

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	GENERAL SESSIONS
)	FIFTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA)	CASE NO. 2018-GS-40-8199
)	
v.)	<u>ORDER</u>
)	<u>DENYING MOTION TO RECONSIDER</u>
CHARLES DAVENPORT,)	
)	
DEFENDANT)	
_____)	

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In this felony DUI (death) action, I sentenced Defendant after accepting his plea of guilty. Defendant moved for reconsideration of the sentence.

GUILTY PLEA and SENTENCE

On November 8, 2018 at the Richland County Courthouse, Defendant offered a plea of guilty to one count of felony DUI under true-billed indictment 2018-GS-40-8199. Defendant appeared with his very competent and well-respected attorneys, Joseph M. McCulloch, Jr., and Kathy R. Schillaci. Joshua P. Golson as the assistant solicitor of the Fifth Judicial Circuit was present representing the State of South Carolina. The plea was "straight up" free of sentence recommendations from the State or Defendant.

The plea colloquy and sentencing created eighty-two pages of transcript. Numerous persons spoke for and on behalf of the victim and his family. Several persons spoke for and on behalf of Defendant. I listened to every person and considered what they said. I took a long break to review my notes and consider the sentence.

I returned and announced the sentence after stating on the record my reasons for the sentence. Those reasons are listed in the transcript starting on page 80 of the transcript. I sentenced Defendant to the South Carolina Department of Corrections for a

period of twenty-five years suspended to twenty years and a fine of \$10,100.

DEFENDANT'S MOTION TO RECONSIDER UNDER RULE 29(a)

Defendant timely served his motion to reconsider filed November 16, 2018. On July 29, 2019 I issued my ruling by memorandum. Subsequently, Defendant requested that an order be issued. This is the order.

Defendant requested that I amend his sentence by reducing the length of it. Defendant asserted that the sentence "appears to be the harshest sentence handed down in this state to a defendant with no prior record in a single felony DUI with death plea." Defendant offered information about sentences issued in similar cases.

RESPONSE TO MOTION VIS-À-VIS THE SENTENCING STATUTE

Regarding sentencing, SC Code Section 56-5-2945 provides in Subsection (A)(2): "By a mandatory fine of not less than ten thousand one hundred dollars nor more than twenty-five thousand one hundred dollars and mandatory imprisonment for not less than one year nor more than twenty-five years when death results." I set Defendant's fine at the minimum amount of \$10,100.00. I sentenced Defendant to twenty-five years suspended to twenty-years.

I did not sentence in excess of the statute's maximum sentence of twenty-five years. The statute does not provide a list of aggravating or mitigating factors that a judge shall consider.

OTHER CONSIDERATIONNS

I listed my reasons for the sentence on page 80 of the transcript and I incorporate those reasons herein by reference. I

did not see this crime as the result of a mere accident where Defendant was slightly intoxicated and pulled in front of another driver, for example. I considered Defendant's blood alcohol level, his THC level, and his driving at 76 miles per hour on a city street in a 35 miles per hour zone at or shortly before the impact. (Another substance was present in Defendant's system that may have been the result of medical care.)

I considered the ages of Defendant and the victim, David Newell, along with the facts of this case. Mr. Newell was lawfully on the roadway. Defendant was knowingly engaging in unlawful acts while on the roadway.

I considered the awful pain of the victim's family and the remorse of Defendant and his family.

I read the anecdotal information Defendant provided about sentencing across South Carolina in similar felony death DUI cases. I do not accept the assertion that because other judges have issued shorter sentences in similar cases my sentence is therefore improper or an abuse of discretion.

I wish to stress, and emphatically do so, that my sentence was mine alone. I was not influenced, and will not be, by any persons or groups, directly or indirectly.

Defendant offered in his motion "GOALS OF SENTENCING AND CHARLES DAVENPORT" wherein Defendant's character and rehabilitative potential are noted. Offered also is information related to the seriousness of the offense, the need to protect society and the need for deterrence and punishment. However, all of it comes back to the length of the sentence, and I have offered my reasons for the sentence.

CONCLUSION

I respectfully decline to amend the sentence and therefore deny the reconsideration motion. I took no joy in issuing the sentence. It was not a "knee jerk" sentence driven by personal views or the shock factor of the facts in this case. If a higher and more learned panel of jurists disagree with my sentence and my ruling on reconsideration, I will respectfully stand corrected, chastened, and rebuked.

It is DONE and ORDERED this _____ day of April 2020 at Sumter, South Carolina.

George M. McFaddin, Jr.
Circuit Court Judge