

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

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MAR 28 2019

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KENNETH STROTHER COLLINS,

APPELLANT

APPELLATE CASE NO. 2017-002282

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether, in the interests of judicial economy, this Court should vacate appellant's sentence for kidnapping because he was also sentenced for the same victim's murder?

STATEMENT OF THE CASE

On April 13, 2015, an Oconee County grand jury indicted appellant for murder, kidnapping and a weapons charge. R. 275.–278. On October 17, 2017, appellant's trial began after conducting jury selection and pretrial motions the day before. R. 1. Appellant was tried before the Honorable R. Scott Sprouse and a jury. R. 1. Lindsey Satterfield Simmons and Jason C. Alderman represented the State. R. 1. Angela Lane represented appellant. R. 1. The jury convicted appellant on all counts. R. 118, l. 11 – 119, l. 13. Judge Sprouse sentenced appellant to thirty years' imprisonment for murder, a consecutive twenty years' imprisonment for kidnapping, and a concurrent five years' imprisonment on the weapons charge. R. 126, l. 12 – 127, l. 13. This appeal follows.

STANDARD OF REVIEW

“Determining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law de novo.” First Citizens Bank & Tr. Co., Inc. v. Blue Ox, LLC, 422 S.C. 461, 466, 812 S.E.2d 418, 420 (Ct. App: 2018), reh'g denied (Apr. 26, 2018), cert. denied (Aug. 3, 2018) (internal quotations omitted).

ARGUMENT

In the interests of judicial economy, this Court should vacate appellant's sentence for kidnapping because he was also sentenced for the same victim's murder.

Appellant was indicted for the murder of Jeremy Lee Little ("Little"). R. 275 – 276. Appellant was convicted of Little's murder. R. 265, l. 14 – 266, l. 1. Judge Sprouse sentenced appellant to thirty years' imprisonment for Little's murder. R. 274, ll. 4 – 6. R. 279.

Appellant was also indicted for kidnapping Little. R. 277 – 278. The jury convicted appellant of kidnapping Little. R. 266, ll. 2 – 4. Judge Sprouse sentenced appellant to a consecutive term of twenty years' imprisonment for kidnapping Little. R. 274, ll. 7 – 9. R. 281.

Appellant's kidnapping sentence is improper because the kidnapping statute forbids such a sentence when a defendant is also sentenced for the murder of the same victim. S.C. Code Ann. § 16-3-910. The kidnapping statute provides:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years **unless sentenced for murder** as provided in section 16-3-20.

S.C. Code Ann. § 16-3-910 (emphasis added). "Our courts have long held, where an appellant has been sentenced for murder of a victim, this code section precludes a sentence for kidnapping of that victim, and any such sentence should be vacated." State v. Vick, 384 S.C. 189, 201-202, 682 S.E.2d 275, 281 (Ct. App. 2009); see also Owens v. State, 331 S.C. 582, 584-585, 503 S.E.2d 462, 463 (1998); State v. McCall, 304 S.C. 465, 470, 405 S.E.2d 414, 416-417 (Ct. App. 1991), overruled on other grounds by Brightman v. State, 336 S.C. 348, 352, 520 S.E.2d 614, 616 (1999); State v. Livingston, 282 S.C. 1, 8, 317 S.E.2d 129, 133 (1984); State v. Perry, 278 S.C. 290, 495, 299 S.E.2d 324, 327 (1983); State v. Copeland, 278 S.C. 572, 597, 300 S.E.2d 63, 77-78 (1982). In

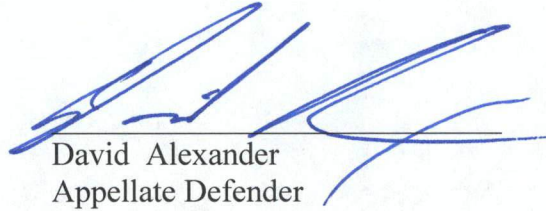
Perry, the Court vacated consecutive life sentences for kidnapping and murder. Perry at 324, 327, 299 S.E.2d at 491, 495-96. See also State v. Joyner, 289 S.C. 436, n.1, 346 S.E.2d 711, n.1 (1986) (calling trial court's attention on remand to the kidnapping statute where trial judge sentenced defendant to consecutive sentences for kidnapping and murder).

In Vick, the State acknowledged it was "error to sentence a defendant for the kidnapping of a victim whom he is also convicted of murdering, and that when a defendant is convicted of murder, any sentence for kidnapping of the victim should be vacated." Vick at 201, 682 S.E.2d at 281. Despite its acknowledgment, the State opposed vacating the admittedly improper sentence because no objection was raised at trial. Id. This Court vacated the kidnapping sentence over the State's preservation objection.

Just as in Vick, this Court should address the merits of the issue in the interest of judicial economy. Should this Court decline to reach this issue, appellant could raise this issue in an application for post-conviction relief as a claim of ineffective assistance of trial counsel for failing to object to an improper sentence. Based upon section 16-3-910 and its interpretation, appellant's sentence for kidnapping is improper. Thus, judicial economy weighs heavily in favor of this Court addressing the merits of the claim at this time. Appellant respectfully requests this Court address the merits of the issue and vacate the kidnapping sentence.

CONCLUSION

For the foregoing reasons, this Court should vacate appellant's sentence for kidnapping.



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ATTORNEY FOR APPELLANT

This 28th day of March, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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