues that he expected a twenty-year sentence and not the forty-five year sentence that he ultimately received. Appellant's argument lacks merit. Initially, Appellant's argument is not preserved for appellate review where Appellant failed to argue that his guilty plea was involuntary as a result of the trial judge not following the State's sentencing recommendation. Error preservation concerns aside, the record reveals that the trial judge was in fact well aware of the State's recommended sentence at the plea hearing and ultimately exercised his discretion to not follow that recommendation and sentence Appellant to a greater term of years because of the egregiousness of his crimes. Critically, Appellant indicated during the plea hearing that he was aware that the trial judge could sentence him to up to fifty years' imprisonment. The trial judge thus properly exercised his discretion with full knowledge of the facts of the case when he sentenced Appellant to imprisonment for a term of forty-five years.

As an initial matter, Appellant's argument is not preserved for appellate review. In his Motion to Reconsider Sentence and during the subsequent hearing, Appellant simply asked the Court to reconsider his sentence in light of his age and the fact that some of his co-defendants received lighter sentences. At no point during the hearing did Appellant allege that the State's recommended sentence was not disclosed to the trial judge during the guilty plea, nor did Appellant contend that his guilty plea was not knowing and involuntary as a result. Appellant's argument is thus not preserved for review. See State v. McKinney, 278 S.C. 107, 108, 292

S.E.2d 598, 599 (1982) (finding that the failure of the defendant to argue before the trial judge that his guilty plea was not knowing and intelligent precluded consideration of the issue on appeal).

Error preservation concerns aside, Appellant's argument lacks merit. In order for a defendant to knowingly and voluntarily plead guilty, the record must establish the defendant had a full understanding of the consequences of his plea. Boykin v. Alabama, 395 U.S. 238 (1969). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Dover v. State, 304 S.C. 433, 434-45, 505 S.E.2d 391, 392 (1991). "The State's sentence recommendation is not binding on the trial judge." State v. Green, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999). When the State fulfills its agreement to recommend a specific sentence, the fact that the trial judge does not accept the recommendation does not affect the validity of the plea. State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982).

In the current case, the record reflects that the trial judge was presented with the State's sentencing recommendation. While there is no specific mention in the transcript of Appellant's guilty plea of the State's sentencing recommendation, the State's recommendation was mentioned during the hearing on Appellant's Motion to Reconsider Sentence. During the hearing, the trial judge indicated that he was aware of the State's recommended sentence, noted he was not bound by the recommended sentence and he told the parties as much before the plea, and ultimately sentenced Appellant to a more significant term of imprisonment because of the heinous nature of his crimes. Since the trial judge specifically stated he was aware of the State's recommended sentence at the time of the guilty plea, it is clear that the recommendation was presented to the trial judge either in chambers or during a bench conference. Importantly,

Appellant indicated during the plea hearing that he was aware the trial judge could sentence him to up to fifty years' imprisonment, and still decided to plead guilty to the crimes. Appellant cannot claim that he was unaware he could receive a sentence beyond the State's recommendation where he specifically acknowledged he was aware he could be sentenced beyond that recommendation during the plea hearing. The trial judge was aware of the State's recommended sentence of twenty years; however, the trial judge was also aware of the fact that Appellant was one of the shooters in a horrific crime that killed one man and permanently paralyzed another. The trial judge thus properly exercised his discretion in sentencing Appellant within the applicable sentencing range to an aggregate term of imprisonment of forty-five years. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

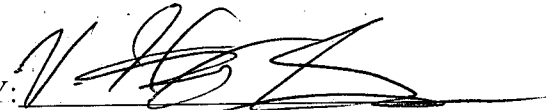
Respectfully submitted,

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