THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of General Sessions

The Honorable J. Cordell Maddox Jr., Circuit Court Judge

Case No.: 2018-001153

The State, Petitioner,

v.

Fredrick Scott Pfeiffer, Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the State waive its right to appeal Respondent's sentence in the Plea Agreement between Respondent and the State, where the Plea Agreement states that the parties intend for the plea to end litigation, where the State did not specifically retain the right to appeal the sentence, and where an end to litigation was part of the Respondent's bargain?
2. Did the trial court err in determining that the Respondent's second Motion to Reconsider was timely filed, where the trial court resentenced Respondent at the October 8, 2013 hearing, and where the Respondent's second Motion to Reconsider, was filed within ten days after that sentencing?
3. May the State raise this issue on appeal where the facts giving rise to the motion did not exist until more than ten days after the original sentence because the State, who in the State Grand Jury system is entirely in control of the docket, intentionally scheduled the sentencings of the co-defendants more than ten days apart, thereby inducing the error they are complaining of?

STATEMENT OF THE CASE

Respondent and a co-defendant were indicted by State Grand Jury. Respondent, pursuant to a written plea agreement with Appellant, plead guilty to three counts of Indictment 2013GS4709 before The Honorable J. Cordell Maddox, Jr. (the "Trial Court") on September 18, 2013. (App. pp. 2-4; R. pp. 16-64). The Trial Court sentenced Respondent to an active sentence of six (6) years, with four years of imprisonment followed by two years of home incarceration on that same day. (app. pp. 2-4). Respondent filed a timely motion for reconsideration of the sentence.

Respondent's first motion for reconsideration was heard by Judge Maddox on October 8, 2013. At that hearing, the Trial Court amended the sentences that day issuing amended sentencing sheets dated October 8, 2013. (App. pp. 5-7). Later on that same day, October 8, 2013, the co-defendant was sentenced by the Trial Court. (App. p. 66, line 11). The co-defendant's sentence resulted in the co-defendant being released almost immediately. Because the co-defendant's almost immediate release created a disparity in sentencing, Respondent filed a motion to reconsider Respondent's amended sentence in light of the co-defendant's sentence on October 17, 2013. (App. p. 15).

The Trial Court held a hearing on the second motion to reconsider on July 9, 2014. At that hearing, Appellant argued that the second motion to reconsider was not timely made. The Trial Court found that Respondent's motion was timely made, and issued the Order appealed from increasing the Respondent's total sentence, but reducing the active sentence to five (5) years with four years of imprisonment followed by two years of home incarceration. (App. p. 9). The Trial Court signed the Order appealed from on January 13, 2015 and it was filed on January 23, 2015. Appellant then served its Notice of Appeal on February 2, 2015.

STANDARD OF REVIEW

The court is to review errors of law when reviewing criminal convictions. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006). The court's task is to determine whether the trial court abused its discretion. *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998). An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support. *State v. Pagan*, 369 S.C.201, 208, 631 S.E.2d 262, 265 (2006).

"[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). "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).

Sound judicial discretion must be exercised in every case with a thorough regard for what is just and proper under the circumstances. *State v. Scates*, 212 S.C. 150, 156, 46 S.E.2d 693, 695 (1948). "The reasonableness of any given sentence will largely depend upon the specific facts of each case and the district court's consideration and application of the § 3553(a) factors to those facts." *U.S. v. Hampton,* 441 F.3d 284, 287 (4th Cir. 2006), (referring to sentencing factors outlined in 18 U.S.C.A. § 3553(a) (2012)).

ARGUMENT

I. THE STATE'S APPEAL SHOULD BE DISMISSED BECAUSE THE STATE WAIVED ITS RIGHT TO APPEAL AND BECAUSE THIS APPEAL DEPRIVES THE RESPONDENT OF THE BENEFIT OF HIS BARGAIN WITH THE STATE.

This appeal should be dismissed because Appellant waived its right to appeal though the Plea Agreement signed by both Appellant and Respondent and accepted by the Trial Court.

Section (6) of the Plea Agreement is captioned "Waiver of direct appeals and collateral attacks." The second paragraph of Section (6) states:

> It is the intent of the ***parties*** that this agreement and the resulting pleas and sentences finally conclude any and all existing or possible legal proceedings related to indictment 2012-GS-47-0008, 2013-GS-47-0009, and 2013-GS-47-0010 whether direct or collateral, and all that remains is for Mr. Pfeiffer to serve any sentence given by the Court in the manner provided for by state law. (emphasis added). (App. p. 122)

This paragraph makes it clear that the bargain of the "parties" was that the plea was to end all litigation, and not just for the Respondent.

The State is bound by the bargain that it made to obtain a defendant's guilty plea. *State v. Rhinehart*, 312 S.C. 36, 39, 430 S.E.2d at 536, 537 (Ct. App. 1993). "The trial court, having accepted the plea agreement, must honor it also." *Id.* at 39, 430 S.E.2d at 538. The plain language of the plea agreement, that the Respondent's sentence "finally concludes any and all existing or possible legal proceedings, whether direct or collateral" clearly prohibits this direct appeal. The State is bound by this language and this appeal must be dismissed.

The State waives its right to appeal where the State demands an appeal waiver from the defendant, and the State does not explicitly preserve its own appeal rights. "Regarding plea bargains generally, this Court has recognized and followed federal precedent. *See, e.g., State v. Thrift,* 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) (discussing *Santobello v. New York,* 404

U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) and *United States v. Ringling,* 988 F.2d 504 (4th Cir. 1993))." Federal precedent from The Fourth Circuit Court of Appeals is that not only may the State waive its appeal rights but that it does waive its rights to appeal if there is a waiver of the defendant's appeal rights in a plea agreement and the State does not explicitly preserve those rights. *United States v. Guevera*, 941 F.2d 1299 (4th Cir. 1991)[1]. In so deciding, the *Guevera* court noted that "[t]he finality of judgments and sentences imposed is no more preserved by appeals by the government than by appeals by the defendant and it strikes us as far too one-sided to construe the plea agreement to permit an appeal by the government for a fancied mistake by the district court, as here, but not to permit an appeal on similar grounds by the defendant. . ." *Id.* Here, the State required as a condition of the plea that Respondent waive his rights to appeal. (App. p 121). The State did not explicitly retain its own appeal rights[2]. Therefore, the State's right to appeal is also waived.

To permit this appeal to go forward would deprive Respondent of the benefit of his bargain with the State. A "plea bargain rests on contractual principles, and that each party should receive the benefit of the bargain." *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341, 347 (1994) (citing *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993)). "[W]here a guilty plea rests on a promise or agreement which can be said to be a part of the inducement or consideration, then the agreement must be fulfilled." *Id.* at 347 (1994) (citing *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971)). Further, the State must "be held to a higher degree of responsibility than the defendant for imprecisions or ambiguities." *Id.* at 347 (citing *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993)). The Plea Agreement, in the

[1] In *Guevera* the United States appealed, as the State does here, because the severity of the sentence was "not to its liking."

[2] In fact, the State explicitly waived its appellate rights in the second paragraph of Section 6, as shown above.

second paragraph of Section (5) states that "any sentence will be in the discretion of the sentencing court." By bringing this appeal, the State is now attempting to wrest the sentencing decision from the sentencing court and give that discretion to this Court. To allow this would be to deprive Respondent of the benefit of his bargain with the State.

The State waived its right to appeal the trial court's sentence, failed to explicitly retain any such right, and bargained away that right in order to induce Respondent's plea. For all those reasons, this appeal should be dismissed.

II. THE SENTENCING COURT HAD AUTHOURITY TO RULE ON RESPONDENT'S OCTOBER 17, 2013 MOTION TO RECONSIDER BECAUSE IT WAS TIMELY FILED.

Respondent's October 17, 2013 Motion to Reconsider was timely filed because it was filed 9 days (within 10 days) after the sentencing courts **imposition of the sentence** on October 8, 2013. Rule 29(a) of the SCRCrimP states "Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the **imposition of the sentence**." (emphasis added). When interpreting a court rule the same rules of construction used in interpreting statutes is applied. *Stark Truss Co. v. Superior Construction Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99 (Ct. App. 2004). "Therefore the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." *Id.* at 508. (internal citation omitted.) When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning." *Id.* at 508. Here, the October 17, 2013 motion was made within ten days of the **imposition of sentence** on October 8, 2013. Therefore, under a plain reading of Rule 29(a) SCRCrimP, the motion was timely. The State argues that the October 17, 2013 motion was untimely because it

was made more than ten days after the plea which was also the date of the original sentencing. Rule 29(a) SCRCrimP does not specify that it applies only to the original sentencing. The rule does not mention the plea at all.

The sentencing court imposed a sentence on September 18, 2013. A motion to amend sentence was timely filed and the sentencing court heard that motion on October 8, 2013. The sentencing court granted that motion and **imposed a new sentence** on October 8, 2013. This created a new date for the "imposition of the sentence" contemplated by Rule 29(a) SCRCrimP. A reading of Rule 29(a) SCRCrimP that the grant of a motion to reconsider a sentence is not itself an "imposition of sentence" would produce two absurd results. First, if a sentencing court grants a motion to reconsider a sentence and inadvertently, or on purpose, gives a defendant an illegal sentence, there would be no mechanism for that sentencing court to correct the error and the defendant would have to resolve the matter through appeal. If, for example, the sentencing court gave a thirty day sentence for assault and battery in the third degree[3], then upon a motion to reconsider, intended to change the sentence to fifteen days, but inadvertently marked the sentencing sheet fifteen years, the defendant would have to remain in prison far in excess of the statutory maximum of thirty days while awaiting a ruling on an appeal. Second, Rule 203(b)(2) SCACR requires that an appeal from a Court of General Sessions must be notice "within ten (10) days after the sentence is imposed." However, "[w]hen a ***timely*** post-trial motion is made under Rule 29(a) SCRCrimP the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion." Rule 203(b)(2) SCACR (*emphasis added*). Because of this rule, under the State's theory that the October 17, 2013 motion was not timely because it was filed more than ten days after Respondent's original

[3] The maximum imprisonment for assault and batter in the third degree is 30 days. SC Code § 16-3-600(E)(2)

sentencing date of September 18, 2013, then this appeal is also not timely and should be dismissed.

In criminal cases, this court reviews only errors of law and is bound by the factual findings of the trial court unless the findings are clearly erroneous. *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support. *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010).

The Appellant admits that the Respondent's initial motion to reconsider was timely filed. (*See* Brief of Appellant at p. 3). Rule 29 SCRCrimP allows a circuit judge to retain jurisdiction over a case when a motion to reconsider is timely filed. Therefore, the trial court had both jurisdiction over the case and had the "claim-processing" power to act on the first motion to reconsider when it held the October 8, 2013 hearing. See *State v. Warren,* 392 S.C. 235, 708 S.E.2d (Ct. App. 2011). When the trial court granted, with the State's consent, Respondent's motion to reconsider and issued Amended Sentencing Sheets, the court was acting with full authority and jurisdiction. This resentencing created a new ten-day window within which either party could file a timely appeal (see Rule 203(b)(2) SCACR) or motion (see Rule 29, SCRCrimP). Respondent's second motion to reconsider was filed within that ten-day window, as the trial court held. (App. p.11).

Because Respondent's motion to reconsider under Rule 29(a) was filed within ten days after his sentence was amended by the trial court, the motion was timely and the trial court

retained both jurisdiction and claim processing authority to consider the second motion to reconsider and to amend Respondent's sentence.

III. THE STATE CANNOT BE HEARD ON APPEAL TO COMPLAIN OF ANY ERROR INDUCED BY ITS OWN CONDUCT.

The State may not complain about the sentencing court's reconsideration of its sentence an imposition of a new sentence because it was the State's conduct that produced the result. "A party cannot complain of an error which his own conduct has induced." *See State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005), *State v. Babb*, 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989), *State v. McCrary*, 242 S.C. 506, 131 S.E.2d 687 (1963) ("The appellant is not in position to complain of any prejudice resulting to him by reason of his tender of the aforesaid plea. He cannot complain of an error which his own conduct has induced. *State v. Epes*, 209 S.C. 246, 39 S.E.2d 769; *Brown v. State*, 150 Ga. 756, 105 S.E. 289, and *Brown v. State*, 71 Ga. App. 522, 31 S.E.2d 85"). Respondent's second motion to reconsider was based on the disparity between his amended sentence and the sentence of his co-defendant. This disparity did not exist until the co-defendant was sentenced on October 8, 2013. Appellant's position that the ten-day window to file a motion to reconsider runs only from the initial sentencing, if accepted, would permit Attorney General to bar any reconsideration based on a disparity in the sentences of co-defendants by simply scheduling the sentencing dates more than ten days apart. Clearly, however, concern over disparity in sentencing is an appropriate concern for a trial court and is within that court's general discretion regarding sentencing.[4] Because the Attorney General exercises exclusive control over the docket in all State Grand Jury cases, the Attorney General's

[4] "An attentive concern with whether A was treated as A deserves, and whether any difference in the treatment between A and B can be justified, is a concern for justice". H.L.A. Hart, The Concept of Law, Third Edition, Introduction by Leslie Green, at xxxviii.

scheduling of Respondent's and his co-defendant's sentencings more than ten days apart induced the error of which the State now complains.

There was no extrinsic reason for separate sentencing dates for the Respondent and the co-defendant. In fact, the co-defendant entered his guilty plea months before the Respondent, and the Attorney General withheld sentencing until after Appellant's plea, in order to obtain cooperation from the co-defendant. Once Respondent pled guilty on September 18, 2013, however, there was no reason to further delay the sentencing of the co-defendant.

The Attorney General exercises control over the docket of State Grand Jury cases, and intentionally scheduled the pleas of these co-defendants more than ten days apart. He cannot be heard to complain, then, that the trial court reconsidered the first plea in light of the second plea, even were they more than ten days apart.[5]

CONCLUSION

The State clearly and unambiguously waived any right to appeal the trial court's final sentence, or at least failed to explicitly reserve that right when requiring Respondent to waive his rights, and permitting such an appeal would deprive Respondent of the benefit of his bargain with the State. Further, the State's argument that the trial court was without jurisdiction to reconsider Respondent's sentence is entirely without merit, because Respondent's second motion to reconsider was timely filed within ten days of the trial court's amended sentence. Finally, even if such an appeal were to be permitted and the State's argument that the ten-day window to move to reconsider a sentence runs only from the initial sentencing and not any amended sentence, the Attorney General induced the error by scheduling the co-defendant's sentencings more than ten

[5] Of course, in this case, because the trial court also amended Respondent's sentence on the same day the co-defendant pled, the second motion to reconsider was timely, as argued above.

days apart, depriving the trial court of the benefit of hearing all argument in both sentencings and issuing consistent and just sentences to both defendants.

For all these reasons, the decision of the trial court appealed from should be affirmed by this Court, and the appeal dismissed.

Respectfully submitted,

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October 19, 2019

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PROOF OF SERVICE OF RESPONDENT'S BRIEF

I, Ralph Gleaton, certify on this date, October 22, 2018, I served the Respondent's Brief in this action, dated October 19, 2018 on the below by mailing it to them, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

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October 22, 2018

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