

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Alex Kinlaw, Circuit Court Judge.

THE STATE,

RESPONDENT,

V.

JONATHON CAMPBELL,

APPELLANT

APPELLATE CASE NO 2018-000776

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court err by changing his ruling, based on bias, during Appellant's guilty plea from not requiring Appellant Campbell to register as a sex offender following his guilty plea to the lesser charge of assault and battery first degree (reduced from CSC third degree) to requiring his registration as a sex offender only after the victim, who had been a close friend of Appellant, advocated hysterically for the sex offender registry for Appellant who had no prior criminal record except a DUS, and who expressed extreme remorse for the incident and who was willing to participate in sex offender counseling?

STATEMENT OF THE CASE

On May 17, 2017, the Richland County Grand Jury indicted Jonathon Campbell on the charge of criminal sexual conduct third degree (CSC). On April 16, 2018, Campbell appeared before the Honorable Alex Kinlaw, Jr. and entered a guilty plea to the lesser charge of assault and battery first degree. Tr. 3, ll. 1 – Tr. 4, ll. 4. Campbell was represented by Alicia Goode, and the state was represented by April Sampson. Tr. 1. The judge sentenced Campbell to four years incarceration suspended to two years and two years probation with credit for 458 days. The judge also ordered that Campbell be placed on the sex offender registry. Tr. 20, ll. 13 – Tr. 24, ll. 11.

Defense counsel filed a motion for reconsideration regarding the sex offender registry placement. April 19, 2018 Tr. 3, ll. 1 -25. A hearing was held on April 19, 2018 before Judge Kinlaw. Appellant Campbell was again represented by Alicia Goode, and the state was represented by April Sampson. April 19, 2018 Tr. 1. Following arguments by both defense counsel and the state, the judge denied defense counsel's motion for reconsideration and required that Appellant Campbell remain on the sex offender registry. April 19, 2018 Tr. 12, ll. 1 – 7.

Defense counsel filed a notice of appeal which included a statement of the basis for the appeal from a guilty plea pursuant to Rule 203(d)(1)(B). Counsel explained in the statement that the basis was that the plea judge first ruled that Campbell would not be required to register as a sex offender. Then the plea judge changed his ruling following additional comments by the victim. This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Nesbitt, 411 S.C. 194, 199, 768 S.E.2d 67, 70 (2015) (quoting State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)).

“An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Id. (citing State v. Hughes, 346 S.C. 339, 552 S.E.2d 35 (Ct. App. 2001)). “The failure to exercise discretion, however, is itself an abuse of discretion.” State v. Mansfield, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) (citing Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997)

ARGUMENT

The circuit court erred by changing his ruling, based on bias, during Appellant's guilty plea from not requiring Appellant Campbell to register as a sex offender following his guilty plea to the lesser charge of assault and battery first degree (reduced from CSC third degree) to requiring his registration as a sex offender only after the victim, who had been a close friend of Appellant, advocated hysterically for the sex offender registry for Appellant who had no prior criminal record except a DUS, and who expressed extreme remorse for the incident and who was willing to participate in sex offender counseling.

Relevant Facts

Meeca B. and Appellant Campbell had been friends for a couple of years. They were not dating but just spent time hanging out together. On October 22, 2015, the two of them were together just hanging out. At some point, they decided to go to Appellant's house to watch television. Tr. 8, ll. 1 – 12.

As the time passed and it was getting late, the two of them decided that Meeca would say overnight. She slept in one bedroom, and Appellant slept in another bedroom. Tr. 8, ll. 11 – 15. The next morning, Meeca awoke to find Appellant Campbell having sex with her. She pushed him away, dressed and went to the Circle K nearby and called law enforcement. As she was doing this, she kept receiving texts and calls from Appellant Campbell apologizing. Tr. 8, ll. 16 – 22.

Meeca was taken to the hospital where a rape kit was performed. DNA was found. Tr. 8, ll. 23 -25. Appellant Campbell was arrested February 28, 2016. Tr. 8, ll. 25 – Tr. 9, ll. 4.

On May 17, 2017, the Richland County Grand jury indicted Appellant Campbell on the charge of criminal sexual conduct third degree (CSC). On April 16, 2018, Appellant Campbell appeared before the Honorable Alex Kinlaw, Jr. and entered a guilty plea to the lesser included charge of assault and battery first degree. Tr. 3, ll. 1 – Tr. 4, ll. 4.

At the beginning of the plea, the state told the judge that they were recommending that Appellant Campbell receive a split sentence where he did some prison time followed by probation and sex offender counseling. Tr. 4, ll. 1 – 23. The state explained that the defense was agreeable to sex offender counseling but would like “whether he had to register as a sex offender to be determined by whether he successfully completed sex offender counseling.” However, the state told the court that the victim was requesting that Campbell register as a sex offender regardless of whether he completed the counseling. Tr. 4, ll. 5 – Tr. 5, ll. 5.

During the plea, defense counsel argued that Appellant Campbell not be placed on the sex offender registry. Counsel explained that he was assuming responsibility for his behavior and was extremely remorseful. He did not have a history of this sort of behavior as he had no prior record. Counsel said he felt he was socially awkward and had a crush on Meecca. He wanted to return to school to work on a degree. Tr. 10, ll. 7 – Tr. 11, ll. 25.

Counsel argued that he was willing to go to counseling. If he did not complete counseling that would be a violation of probation. Counsel believed that counseling would address the concerns of the victim. Tr. 12, ll. 1 – Tr. 13, ll. 6.

The state reported that the only record he had a driving under suspension in 2014. Tr. 13, ll. 9 – 25. The victim, Meecca, told the judge that she did forgive Campbell because “he was a good person, and just made a bad decision.” However, she stated: “I just need him to register because that’s only fair because I have to live with it.” She continued to say that she knew that

Campbell wanted to better his life and go to school. She wanted him to “living the best life he could possibly live.” Nevertheless, she just “needed” for him to be on the registry because she had to live with this, and “so should he.” Tr. 14, ll. 17 – Tr. 15, ll. 10.

Appellant Campbell told the court that he “was really sorry for his actions.” He regretted his actions every day. Tr. 15, ll. 16 – 24.

The judge then ruled:

I’ve accepted his plea as being freely and voluntarily given, but I’m going to do this. I am going to impose a sentence of two years suspended upon two years of probation, and I’m going to give him credit for the 458 days in jail, and I am not going to put it on the sex offender registry.

Tr. 21, ll. 24 -Tr. 22, ll. 5.

The judge added sex offender counseling. When the state said she did not understand the sentence. The judge explained that the sentence was four years suspended upon two years and two years probation. Tr. 22, ll. 6 – Tr.23, ll. 13.

Meecca then told the judge that his sentence was not fair as she needed for Campbell to “live with this forever.” She said:

I need him on that list. I have to live with this forever. I need for him to live with this forever. That’s not fair. That’s not fair! He can get out today, and I’m fine with it. I just need him on that list. He’s got to take accountability for it. He offended me sexually. He needs to be on that list.

Tr. 23, ll. 14 – 22.

Then the judge said:

Court: Hold on. Hold on a second.

Meecca: It’s not okay.

Court: Hold on a second, ma’am. Have a seat. All right. I’m going to put him on the sex offender register.

Tr. 23, ll. 23 – Tr. 24, ll. 3.

Defense counsel told the court that he had already ruled. Then the judge said that after giving it some thought, this “is what he decided to do.” Tr. 24, ll. 6 – 11.

Defense filed a motion for reconsideration of the sentence as pertaining to the order that Campbell register as a sex offender. April 19, 2018 Tr. 3, ll. 1 – 25.

A hearing on that motion was held on April 19, 2018 before Judge Kinlaw. April 19, 2018 Tr. 1. At the hearing, defense counsel asked the judge to reconsider his ruling for Campbell as it pertained to the sex offender registry. Counsel reminded the judge that he stated during the plea that placing a person on the registry was a “permanent mark” on that person, and that the judge took it very seriously. Then the judge changed his ruling after the victim made additional comments. April 19, 2018 Tr. 3, ll. 21 – Tr. 4, ll. 14.

Counsel reminded the judge that the victim also said that she wanted Campbell to “live his best life.” Counsel argued that no one would be able to live his best life if he were on the sex offender registry. Counsel argued that being on the registry affected housing and getting a job. April 19, 2018 Tr. 5, ll. 1 – 25.

Counsel continued to argue that Campbell was being held accountable by pleading guilty and going to prison. The only reason for imposing the registry, counsel argued, was for punishment and retribution for the victim. April 19, 2018 Tr. 6, ll. 1 – 24.

The state replied that he received a reduction in the charge because the victim wanted him to be able to do other things. However, she wanted him on the registry as she seemed more comfortable with that instead of going forward on a trial. The state’s position was that it was not “inappropriate” for Campbell to be placed on the registry, but the state left that up to the judge’s discretion. April 19, 2018 Tr. 7, ll. 1 – 21.

Defense counsel argued that the decision was up to the judges and solicitors because they knew the law and what was fair under the law. The decision was not up to the victim. April 19, 2018 Tr. 7, ll. 23 – Tr. 9, ll. 14.

The judge responded that he had been a judge in family court for nine and one half years. Therefore, the sex offender registry was “not foreign to him.” He had actually done research on the registry because the issue should be taken seriously by the trial judge. In this case, the judge pointed out that the original charge was CSC and was reduced to assault and battery. However, the facts did not change. He looked at the totality of the circumstances in making his decision. The judge said it was the same set of facts for the CSC as for the assault and battery. Nothing changed. The judge denied defense counsel’s motion to reconsider the sentence. April 19, 2018 Tr. 9, ll. 15 – Tr. 12, ll. 5.

Discussion

South Carolina Code Section 23-3-400 provides that the purpose of the sex offender registry is to “promote the state’s fundamental right to provide for the public health, welfare, and safety of its citizens.” The registry provides law enforcement with the tools needed in investigating criminal offenses.

The Supreme Court held in the case of In re Justin B., 405 S.C. 391, 747 S.E. 2d 774 (2013) that the state’s sex offender registration and electronic monitoring statutory regime was intended as a civil scheme for the protection of the public, not as punishment.

In Williams v. State, 378 S.C. 511, 662 S.E.2d 615 (Ct. App. 2008), the Court of Appeals held that the South Carolina Sex Offender Registry Act was created to be a non-punitive act.

Rule 501, SCACR, Code of Judicial Conduct, Canon 3, B (2) provides that a judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. Section B (5) of the rule provides that a judge shall perform judicial duties without bias or prejudice. Section B (8) provides that a judge shall dispose of all judicial matters promptly, efficiently, and fairly.

The Judge's Oath, found in Rule 502.1, SCACR, provides that all members of the United Judicial System in this state shall take the following oath of office:

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect and defend the Constitution of this State and of the United States;

I pledge to uphold the integrity and independence of the judiciary;

I pledge, in the discharge of my duties, to treat all persons who enter the courtroom with civility, fairness, and respect;

I pledge to listen courteously, sit impartially, act promptly, and rule after careful and considerate deliberation;

I pledge to seek justice, and justice alone;

The plea judge in Appellant Campbell's case did not fulfill the intent of the statute Section 23-3-400. The statute provides that it was not meant for punishment. Instead the judge followed what the victim wanted which was clearly punishment for Campbell. Although the victim said the proper words ---like she wanted him to have the best life--- she obviously wanted revenge. This was evident when she said that she had to live with this and she wanted him to live with this as that was only fair. Appellant Campbell could not have those things such as a place to live or a job, since he was a registered sex offender.

The state did not consider Appellant Campbell a threat to the community because the state did not ask specifically that Campbell be required to register as a sex offender. The state allowed Campbell to plead to a lesser charge than CSC. The state apparently did not consider Campbell to be a dangerous sex offender or even a sex offender.


The judge said that he changed his ruling after giving the issue serious thought. However, the record does not reflect that action. Instead, immediately after the judge's first ruling where he did not order the sex offender registry for Campbell, and the victim began mandating the registry, the judge immediately changed his ruling to require the registry. The record does not reflect that the judge took time to seriously consider the issue.

Campbell was twenty-eight and had no criminal record except one DUS. There was nothing violent nor of a sexual nature on his record. He was working and wanted to further his education.

The plea judge ruled in favor of bias for the victim and not fairness. His duty was to render the law in fairness. He did not.

CONCLUSION

Based on the above, the case should be remanded for a ruling to remove Appellant Campbell from the sex offender registry.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of April, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Alex Kinlaw, Circuit Court Judge

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THE STATE,

RESPONDENT,

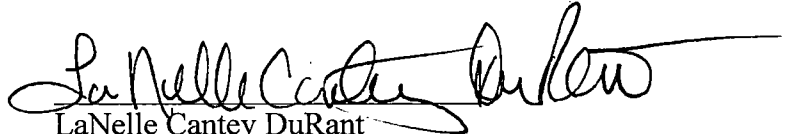
V.

JONATHON CAMPBELL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial 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 Initial Brief of Appellant and Designation of Matter have been served on Jonathon Campbell, at 4944 Little River Inn Lane #2303, Little River, SC 29566, this 29th day of April, 2019.



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of April, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.