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STATE OF SOUTH CAROLINA
In The Court of Appeals

MAY 21 2019

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2018-002092

THE STATE,

Respondent,

v.

DORIAN ROSEAN HOPKINS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the plea judge abused her discretion by requiring Appellant to register as a sex offender when the plea judge made specific findings on the record as to why Appellant should be required to register as a sex offender?

STATEMENT OF THE CASE

In December 2017, the Lexington County Grand Jury indicted Appellant for one count of indecent exposure. On March 12, 2018, Appellant pled guilty to his indicted offense in the Lexington County Court of General Sessions before the Honorable Jocelyn Newman. Appellant was represented by Jason Turnblad, Esquire, of the Lexington County Public Defender's Office. The State was represented by Assistant Solicitor Angela Martin of the Eleventh Circuit Solicitor's Office. Judge Newman sentenced Appellant to three years' imprisonment suspended upon completion of eighteen months' probation. Appellant was also required to register as a sex offender. Appellant filed a motion to reconsider his sentence on March 21, 2018. Appellant's motion to reconsider was heard by Judge Newman on November 13, 2018 in the Richland County Court of General Sessions. Appellant waived venue so the hearing could take place outside of Lexington County. At his motion to reconsider, Appellant was represented by James Snell, Esq. and the State was represented by Assistant Solicitor Kate Usry. Judge Newman denied Appellant's motion to reconsider. Appellant then timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

On April 14, 2017, loss prevention officers at the Walmart on Bush River Road in Lexington County observed a man on surveillance footage standing in the cosmetics section with his penis exposed. (Plea Transcript 4-5). The man was masturbating while looking at a female customer. (Plea Transcript 5). The man ejaculated and then exited the store. (Pre Transcript 5). Loss prevention personnel then followed the man outside and saw him get into a car. Loss prevention was able to read his license plate number. The license plate number was referenced through DMV records by the Columbia Police Department and a driver's license photo of Appellant was obtained. (Plea Transcript 5). A loss prevention officer subsequently picked Appellant out of a photo lineup. (Plea Transcript 5).

Appellant pled guilty on March 12, 2018. Appellant received a probationary sentence and was placed on the sex offender registry. Appellant filed a motion to reconsider his sentence. While Appellant's motion to reconsider was pending, Appellant was evaluated by Dr. E. Selman Watson. On October 1, 2018, Dr. Watson sent Appellant's counsel a letter detailing his findings. According to Dr. Watson, Appellant admitted he exposed himself in two different Walmart stores. In addition to masturbating in the Walmart on Bush River Road, Appellant also exposed himself in a Walmart in Ballentine, South Carolina. (Dr. Watson report 3). Appellant also told Dr. Watson that he masturbated in the Walmart on Bush River Road because an employee named Bree invited him there for "sex in a public place" and "she wanted to see me masturbate." (Dr. Watson report 2). Appellant did not tell Judge Newman this information during his plea hearing on March 12, 2018.

On November 13, 2018 Appellant's motion to reconsider sentence was heard before Judge Newman in Richland County. Dr. Watson's report was provided to Judge Newman at this

hearing. (Motion to reconsider 7). Appellant was asked by Judge Newman whether he masturbated in the Walmart on Bush River Road at the direction of Bree. (Motion to reconsider 11-12). Appellant denied that he masturbated because of Bree and stated "I didn't do it because she asked at that time, but at that time, I just did it for myself." (Motion to reconsider 12, lines 17-18). Judge Newman denied Appellant's motion to reconsider and noted that she had concerns with Appellant's inability to give her a logical explanation for why he masturbated in public. (Motion to reconsider 18). Ultimately, Judge Newman explained that Appellant was being placed on the sex offender registry for the protection of society. (Motion to reconsider 19).

STANDARD OF REVIEW

The decision whether to require a defendant to register as a sex offender is reviewed under an abuse of discretion standard. In re M.B.H., 387 S.C. 323, 692 S.E.2d 541 (2010). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” State v. Bickham, 381 S.C. 143, 147, 672 S.E.2d 105, 107 (2009).

ARGUMENT

I.

The plea judge did not abuse her discretion by requiring Appellant to register as a sex offender because the plea judge made specific findings on the record as to why Appellant should be required to register as a sex offender.

Appellant argues the plea judge erred in requiring him to register as a sex offender because the plea judge ignored the factors discussed in Dr. Watson's evaluation of Appellant. Specifically, Appellant contends the plea judge ignored Dr. Watson's finding that Appellant did not meet a specific criteria for an exhibitionistic sexual disorder. Appellant's argument is without merit. The plea judge did not ignore Dr. Watson's report. On the contrary, the plea judge read Dr. Watson's report and considered his findings, but ultimately still had concerns about Appellant's threat to society. The plea judge was not required to accept the findings of Dr. Watson, and even if she were, Dr. Watson did not give a definitive recommendation regarding Appellant's sex offender status. In fact, Dr. Watson merely recognized that Appellant failed to meet one criteria of an exhibitionistic sexual disorder and therefore Dr. Watson had "some doubt" as to whether Appellant should be required to register as a sex offender. The plea judge ultimately considered Dr. Watson's report and other facts in record in reaching her conclusion that Appellant should register as a sex offender. Therefore, the plea judge did not abuse her discretion. Appellant's conviction and sentence should be affirmed.

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information

that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” Id. South Carolina Code § 23-3-430(C)(14) provides:

(C) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender:

(14) A person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender.

S.C. Code Ann. § 23-3-430(C)(14).

Here, the plea judge made specific findings on the record of why Appellant should register as a sex offender after pleading guilty to indecent exposure. Far from ignoring Dr. Watson’s report, the plea judge considered it, but ultimately found Dr. Watson’s findings were not dispositive of whether Appellant should be required to register as a sex offender. Indeed, the plea judge recognized this in her ruling when she noted:

The Court: Of course the turning point in my analysis is not whether there is an official diagnosis of some disorder or any – anything listed in the DSM at all, but also if there is an issue of lack of mental health treatment, no interest in potential anti-depressant medication, smoking marijuana three times a day, et cetera.

(Motion to reconsider 17, lines 9-14). Rather than focusing on an official diagnosis for Appellant or a lack thereof, the trial judge was more concerned that Appellant could not explain his behavior. The trial judge reiterated these concerns in ruling on Appellant’s motion to reconsider:

The Court: And so my concern remains as it was during the guilty plea that [Appellant] doesn’t seem to have a logical explanation for why he did what he did. And without any logical reasoning, the ability to predict his actions in the

future is diminished, and particularly, if the reason for certain of the behaviors is smoking marijuana or having lost a loved one.

(Motion to reconsider 18, lines 12-18). Ultimately, the plea judge acknowledged that she considered Dr. Watson's report but she nonetheless had concerns about removing Appellant from the sex offender registry:

The Court: So I have the same concerns now as I did then and nothing in Dr. Watson's report or anything that [Appellant] has told me has really altered or diminished my concerns. I simply believe that the circumstances of this case and the thought process and behaviors of [Appellant] make it necessary for him to register as a sex offender to protect society and put society, citizens on notice that such a person is out there.

(Motion to reconsider 19, lines 13-21).

Appellant's argument should be unavailing to this Court. Appellant cites no law that is mandatory authority for this Court and relies solely upon appellate decisions from the State of California. Furthermore, two of the three California cases cited by Appellant have been explicitly overruled and are no longer binding precedent in California, let alone in South Carolina¹. A circuit court judge in South Carolina has broad discretion to fashion a sentence and the discretion to change that sentence. A circuit court judge is not required to accept the recommendations of any particular expert. Assuming for the sake of argument that the plea judge was required to accept the findings of Dr. Watson, the plea judge would nonetheless have been within her discretion in placing Appellant on the sex offender registry. Dr. Watson did not reach a definitive conclusion as to whether Appellant was a sex offender, but merely stated "there is some doubt therefore in this examiner's mind whether [Appellant] qualifies for the sex offender registry."

(Dr. Watson Report 5). Given the plea judge's carefully articulated analysis for why she

¹ See In re Alva, 33 Cal 4th 254, 92 P.3d 311 (2004) (overruling In re Reed, 33 Cal. 3d 914, 663 P.2d 216 (1983)). See also People v. Noriega, 124 Cal. App.4th 1334, 22 Cal. Rptr. 3d 382 (Cal. Ct. App. 2004) (overruling In re King, 157 Cal. App.3d 554, 204 Cal. Rptr. 39 (Cal. Ct. App. 1984)).

determined Appellant must register as a sex offender, this Court should find the plea judge did not abuse her discretion. Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the sentence and conviction of the lower court should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Christopher B. Lusk, Esquire
Law Office of James R. Snell, Jr., LLC
123 Harmon Street
Lexington, SC 29072

I further certify that all parties required by Rule to be served have been served.
This twenty-first day of May, 2019.



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ALAN WILSON
ATTORNEY GENERAL

May 21, 2019

Christopher B. Lusk, Esquire
Law Office of James R. Snell, Jr., LLC
123 Harmon Street
Lexington, SC 29072

RE: State v. Dorian Rosean Hopkins
Appellate Case No. 2018-002092

Dear Mr. Lusk:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Scott Matthews
Assistant Attorney General
Bar # 101464

JSM/ab
Enclosures

cc: ✓ Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services