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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County

Robert E. Hood, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FRANK TERRANCE SINGLETON, III,

APPELLANT

APPELLATE CASE NO. 2014-000598

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in imposing sentences for both murder and kidnapping when the kidnapping statute forbids sentencing on both offences?

STATEMENT OF THE CASE

On March 10, 2014, appellant appeared before the Honorable Robert E. Hood in Kershaw County and pled guilty to murder, armed robbery, burglary in the first degree, and two counts of kidnapping. On March 12, 2014, appellant appeared for sentencing. Appellant was sentenced to fifty (50) years for murder and to thirty (30) years on each of the other charges. All sentences were concurrent. Jason Kirincich, Esquire, and Douglas Strickler, Esquire, represented appellant. Joanna McDuffie, Esquire, Luck Campbell, Esquire, and Daniel Coble, Esquire, were the assistant solicitors.

This appeal follows.

ARGUMENT

The court erred in imposing sentences for both murder and kidnapping when the kidnapping statute forbids sentencing on both offences

Appellant was charged for murder in the shooting death of Michael Hayes. He was charged with armed robbery in robbing Michael Hayes while armed with a pistol. The charge of burglary in the first degree was because appellant entered the victim's home with a pistol to rob him. The victim's girlfriend and their five-day old baby were also in the house. They were forced into the girlfriend's car and driven to a place where appellant and the co-defendants were picked up (R. p. 30, line 20 – p. 32, line 12).

At sentencing on March 12, 2014, the following transpired:

MR. STRCKLER: I would also just bring to the Court's attention, I submit that there should be no sentence imposed on the counts of kidnapping in this matter just as a matter of law.

THE COURT: Now, say that last line again.

MR. STRICKLER. The Court should impose no sentence as to the two counts of kidnapping. The plea is entered. No sentence should be imposed.

In that regard, I just refer to 16-3-910, the kidnapping statute which says that the penalty must be imprisonment for a period not to exceed 30 years, unless the sentence for murder as provided in 16-3-20, he is being sentenced today for murder as provided in 16-3-20. There is a huge body of case law to the effect that no sentence is imposed for kidnapping under those circumstances.

I'd cite Owens v State, 503 S.E.2d, 6--- 462, a '98 case and just read it briefly, Your Honor "The Court has summarily vacated life sentences for kidnapping when the defendant received a concurrent sentence under the murder statute." It then goes on to cite about a dozen cases in that regard. This took place – this case took place after the sentence was changed from a life sentence to 30 years maximum.

The Court also notes, "Effective June 5th, '90/'91, the penalty for kidnapping was reduced to a maximum period of 30 years imprisonment. The prohibition against concurrent sentences for murder and kidnapping was retained."

So to my knowledge, there is no case law which authorizes this court to impose a sentence for kidnapping when it is imposed – it is concurrent to a sentence imposed for murder.

THE COURT: Well, wouldn't that be if the victims were the same?

MR. STRICKER: Well ...

THE COURT: I mean, if the kidnapping charge was on Mr. Hayes –

MR. STRICKLER: I understand, your Honor.

THE COURT: – that's one thing, but the kidnapping charge is on Ms. Shepherd and the child. So I guess – now I'm not reading the statute as you're sitting here quoting it to me – and I'm not saying that you're quoting it wrong but –

MR. STRICKLER: Yes, sir. That's the very thought I was going over in my mind as I drove over here this morning. I'm unaware of any

cases that directly address that I could be wrong. I'm not aware of any cases that address it.

THE COURT: Well, under statutory construction, the kidnapping offenses would both be separate offenses, separate and distinct from the murder charge upon Mr Hayes because they involve different victims. Therefore, they involve different elements. Therefore, they are – actually, the kidnappings in and of themselves are separate and distinct from each other because of the different victims within

(March 12, 2014, R. p. 88, line 6 – p. 90, line 12).

The court was wrong in its interpretation of the kidnapping statute and in sentencing appellant on the kidnapping charges S.C. Code § 16-3-910 plainly states that a person convicted of kidnapping “must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.” Appellant was sentenced for murder as provided in Section 16-3-20, therefore, he could not be sentenced for kidnapping.

In State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (Ct. App. 2002), the court wrote:

It is well established that in interpreting a statute, the court's primary function is to ascertain the intention of the legislature. When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning. Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.

State v Blackmon, 304 S.C 270, 273, 403 S.E 2d 660, 662 (1991) (citations omitted); see also *Kerr v State*, 345 S.C 183, 188, 547 S.E.2d 494, 496-97 (2001); *State v Johnson*, 347 S.C. 67, 70, 552 S.E.2d 339, 340 (Ct.App. 2001); accord *Kennedy v S C Ret Sys*, 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001), *Paschal v State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). “ ‘All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably

discovered in the language used, and that language must be construed in the light of the intended purpose of the statute ' " *State v Baucom*, 340 S.C 339, 342, 531 S E.2d 922, 923 (2000) (quoting *Kiriakides v United Artists Communications, Inc* , 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)).

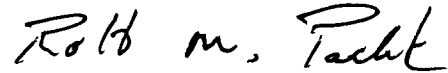
If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search of it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.

The kidnapping statute in this case is clear and unambiguous. The lower court was forcing a statutory construction to limit the statute's operation contrary to the plain and ordinary meaning of the words. It is obvious the legislature did not intend for a defendant to be sentenced for kidnapping when he is sentenced for murder. The statute is defendant oriented. There is nothing in the statute's language that limits its operation depending who the victim of the kidnapping was. That is simply not in the statute's language There is nothing in the kidnapping statute's case law that suggests otherwise. Owens v. State, 331 S.C. 582, 503 S.E.2d 462 (1998).

CONCLUSION

Appellant's sentences on the kidnapping charges should be vacated.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

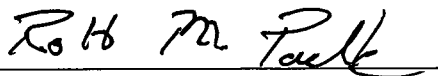
ATTORNEY FOR APPELLANT

This 6th day of November, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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 6, 2014



Robert M. Pachak
Appellate Defender

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