

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
2018-GS-32-2066-67

STATE OF SOUTH
CAROLINA,

-v-

JOSEPH
EDWARD
SWEARINGEN,
III,
Defendant.

ORDER DENYING DEFENDANT'S MOTION
FOR RECONSIDERATION

RECEIVED

AUG 15 2019

SC Court of Appeals

ISAM COHEN
CLERK OF COURT
COURT HOUSE
LEXINGTON, SC

19 AUG 12 AM 9:59

FILED

Addy, J.

THIS MATTER CAME BEFORE THE COURT on a motion for reconsideration, timely filed and dated August 1, 2019, requesting that the Court reconsider the sentence imposed on July 23, 2019. For the following reasons, the Court finds that a hearing on this motion is not necessary and that the sentence imposed should not be altered or amended.

Mr. Swearingen pled guilty to Felony DUI involving Great Bodily Injury and Possession of Cocaine, 2nd Offense. He was represented by James R. Snell, Jr., Esq., and the State was represented by Assistant Solicitor Todd Wagoner. Upon consideration of the underlying facts, counsels' arguments, the statements by the victim and her supporters, and the statements by the Defendant and his supporters, the Court imposed the maximum fifteen (15) year sentence on the Felony DUI charge and suspended a five (5) year sentence on the Cocaine charge. The Court has reviewed fully the very articulate motion submitted by counsel for Mr. Swearingen, and despite the Court agreeing with many of counsel's assertions, the Court declines to alter or amend the sentence imposed.

As a preliminary matter, this jurist is extremely hesitant to impose the maximum sentence in instances where a defendant pleads guilty. The Court's thinking is that a defendant who accepts responsibility unconditionally has made at least an initial step toward rehabilitation and deserves some

1
AA

A TRUE COPY

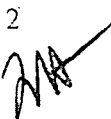
[Signature]
Lex. Co. C.C.P. C.C.P.

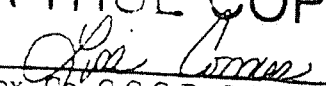
consideration for not putting the State to the burden of proving guilt at trial. In the overwhelming number of pleas I handle, a defendant receives substantial consideration for accepting responsibility. However, in the present case, the Court found the maximum sentence was warranted for the following reasons.

First, the Court notes that the sentencing range in this case gives the Court very wide discretion. No two cases are alike. In the present case, the Court agrees that Mr. Swearingen's prior driving history reflects primarily speeding type offenses with the exception of a reckless driving which had been pled down from a DUI. As explained at the hearing and in counsel's motion, Mr. Swearingen has suffered from a severe drug addiction throughout his teenage years and his adult life. The Court understood that Mr. Swearingen's attempted rehab multiple times in the years prior to this incident, and the Court agrees that his addiction is one of the worst this jurist has seen. However, the fact remains that, despite multiple opportunities and attempts at rehab, Mr. Swearingen apparently never engaged sufficiently in his recovery efforts to conquer his addiction successfully. Having helped establish the 8th Circuit Drug Court, this judge is aware that even the most extreme addicts can overcome their demons, and I have seen it happen numerous times. However, an unwavering, unceasing dedication to recovery is absolutely necessary to achieve long-term sobriety.

Additionally, this wide discretion must also take into account the nature of the injuries to the victim in a case. Put another way, a victim may suffer great bodily injury, yet they make a full recovery and suffer no lasting damage from the incident. In the present case, however, Mrs. Diffie's injuries were extensive, life-altering, and likely permanent absent some future medical miracle. In other words, Mrs. Diffie will probably still be suffering from her injuries years after Mr. Swearingen is released from confinement. Unlike Mr. Swearingen, her sentence is a life sentence.

Second, the Court fully considered the written statements in support of Mr. Swearingen. Mr.

2


A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Swearingen is clearly loved by his family, has made some initial progress in addressing his addiction, and possesses many good qualities. Mr. Swearingen will continue to benefit from the support of his family, friends, and counselors, and he is deserving of that support. The Court's obligation is to pass judgment on the crime, not the person, and as explained above, this incident warranted a sanction more severe than probation, a YOA, or some lesser period of incarceration. In short, the Court considered all statements, those made in support of Ms. Diffie *and* Mr. Swearingen, in pronouncing sentence.

Third, in Mr. Swearingen's motion, counsel references other cases whereby the defendant received a lesser sentence for a more serious DUI related offense. Specifically, counsel references 2017 and 2018 Felony DUIs involving death in Lexington where the defendants received a ten (10) year sentence and a seven (7) year sentence. The Court agrees that more serious cases must be punished more harshly, but Counsel overlooks the fact that a defendant sentenced for Felony DUI involving death must serve 85% of their sentence prior to being eligible for release. This provision does not apply to Felony DUI with great bodily injury. The Court assumes that the sentencing judges in the 2017 and 2018 cases are aware of this distinction and likely sentenced the defendants to *less* time than Mr. Swearingen received because those defendants will likely serve *more* actual time in prison than will Mr. Swearingen.¹

Fourth, and the Court is hesitant to even address this because it is not likely reflected in the record, it appeared to the Court that Mr. Swearingen was less than fully alert and, at times, dismissive during the presentation by Mrs. Diffie and her family. The Court began its colloquy of Mr. Swearingen by asking if he had taken any medication, drugs or alcohol within the prior twenty-four (24) hours which would affect his thinking, and he indicated that he had not. The Court may consider the manner

¹ By way of example, per the SCDC website, Mr. Swearingen's 15 year sentence means he is eligible for parole on April 19, 2023 with a max out date of August 17, 2028, meaning he is eligible for release in less than 4 years. Destiny H. Mills was sentenced in Lexington to 10 years for Felony DUI involving death on November 17, 2017. Per the SCDC website, she is ineligible for parole and has a projected release date of November 6, 2025, meaning that she must serve roughly 8 years in prison with no opportunity for early release.

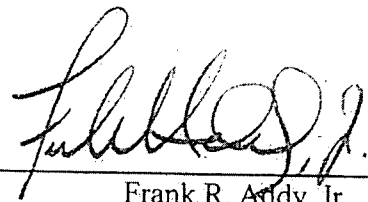
in which Mr. Swearingen conducted himself at the time of the plea, and his demeanor while the victim impact evidence was being presented did not aid in his pleas for leniency.

Finally, the Court received voluminous letters prior to the plea on behalf of Mrs. Diffie and Mr. Swearingen. Attached to Mr. Swearingen's motion for reconsideration were additional, numerous letters requesting leniency, and the Court has read all letters submitted prior to and after the plea. Although the Court appreciates of the letters of support offered by both sides and appreciates the insights offered by those who took the time to write, the Court was and remains most attentive to the concerns expressed by Mr. Swearingen, Mrs. Diffie, and members of their immediate family. In short, although the Court considered the input of even those who are unrelated to the parties or are merely acquaintances of the families, the comments by Mr. Swearingen, Mrs. Diffie, and their family members had the greatest effect on the passing of sentence.

The Court has fully reconsidered the facts, circumstances, and propriety of the sentence imposed. For the reasons stated herein, the Court declines to modify the sentence imposed on July 23, 2019.

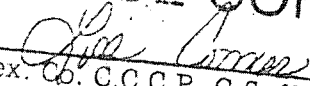
WHEREFORE, the Defendant's motion for reconsideration is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Presiding Judge, Eleventh Judicial Circuit

August 9, 2019
Greenwood, South Carolina

A TRUE COPY

Lex. Cl. C.C.C.P., G.S. & F.C.

30 days - 15 years AND \$5000 - \$10,000

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE VS.)
Joseph Edward Swearingen III)
AKA:)
Race: White Sex: M Age: 24)
DOB: SS#:)
Address:)
City, State, Zip:)
DL#: SID#: SC02153540)
*CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS3202066
A/W#: 2018A3210200831
Date of Offense: 5/5/2018
S.C. Code § : 56-05-2945
CDR Code #: 0406
RECEIVED
AUG 15 2019
SC Court of Appeals

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: DUI / Felony driving under the influence, great bodily injury results

CONVICTED OF or PLEADS

in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 70206 [Signature] 72663
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100 -
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100 -
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12 -
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25 -
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL \$ 237 -

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (04/2018)

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: [Signature] ATU

Appointed PD or appointed other counsel, § Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge [Signature]
Judge Code: 2159
Sentence Date: 7-23-19

0-5 years and/or 0-\$7500

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Joseph Edward Swearingen III

AKA:

Race: White Sex: M Age: 24

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#: SC02153540

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Drugs / possession of cocaine, 2nd offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS3202067

A/W#: 2018A3210200832

Date of Offense: 5/5/2018

S.C. Code § : 44-53-0370(d)(3)

CDR Code #: 3012

RECEIVED

AUG 15 2019

SC Court of Appeals

CONVICTED OF or PLEADS

in violation of § 44-53-0370(d)(3) of the S.C. Code of Laws, bearing CDR Code # 3012
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Todd W. Solicitor, Joseph Swearingen III Defendant, Attorney for Defendant, 72663 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of 2 days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 4

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDoc.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ca, 3% to County (if paid in installments) \$

\$ paid to Public Defender Fund
Other: Total Probation while in SCDoc. Intensive Supervision for 1st year. Complete In-At rehab upon release.

Appointed PD or appointed other counsel, §Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge: Judge Code: 2159 Sentence Date: 7-23-19

TOTAL \$275
Clerk of Court/ Deputy Clerk: Lisa Comer
Court Reporter: L. Blane