

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

KENNETH LAMONT
ROBINSON, JR.,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

**ORDER DENYING DEFENDANT'S MOTION
TO RECONSIDER SENTENCE**

INDICTMENT NOS: 2017-GS-10-4878, -4879,
-4880, -4881, -4882

CHARGE(s): ASSAULT AND BATTERY FIRST
DEGREE (x4), MURDER

FILED
2020 MAR 20 PM 2:31
CLERK OF COURT
J. PATRICK HODGE

On March 2, 2020, this matter came before the Court for a hearing on Defendant's Amended Motion for Resentencing Based on After-discovered Evidence pursuant to Rule 29(b), SCRCrimP. Defendant argues he should be resentenced because his co-defendants, one of whom was the actual shooter in the murder case, received lesser sentences than Defendant.

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FACTS

On May 10, 2015 the Defendant and his associates occupying 3 vehicles began chasing and shooting at another vehicle, a Chrysler 300, occupied by four individuals. The running gun battle covered a distance of over 10 miles. The Defendant was the front seat passenger in a Honda CRV driven by Richard Simmons with Keon Anderson occupying the backseat. Defendant was armed and an active participant in the shootout. At some point the vehicle occupied by the Defendant lost sight of the Chrysler 300 they had been chasing. In the area of Ashley Phosphate Road and I-26 Richard Simmons observed a Chrysler 300 he believed to be the one they had been chasing. Simmons pulled up along side of the vehicle, grabbed the Defendant's pistol, and fired into the car. Unfortunately, it was not the Chrysler they had been chasing but another one occupied by Kedena Brown. Ms. Brown was struck in the neck and head, crashed into a wall, and was already dead by the time police arrived on scene. At the time of this incident the Defendant was already on juvenile probation for ABHIAN and Attempted Armed Robbery after having shot someone during a robbery attempt at Northwoods Mall.

RMD

PROCEDURAL HISTORY

On February 22, 2018, after trial by jury, the Defendant was convicted of Murder and four counts of Assault and Battery 1st Degree. Both Richard Simmons and Keon Anderson cooperated with the State and testified against the Defendant at his trial. On June 6 and 7, 2018 a sentencing proceeding was conducted by the trial judge, the Honorable Kristi Lea Harrington. At the commencement of the sentencing proceeding the State and Defendant agreed to a negotiated cap of 50 years, thereby conferring upon Judge Harrington a sentencing range of 30 to 50 years. After the extended hearing and considering the aggravating and mitigating evidence presented, Judge Harrington imposed a sentence of 50 years. On June 15, 2018, the Defendant filed a Motion to Reconsider Sentence. On June 29, 2018, the Motion was denied and the Defendant subsequently appealed his conviction. In November of 2018, Richard Simmons received a negotiated sentence of 30 years for Murder and Keon Anderson received a negotiated sentence of 15 years for Voluntary Manslaughter. On February 19, 2019, Defendant filed a motion with the Court of Appeals to remand his case to the Court of General Sessions for a hearing on his motion for reconsideration of sentence based upon after discovered evidence. Defendant argues that the sentences imposed upon the cooperating co-defendants were "after discovered evidence" pursuant to Rule 29(b), SCRCrimP, alleging that had the trial judge been aware of his codefendant's sentences, he would have received a lower sentence. The defendant's contention is that the sentences of his codefendants entitled him to a new sentencing proceeding. On May 3, 2019, the Court of Appeals held the Defendant's appeal in abeyance and remanded the case to circuit court for a hearing on the Defendant's motion.

FINDINGS

The matter came before this Court for a hearing on March 2, 2020. Now, based upon the arguments of counsel together with the briefs and exhibits presented by the parties, this Court makes the following findings:

1. The plain language of Rule 29(b), SCRCrimP, applies to motions for new trials (not new sentences) based upon after-discovered evidence. The Court is aware of

no case which recognizes Rule 29(b) as a basis for imposing a new sentence in a non-capital case.

2. The Defendant has presented no compelling grounds for this Court to extend the holdings of *State v. South*, 310 S.C. 504, 427 S.E.2d 666 (1993), beyond a bifurcated capital proceeding to allow the Defendant to obtain a new sentence. *South* provided for a new sentencing trial in a capital case based upon after-discovered evidence that the defendant had a brain tumor because this evidence was material to "mitigating and aggravating circumstances". However, capital cases by their very nature consist of two jury trials, one to determine guilt and one to determine sentence. Therefore, in a capital case, the defendant can receive a new trial on the issue of sentence without torturing the plain language of Rule 29(b). This Court declines to extend the holding in *South* to a non-capital case.
3. Even if Rule 29(b) was an appropriate mechanism for a new sentencing proceeding in a non-capital case, this Court is convinced that sentences of codefendants are not "evidence" and thus can never be "after-discovered evidence" for purposes of Rule 29(b). By definition evidence is something that tends to prove or disprove the existence of an alleged fact. The Court is of the opinion that the sentences received by the co-defendants have no tendency to prove or disprove any fact which is relevant to this Defendant's guilt or sentence. Although sentences of co-defendants are one of the factors courts may consider in imposing sentence (*State v. Brewington*, 267 S.C. 97, 226 S.E.2d 249 (1976)), they are certainly not required to. As a matter of fact, in *State v. Charping*, 333 S.C. 124, 127, 508 S.E.2d 851, (1998), the court held that "*Brewington* does not stand for the proposition that trial courts are required to consider the sentences of codefendants". In *Charping* the defendant sought to introduce evidence in the sentencing phase of his capital trial that his co-defendant had received a life sentence. The SC Supreme Court held this evidence was irrelevant to establish defendant's character, did not mitigate circumstances of the crime and thus was inadmissible. I likewise find that the sentences imposed upon the cooperating co-defendants in this case are not relevant to the Defendant's character and do not mitigate his involvement in the crimes for which he has been convicted. As a result, this Court finds that evidence of sentences imposed upon co-defendants

would not likely result in a reduction of this Defendant's sentence if a new sentencing proceeding were conducted. Defendant's contention that consideration of sentences received by cooperating co-defendants would result in a lower sentence is pure speculation.

4. Without question, the sentence imposed upon this Defendant was disproportionate to those received by his compatriots; however, this in and of itself does not entitle the Defendant to a reduction of his sentence. Moreover, disparate sentences amongst codefendants are permissible under the law of this State. In imposing a sentence, courts can consider many things other than the defendant's involvement in the crime for which he has been charged, such as prior record, cooperation with authorities, acceptance of responsibility, etc. In the present case, the fact that his co-defendants cooperated with the State and the Defendant was on probation for ABHAN and Attempted Armed Robbery at the time of committing this offense could account for the disparity in sentences. As a result the Defendant has presented no concrete evidence to show that Judge Harrington would have sentenced the Defendant differently had she been aware of the negotiated sentences of the cooperating codefendants.
5. The Defendant was granted a meaningful sentencing hearing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), conducted by the original trial judge, who was aware of all of the facts of the case and gave careful consideration to all constitutionally required factors, including the "hallmark features of youth" and the Defendant's background and upbringing. Many other factors—including the defendant's criminal history—were considered by the trial judge when fashioning the sentence. As noted above, while a trial judge *may* consider the sentences of other codefendants, it is not a *requirement*. The sentence imposed was within the negotiated framework agreed upon by the Defendant and the State, and that framework was within the statutory parameters of sentencing exposure. The Defendant chose to go with the negotiated sentence and chose that versus life. Thus, there was nothing inappropriate about the trial judge's imposition of a 50-year aggregate sentence.
6. The Defendant has presented no evidence of actual prosecutorial vindictiveness by the State or vindictiveness by the trial court as the sentencing authority. The State engaged in negotiations and was acting within the scope of its authority by

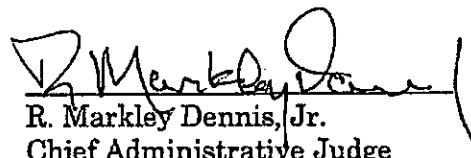
offering or removing incentives during the bargaining process. As noted by the US Supreme Court in *Alabama v. Smith*, 490 U.S. 794, 802-03 (1989):

... a prosecutor may offer a "recommendation of a lenient sentence or a reduction of charges" as part of the plea bargaining process, and we have upheld the prosecutorial practice of threatening a defendant with increased charges if he does not plead guilty, and following through on that threat if the defendant insists on his right to stand trial... we have recognized that the same mutual interests that support the practice of plea bargaining to avoid trial may also be pursued directly by providing for a more lenient sentence if the defendant pleads guilty...

Likewise, in this case the trial court as a sentencing authority had the discretion to sentence within a framework of a 30 to 50-year range, based upon the cap which was negotiated by the parties. The Defendant now argues that the 50 year sentence was imposed by the court as punishment for him exercising his right to trial by jury but does not present a scintilla of evidence to support this proposition. The Court reviewed the transcripts of the trial which indicate that the Defendant chose to go with the negotiated sentence, understanding that the time frame for the sentence would be 30 to 50 years. The consideration was that the life sentence would not have the possibility of being imposed. Thus, the Defendant has failed to establish vindictiveness by either the prosecution or court.

For the forgoing reasons, the Defendant's motion for a new sentence pursuant to Rule 29(b) is DENIED. It is hereby ORDERED that the original sentence imposed by Judge Harrington following trial on the above-captioned matters shall remain in place.

AND IT IS SO ORDERED.


R. Markley Dennis, Jr.
Chief Administrative Judge
Ninth Judicial Circuit
Charleston, South Carolina
3/20/2020

RMDs

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20 MAR 20 PM 2:31
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