

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

V.

RANDALL SCOTT CLARK,

RESPONDENT,

APPELLANT

APPELLATE CASE NO. 2018-000829

ANDERS BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the court abused its discretion by ordering appellant to register as a sex offender where the alleged victim repeatedly told a forensic interviewer that appellant did not molest her, since the state failed to show the "good cause" necessary to mandate that appellant register as a sex offender pursuant to S.C. Code § 23-3-430(D)?

STATEMENT OF THE CASE

Appellant appeared on April 16, 2018, in the Oconee County Court of General Sessions before the Honorable R. Scott Sprouse. Suzanne Earle represented appellant. Lindsey Simmons was the assistant solicitor. R. 1:

Appellant waived presentment to the Grand Jury and entered a guilty plea to the charge of assault and battery in the second degree. R. 13-15. There was no sentencing recommendation from the state. Assistant solicitor Simmons told the judge the state would be moving that appellant be placed on the sex offender registry. The defense vigorously opposed this motion. The alleged victim was not present, and no family members of the alleged victim were in the courtroom at the time of the guilty plea, and sex offender registry arguments. R. 2, l. 4 – 3, l. 9.

At the conclusion of the guilty plea proceeding, Judge Sprouse sentenced appellant to three years' imprisonment suspended upon the service of one year's imprisonment and five years' probation. Judge Sprouse also ordered that appellant register as a sex offender. R. 10, ll. 10-16.

This appeal follows.

STANDARD OF REVIEW

The issue of interpretation of a statute is a question of law for the court. University of Southern California v. Moran, 365 S.C. 270, 275, 617 S.E.2d 135, 137 (Ct. App. 2005); see also Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995).

ARGUMENT

The court abused its discretion by ordering appellant to register as a sex offender where the alleged victim repeatedly told a forensic interviewer that appellant did not molest her, since the state failed to show the “good cause” necessary to mandate that appellant register as a sex offender pursuant to S.C. Code § 23-3-430(D).

Relevant Facts

Assistant solicitor Simmons told the judge that “for the purpose of the statute [S.C. Code §16-3-600 (D)(1)(b)], this would be an inappropriate touching of the private parts of a female in order to satisfy assault and battery second degree. Your Honor, that did occur in Oconee County.”¹ R. 4, ll. 15-19.

The solicitor stated that the alleged victim’s father told a sheriff’s deputy he thought his daughter was the victim of a sexual assault. Appellant was the boyfriend of the alleged victim’s mother. Appellant was twenty-five years old and the alleged victim was twelve. R. 4, l. 20 – 5, l. 4.

Simmons said the alleged victim claimed she had “sexual activity with Mr. Clark on three separate occasions between January 1st, 2016, and July 1st, 2016, here in Oconee County.” R. 5, ll. 5-8. The third incident allegedly “involved both intercourse and discussion [that] she might be pregnant.” R. 5, ll. 5-14.

The solicitor also maintained that appellant admitted fondling the alleged victim, but he denied having sex with her or “remembering that he had sex with her.” R. 5, l. 15 – 6, l. 1.

¹ The statute refers to the illegal action as the “nonconsensual touching” of “the private parts of a person, either under or above clothing.” S.C. Code § 16-3-600 (D)(1)(b).

Conversely, defense counsel Earle told the judge that the alleged victim repeatedly denied having any "inappropriate" relationship with appellant. "[N]one of the allegations were true." R. 7, ll. 13-17.

Further, appellant had been honorably discharged from the armed forces, he was pursuing a career in welding, and having to register as a sex offender would likely ruin his career. R. 8, ll. 4-21. Earle concluded, "I don't think he is an appropriate candidate for the sex offender registry." R. 8, l. 25 - 9, l. 9.

Earle made one request: If the judge was seriously thinking about placing appellant on the sex offender registry under these strange circumstances that he would allow appellant to be evaluated by Forensic psychiatrist Dr. Schwartz-Watts Maddox before issuing such an order. R. 8, l. 25 - 9, l. 9.

Earle urged that appellant be placed on probation and that he not be ordered to register as a sex offender. R. 9, l. 12 - 10, l. 9. The judge then sentenced appellant to three years' imprisonment suspended upon the service of one year, five years of probation, and he ordered appellant to register as a sex offender. R. 10, ll. 10-16.

Discussion

South Carolina Code § 23-3-430(D) states that a judge may order as a condition of sentencing that a person be included in the sex offender registry if good cause is shown by the solicitor for any offense. In the present case, the judge was presented with directly conflicting evidence. The solicitor claimed that appellant confessed to the police that he molested the girl. Conversely, defense counsel told the judge that the alleged victim repeatedly told the forensic interviewer that appellant had not done anything improper with her. Directly conflicting evidence should not constitute "good cause" under the statute in the absence of the judge making

a credibility determination on which of the two hopelessly conflicting pieces of evidence he found credible.

“A statute should be so construed that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous. . . .” State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) quoting In re: Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995).

In State v. Fuller, 425 S.C. 468, 822 S.E.2d 910 (2019), this Court held that the trial judge did not abuse his discretion in ordering Fuller to register as a sex offender after he had been convicted of kidnapping. Any person in South Carolina convicted of kidnapping of a person eighteen years or older must register as a sex offender “except when the court makes a finding on the record that the offense did *not include* a criminal sexual offense or attempted criminal sexual offense.” See, S.C. Code § 23-3-430. (emphasis added).

Here, appellant was not required to register as a sex offender after his guilty plea to assault and battery in the second degree unless the court found “good cause” was proven by the solicitor to order appellant to register as a sex offender. See, S.C. Code § 23-3-430(D).

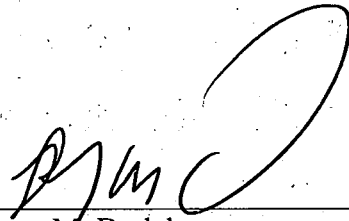
In Brooks v. State, 325 S.C. 269, 481 S.E.2d 712 (1997), the Supreme Court discussed a defendant being ordered to register as a juvenile sex offender following his admission of delinquency to two amended charges of assault and battery of a high and aggravated nature even though charges against him were dismissed for lewd act with a minor, assault with intent to commit sexual battery, and sexual battery. The Supreme Court in Brooks v. State noted that the judge must be permitted to consider any and all information that might reasonably bear on a proper sentence for the particular defendant. A defendant seeking to overturn that sentence must show an abuse of discretion based on an error of law or factual conclusion that is without evidentiary support. See, In re: M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

Here, again, the judge heard two diametrically conflicting pieces of “evidence” regarding appellant’s guilt of nonconsensual illegal touching of a minor female. Defense counsel asked the judge under these highly unusual circumstances that if he was considering placing appellant on the sex offender registry that he first allow appellant to be evaluated by Dr. Donna Schwartz-Watts Maddox. The judge disregarded this reasonable request for an evaluation before ordering a life time of sex offender registry, and he arbitrarily ordered appellant to be placed on the sex offender registry even though the alleged victim denied repeatedly to the forensic interviewer that appellant had molested her.

Respectfully, the record before this Court does not show the factual predicate necessary for a legal conclusion that there was “good cause” to order appellant to register as a sex offender. See, In re: M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). The order requiring appellant to register as a sex offender should therefore be vacated.

CONCLUSION

By reason of the foregoing arguments, the judge's order that appellant register as a sex offender should be vacated.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of April, 2019.

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Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

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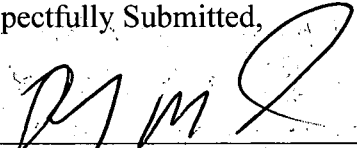
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randall Scott Clark states:

1. He is Chief 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. Scott Sprouse, which was held on April 16, 2018, 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 Randall Scott Clark.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 16th day of April, 2019.

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Honorable R. Scott Sprouse, Circuit Court Judge

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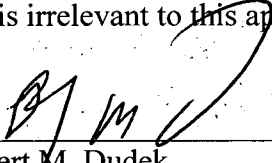
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Indictment
- (2) Entire guilty plea transcript.
- (3) Sentence sheet

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

April 16, 2019



Robert M. Dudek
Chief Appellate Defender

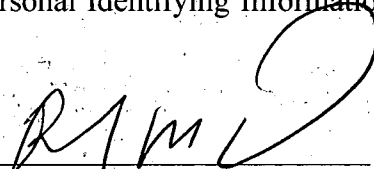
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(803) 734-1330

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."

April 16, 2019.



Robert M. Dudek
Chief Appellate Defender

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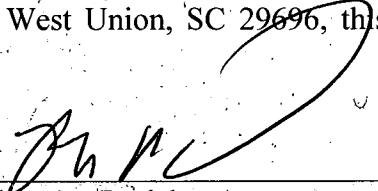
V.

RANDALL SCOTT CLARK,

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 Randall Scott Clark, at 165 Burnt Tanyard Rd., West Union, SC 29696, this 16th day of April, 2019.


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of April, 2019.

Courtney Powers (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.