

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge
Appellate Case No. 2018-00541

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SC Court of Appeals

THE STATE,

Respondent,

vs.

BOBBY LEON SMITH,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Just as defense counsel argued during the sentencing proceedings, the trial judge erred by imposing a five-year sentence for possession of a weapon during the commission of a violent crime in Appellant's case because Appellant was concurrently sentenced to life without parole for the violent crime of armed robbery, which rendered the weapon possession charge's five-year sentence inapplicable.

STATEMENT OF THE CASE

In February of 2015, Appellant Bobby Leon Smith was arrested after the body of a deceased woman was found inside a car parked outside a home he lived in along with his mother. In August of 2016, the Greenville County Grand Jury indicted Appellant for murder, armed robbery, and possession of a weapon during the commission of a violent crime. Prior to trial, the solicitor served timely notice on Appellant indicating the State would seek a sentence of life without parole upon conviction based on Appellant's prior convictions for "most serious" offenses.¹ On March 12, 2018, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable Robin B. Stilwell, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Appellant of accessory after the fact to murder, armed robbery, and possession of a weapon during the commission of a violent crime.² Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of life without parole for armed robbery, fifteen years for accessory after the fact to murder, and five years for possession of a weapon during the commission of a violent crime.³ Appellant then timely filed a notice of appeal.

¹ Specifically, Appellant had previously been convicted of the "most serious" offenses of armed robbery and assault and battery with intent to kill. (Tr. p. 675).

² At defense counsel's request, the trial judge instructed the jury on accessory after the fact to murder as a purported lesser-included offense of murder over the solicitor's objection. (Tr. pp. 606-608).

³ Notably, Appellant's brother, Jahru Harold Smith, was also arrested in connection to the killing, was indicted for the same offenses as Appellant, was jointly tried with Appellant, and was convicted by the jury of murder, armed robbery, and possession of a weapon during the commission of a violent crime. (Tr. pp. 34-35; p. 669).

STATEMENT OF FACTS

After the jury convicted Appellant of accessory after the fact to murder, armed robbery, and possession of a weapon during the commission of a violent crime, the trial judge imposed concurrent terms of imprisonment of life without parole for armed robbery, fifteen years for accessory after the fact to murder, and five years for possession of a weapon during the commission of a violent crime. (Tr. pp. 669-670; pp. 678-679). Immediately after the sentences were imposed, defense counsel objected to the five-year sentence for possession of a weapon during the commission of a violent crime, arguing it was not applicable since Appellant had been sentenced to life without parole for armed robbery. (Tr. p. 679). In response, the trial judge indicated he believed the relevant statutory provision meant the applicable five-year sentence for possession of a weapon during the commission of a violent crime was permissible but not compulsory if the offender was sentenced to either life without parole or death for the violent crime. (Tr. p. 679). Based on that interpretation, the trial judge concluded he was not precluded from imposing the five-year sentence in Appellant's case. (Tr. p. 680). However, the trial judge noted he would permit briefing on the matter within the relevant time period for post-trial motions if defense counsel wished to do so. (Tr. p. 680). Ultimately though, defense counsel declined to do so after indicating he believed it "would be a waste of everybody's time" under the circumstances. (Tr. p. 680).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016); see generally State v. Kimbrough, 212 S.C. 348, 353, 46 S.E.2d 273, 275 (1948) (“The power of an appellate court to review a sentence for the purpose of determining whether it offends the constitutional provision against cruel and unusual punishment may be sustained under the grant of power to correct errors of law in the judgment appealed from.”). As a result, when reviewing a sentencing issue on appeal, an appellate court is limited to determining whether the trial judge abused his discretion, which occurs when the trial judge’s decision is unsupported by the evidence or controlled by an error of law. Palmer, 415 S.C. at 511, 783 S.E.2d at 827; see In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (“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.”).

ARGUMENT

Just as defense counsel argued during the sentencing proceedings, the trial judge erred by imposing a five-year sentence for possession of a weapon during the commission of a violent crime in Appellant's case because Appellant was concurrently sentenced to life without parole for the violent crime of armed robbery, which rendered the weapon possession charge's five-year sentence inapplicable.

Appellant contends the trial judge erred by imposing a five-year sentence for possession of a weapon during the commission of a violent crime. In support of that contention, Appellant maintains the five-year sentence was inapplicable in light of the fact he was concurrently sentenced to life without parole for armed robbery. Appellant's contention is correct. Based on the plain language of Section 16-23-490 of the South Carolina Code of Laws, the five-year sentence for possession of a weapon during the commission of a violent crime is inapplicable if the defendant is sentenced to life without parole or death for the violent crime. Therefore, since Appellant was sentenced to life without parole for armed robbery, he could not properly be sentenced to five years for possessing a weapon during the commission of that violent crime, and the trial judge erred by imposing such a sentence over defense counsel's objection. Appellant's five-year sentence for possession of a weapon during the commission of a violent crime should be vacated.

In criminal cases, a trial judge has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974); see State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) ("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."). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual

circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). “Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is *within the limits prescribed by statute.*” State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997) (emphasis added).

Pursuant to Section 16-23-490(A), a defendant who is convicted of possession of a weapon during the commission of a violent crime must be imprisoned for five years in addition to the penalty provided for the violent crime. See S.C. Code Ann. § 16-23-490(A) (“If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime.”). However, if the defendant is sentenced to life without parole or death for the violent crime, the five-year sentence “does not apply[.]” Id.; see also State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (“[A] court must abide by the plain meaning of the words of a statute.”).

In the case sub judice, the trial judge sentenced Appellant to life without parole for the violent crime of armed robbery. See S.C. Code Ann. § 16-1-60 (classifying armed robbery as a violent crime while not classifying accessory after the fact to murder as a violent crime). Because Appellant was concurrently sentenced to life without parole for armed robbery, the five-year sentence for possession of weapon during the commission of that violent crime was not applicable in his case. See S.C. Code Ann. § 16-23-490(a) (“This five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.”). Accordingly, just as defense counsel contended during the sentencing proceedings, the trial judge erred by imposing the five-year sentence in Appellant’s case. See State v. Owens,

346 S.C. 637, 666-667, 552 S.E.2d 745, 760 (2001) (“Section 16–23–490(A) expressly provides the mandatory five year sentence for possession of a firearm during the commission of a violent crime shall not be imposed when the defendant is sentenced to death or to life without parole for the violent crime. Appellant was sentenced to death. Accordingly, we vacate the five year sentence for possession of a firearm during the commission of a violent crime.”), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Appellant’s five-year sentence for possession of a weapon during the commission of a violent crime should be vacated. See State v. Owens, 378 S.C. 636, 637, n. 1, 664 S.E.2d 80, 80 (2008) (noting “no firearm sentence may be imposed where the defendant receives a death sentence or life sentence without parole for the violent crime”); cf. Palmer, 415 S.C. at 525, 783 S.E.2d at 835 (vacating Palmer’s five-year sentence for possession of a weapon during the commission of a violent crime where Palmer was sentenced to life without parole for murder and “Palmer objected to the [five-year] sentence”)

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the five-year sentence for possession of a weapon during the commission of a violent crime should be vacated.

Respectfully submitted,

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PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Lara M. Caudy, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 15th day of March, 2019.



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RE: State v. Bobby Leon Smith – Appellate Case No. 2018-000541

Dear Ms. Caudy:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: ~~Honorable Jenny A. Kutchings~~ (original enclosed)
Victim Advocacy Division