

State of South Carolina
In the Court of Appeals

Appeal From Lexington County
Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

v.

Sean L. Stroman

Appellant

Appellant Case No. 2017-001430

ANDERS BRIEF OF APPELLANT

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Pleading to exactly.

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Statement of ISSUE of APPEAL

- Whether the Counsel was ineffective during Sentencing.
- Counsel failed to perform common Pretrial Functions.
- Counsel failed to perform/pursue an argument for me during Sentencing.
- Counsel failed to properly advise me of exactly what I was exactly pleading to, even though I answer yes to the questions of the Judge, only because I thought that what I was supposed to do.

Statement of the case

During the DECEMBER 2012 term, The Lexington County Jury indicted Appellant for two counts of Armed Robbery and Three counts of Kidnapping.

R.45-54. On April 5 2016 Appellant pled guilty as indicted Before the Honorable R. Isaac McMahon R. 1 DERRICK E. Mobley represented ~~App~~ Appellant. ID J. Angela Garrick-Martin represented the State

Judge Knox sentenced Appellant to ~~Thirty~~ ^{Twenty} years imprisonment for 1 count of ARMED Robbery and Thirty years for 1 count of ARMED Robbery and 3 counts of Kidnapping ran consecutive.

R.29, 11. 5-16

On May 31 2016, Appellant had a Reconsideration hearing Before Judge McMahon. R 31. DERRICK Mobley represented Appellant. ID. J. Angela Garrick-Martin represented the State.

In an order issued on June 26 2017, Judge McMahon reconsidered Appellant's sentences to run concurrent with one another R.44. Judge McMahon lowered one of the armed robbery sentences from 30 years imprisonment to twenty years imprisonment as well. Id

This Appeal follows

STANDARD OF REVIEW

"In Criminal Cases, the Appellate courts sit to review errors of law." State v. Vick, 384 S.C. 187, 197, 682 S.E.2d 275, 279 (Ct. App. 2006) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)).

The appellate court is "Bound by the trial court's factual findings unless they are clearly erroneous." Id. (quoting Wilson @ 5-6, 545 S.E.2d @ 829). The reviewing courts "Does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence."

* A finding of ineffective counsel at the Appellant level can lead to a De Novo (new) appeal and sometimes reversal of conviction. SEE. McHale vs United State

* Appellant should also raise ineffectiveness of counsel as a Federal Constitutional claim, even if its claim violate the state effective counsel guarantee. SEE STATE v. Johnson

* In addition to your Federal effective counsel, New York courts said Appellant are entitled to meaningful representation "under Art. Section 6. Then must show lawyers' failures harmed in so much that Appellant didn't have meaningful representation.

* Petitioners' claims arise out of the "Due Process Clause" of the Fifth & Fourteenth Amendments, which protect an accused against conviction unless the state supplies proof beyond reasonable doubt of each element necessary to constitute the crime with the accused is charged.

Argument

The Court abused its discretion when it failed to take into account, for sentencing purposes.

Counsel failed to perform common pretrial function such as filing motions that I asked him to file in a timely matter (motion for bond reduction & also a motion for pre-trial hearing). (PEOPLE v. Donovan states the Defendant was ordered a new trial after ~~the~~ attorney provided ineffective counsel by not moving to suppress certain evidence & by failing to conduct an adequate investigation before trial.

Counsel failed to pursue an argument for appellant during sentencing. (Attorney did not act as an advocate on Appellants' behalf, he made statements that were irrelevant to my defense (PEOPLE v. Stokes). Finding Defendant's rights to appellate counsel has not adequately safeguarded because the brief submitted by Counsel contained no reference to the evidence or to ~~the~~ the defense. Counsel objection made clear that counsel did not act like an advocate on the Appellants' behalf.

Counsel did not properly advise me as to what I was exactly pleading to; he told me that I was pleading to "10-30 years" for 2 armed robbery & 3 kidnapping that all be ran concurrent. He also "advised" me that, that's the best offer "he could get" & that trial wouldn't be a good idea for me" so he "advise me to take the plea & appeal the judges decision if I did not like it".

Discussion

In criminal cases, the role of the Appellant court is to determine whether the trial court abused its discretion.

State v. Page, 406 S.C. 212, 287, 750 S.E.2d 623, 628 (Ct. App. 2013) An abuse of discretion occurs when the courts has made a decision that is controlled by an error of law or unsupported by the evidence presented. State v. Pope 410 S.C. 214, 221, 763 S.E.2d 814, 818 (Ct. App. 2014) (quoting State v. Black 400 S.C. 10, 16, 732 S.E.2d 886, 884 (2012)). To warrant a reversal of the lower court, such an error of law or decision lacking evidentiary support must prejudice the defendant. State v. Commins 396 S.E.2d 413 (2011)

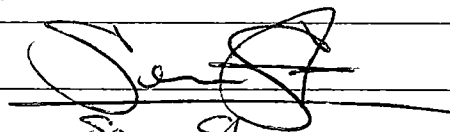
At Sentencing, a Judge has an obligation to consider information that is material to Punishment of the defendant. Hayden v. State 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984). Justice demands that a Sentencing Judge listen and give serious consideration to any information material to Punishment State v. Franklin 267 S.C. 240, 245, 226 S.E.2d 896, 897 (1976). In addition, a Judge must impose sentences with insight and understanding.

He, the Judge erred by not taking into account Appellant's mitigating evidence and sentencing him to the requested term of ten to fifteen years' ~~imprisonment~~ imprisonment. Defense Counsel and Appellant both explained he committed the crimes because he was trying to support his family. R. 34, 11: 17-19. Appellant took responsibility for his actions and was cooperative with law enforcement throughout the investigation. R. 35, 11: 4-10

Although he reconsidered the de facto life-sentence initially imposed upon Appellant by changing Appellants' sentences from consecutive to concurrent, Judge McMahon nevertheless maintained the thirty-year sentences for two counts of armed robbery and the twenty-year sentence the counts of kidnapping, R. 44. Therefore, the lower court abused its discretion by sentencing Appellant to a period ~~that is not~~ that was not warranted or supported by the evidence presented during the plea, thereby prejudicing Appellant.

Conclusion

By reasons of the foregoing arguments, Appellant respectfully requests that his case be remanded to the lower court for a new reconsideration hearing and resentencing.

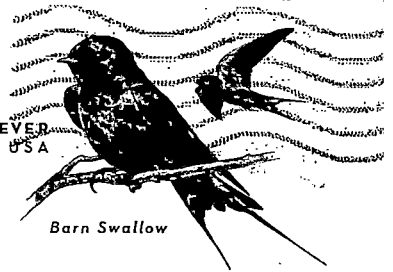

Sean Straman
Appellant

This 15th day of March, 2019

Sean Stroman #367691
4460 Broad River Rd
Columbia SC 29210

COLUMBIA SC 290

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USA



Barn Swallow

SOCIEDAD
Victor ^{RECI} JEEGAR
1220 Senate Street
Columbia SC 29201

SCDC
Christmas
Packet

29201-376999

