

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2018-002092

The State of South Carolina,

v.

Dorian Rosean Hopkins,

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APR 24 2019

SC Court of Appeals

Respondent,

Appellant,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE COURT ABUSE ITS DISCRETION IN IGNORING FACTORS LAID OUT IN THE EXPERT'S REPORT AND MAINTAINING THE DEFENDANT BE REQUIRED TO REMAIN ON THE SEX OFFENDER REGISTRY?

STATEMENT OF THE CASE

On March 12, 2018 Appellant plead guilty to Indecent Exposure before the Honorable Jocelyn Newman. The Appellant, Dorian Hopkins was represented by Attorney Jason Turnblad, and the state was represented by Solicitor Kate Usry. Hopkins' plea was accepted and he was sentenced to three (3) years provided upon the service of time served, with eighteen (18) months of probation and sex offender registry required.

There was no evaluation by a licensed medical professional prior to the guilty plea to determine whether or not, the Appellant had an exhibitionist disorder, or any identifiable sexual disorder. The lack of evaluation did not allow for a complete consideration prior to requiring the sex offender registry. As such, a Motion to Reconsider Sentence, was filed by James R. Snell Jr., which was heard on November 13, 2018 by the Honorable Jocelyn Newman. The motion to reconsider was denied. The Appellant's Motion to Reconsider Attorney, then filed a notice of appeal.

STANDARD OF REVIEW

“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 when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

ARGUMENT

- I. THE COURT ABUSED ITS DISCRETION IN IGNORING FACTORS LAID OUT IN THE EXPERT'S REPORT AND MAINTAINING THE DEFENDANT BE REQUIRED TO REMAIN ON THE SEX OFFENDER REGISTRY.

At the Motion to Reconsider hearing, the attorney for the defendant provided the court with a copy of a psychological report pertaining to the presence, or lack thereof, of a discernable sexual disorder. There was no evaluation done prior to the guilty plea, but an evaluation was conducted in between the guilty plea and the motion to reconsider. Doctor Selman Watson concluded that the Appellant has mental health disorders, such as depression, antisocial disorder, but he did not meet the diagnostic criteria for an exhibitionist disorder.

During the Motion to Reconsider hearing, the court made a statement that she does not have any questions for Doctor Watson, the expert in the case, because "I take no issue with the report. It seems thorough and complete." The court then makes mention that it has a consideration to inquire upon Dr. Watson about his expert opinion about the risk of reoffending, but she then neglects to inquire with Dr. Watson.

The California Supreme Court ruled In re Reed, on Habeas Corpus, that the mandatory requirement of the Sex Offender Registry for all California Penal Code 647(a) misdemeanor violations was unconstitutional. Included in the California Penal Code 647(a) section titled Lewd Conduct in Public includes masturbating in public, which is analogous to the charge that the Appellant was accused of doing, and plead guilty to doing.

Indecent Exposure as classified in SC Code § 16-15-130, is a class A misdemeanor, which is a relatively minor criminal offense, which is backed by the South Carolina State Legislature's

decision to classify the charge as a misdemeanor as opposed to a felony. The facts in the case above, corroborate the belief that the offense is relatively minor in nature. Solicitor Kate Usry mentioned that while there was a woman present in the cosmetics section of the Wal-Mart:

“there is no evidence that the woman he was looking at in the cosmetics section noticed him or saw him touching himself . . . There’s no evidence she ever saw, and she never made a report of seeing anything. She actually left the store and never noticed -- or appeared to notice, never reported it to authorities.”

In re King, the court decided that the registry was improper for a misdemeanor indecent exposure relying on the precedent of In re Lynch. The court In re Lynch ruled that registration as a sex offender for a misdemeanor was improper because “the continuing penalty of sex offender registration is all out of proportion to the crime of which petitioner was convicted.”

In re King, the court relied upon the precedent In re Reed, when determining if “his relatively simple sexual indiscretion place him in the ranks of those who commit more heinous registerable sex offenses.” (In re Reed, supra, 33 Cal.3d at p. 924, 191 Cal.Rptr. 658, 663 P.2d 216.) The Court in, In re Reed, considers some of the more serious offenses that can make the offender register on the sex offender registry, but does not require registry such as kidnapping, or trafficking in persons which requires the State demonstrate the offense is sexual in nature. There is no question kidnapping and trafficking in persons are both more serious offenses than indecent exposure, and this can be demonstrated by the South Carolina State Legislature’s decision to classify those offenses as felonies.

During the motion to reconsider, appellant’s counsel argued that the sex offender registry was not the proper punishment, stating “it really makes such a second-class citizen.” The Court In

re Reed concluded that similarly regarding sex offender classification being attached to probation, stating:

“we must take the seemingly illogical step of declaring a condition of probation invalid because to impose it for a lifetime is cruel or unusual under article 1, section 17 of the California Constitution, even though conditions of probation do not last a lifetime and expire, of course, with the termination of probation.”

Simply stated, it would be improper to fashion a punishment that exceeds the length of probation when no additional jail time was deemed necessary. While indecent exposure only carries up to three (3) years in prison, the sex offender registry is a life sentence.

The issues surrounding the sex offender registry were catamount enough that the United States Department Of Justice (USDOJ) found it to be important to establish the Sex Offender Registration and Notification Act (SORNA). The purpose of this act was to strengthen the nationwide network of sex offender registrations. It is a logic step to take to argue that the offenses requiring the sex offender registry should be uniform nationwide since the USDOJ found the registry to be crucial enough for an act. And as such, indecent exposure, which does not require the sex offender registry in every state should not require the registry in South Carolina.

Based on the foregoing, Appellant believes the trial court erred and should have granted defense counsel’s motion to reconsider, removing the sex offender registry requirement. The expert’s report, which was in the Court’s own words, “thorough and complete” was enough for the Court to reconsider the sex offender registry because the defendant did not have any recognizable sexual disorder. It was immediately apparent that in this case, that the Appellant could benefit from mental health treatment. The defendant and the expert psychologist stated such, and even the Court made that same determination.

CONCLUSION

Based on the arguments presented herein, the Appellant asks this Court to remand the case and remove the Sex Offender Registry requirement, and for all other relief which is just and proper.

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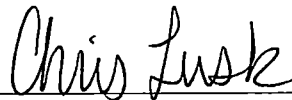
Appellant.

PROOF OF SERVICE

I hereby certify that I have served a copy of the *Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record on Appeal* on the Respondent on this case, as well as the Solicitor from the original General Sessions Plea and Motion hearing, by deposition a copy of the same in the United State Mail, Postage prepaid, on April 24, 2019, addressed to the following:

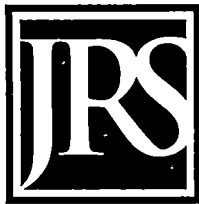
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SC Court of Appeals

Re: The State of South Carolina vs. Dorian Rosean Hopkins
Appellate Case No.: 2018-002092

Dear Sir or Madam:

Please find enclosed the Appellant's Original Copy of the Initial Brief, Designation of Matter to be Included in the Appeal, and Proof of Service on all parties. Should you have any questions concerning this information, please contact our office.

Sincerely,

Christopher B. Lusk, Esq.
Attorney for the Appellant

cc: Alan McCrory Wilson, Esq.
John Benjamin Aplin, Esq.
Kate Whetstone Usry, Esq.

Enclosure