

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEVONTRE CORTELL JACKSON,

APPELLANT.

APPELLATE CASE NO 2019-000996

ANDERS BRIEF OF APPELLANT

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
May 28 2020
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial court erred in denying appellant’s motion to reconsider his sentence where appellant’s thirty-three year sentence was disproportionate to co-defendants’ twenty and ten year sentences.....4

Relevant Facts4

Discussion5

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

In re M.B.H., 387 S.C. 323, 692 S.E.2d 541 (2010)..... 3

State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976)..... 5

State v. Brouwer, 346 S.C. 375, 550 S.E.2d 915 (Ct. App. 2001)..... 5

State v. Fletcher, 322 S.C. 256, 471 S.E.2d 702 (Ct.App.1996) 5

State v. Slocumb, 412 S.C. 88, 770 S.E.2d 436 (Ct. App. 2015) 3

State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996) 5

State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009)..... 3

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 3

Other References

24 C.J.S. Criminal Law § 1460.....5

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's motion to reconsider his sentence where appellant's thirty-three year sentence was disproportionate to co-defendants' twenty and ten year sentences?

STATEMENT OF THE CASE

On March 11, 2019, a Lexington County grand jury indicted appellant on four counts of armed robbery. R. 44. Appellant pled guilty on March 13, 2019, before the Honorable Walton J. McLeod, IV. R. 1. Aimee Zmroczek represented appellant. Assistant solicitor Sutania Fuller represented the state. R. 1. On March 29, 2019, Judge McLeod sentenced appellant to thirty-three years imprisonment. R. 14, l. 25.

On April 8, 2019, appellant filed a motion to reconsider his sentence. R. 36. The state filed a memorandum in opposition to appellant's motion for reconsideration on June 6, 2019. On June 12, 2019, Judge McLeod signed an order denying appellant's motion to reconsider his sentence. R. 41.

This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Vick*, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009)(quoting *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous.” *Id.* (quoting *Wilson*, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court “does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court’s ruling is supported by any evidence.” *State v. Slocumb*, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

The trial court erred denying appellant's motion to reconsider his sentence where appellant's thirty-three year sentence was disproportionate to co-defendants' twenty and ten year sentences.

Relevant facts

In 2009, when appellant was sixteen years old, he was convicted of armed robbery and sentenced to ten years' imprisonment. R. 16, ll. 15-19; R. 26, ll. 17-20. Soon after appellant was released from prison in 2018, he was arrested and charged in this case. R. 25, ll. 18.

Appellant and two co-defendants committed multiple armed robberies during the month of June 2018. R. 10-13. When law enforcement questioned appellant, he confessed and cooperated with the investigation. R. 16, ll. 1-8.

In exchange for the state not seeking a sentence of LWOP, appellant entered a negotiated guilty plea for a range of twenty to forty years. R. 5, ll. 11-15. During sentencing, plea counsel Zmorczek told the court appellant was cooperative with law enforcement and was willing to take responsibility for his actions. Counsel Zmorczek asked the court to impose a sentence of twenty or twenty-five years, the lower end of the sentencing range. R. 32-33.

Appellant's mother also addressed the court and stated that appellant was immature for a twenty-seven-year-old because he had been incarcerated for much of his youth and all his adult life, and he was therefore easily influenced by his co-defendants. R. 28-29. Appellant took responsibility for his actions telling the court he should not have participated in the robberies. Appellant lamented that he had missed out on being a teenager and was "infatuated" with his co-defendants' "style" and got carried away in an attempt to regain his own youth. R. 30-31. Ultimately Judge McLeod sentenced appellant to thirty-three years' imprisonment.

In appellant's brief in support of the motion to reconsider sentence, he argued the court should reduce his sentence because of the disparity between appellant's sentence and the sentences of his co-defendants. R. 37-38. Appellant asserted the co-defendants in this case were as culpable as he in the crime, and appellant expressed great remorse for his role in the robberies. R. 37-38. Judge Walton denied appellant's motion to reconsider finding the disparity was not great and that appellant was not entitled to a reduction. R. 41.

Discussion

In a criminal prosecution, punishment of the offender is recognized as a proper motivation for a sentencing trial judge. *State v. Fletcher*, 322 S.C. 256, 471 S.E.2d 702 (Ct.App.1996). However, another legitimate interest at sentencing is the defendant's prospect for rehabilitation and restoration to a useful place in society. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996). *See also* 24 C.J.S. Criminal Law § 1460 (rehabilitation is considered to be one purpose of sentencing).

The sentence imposed upon a co-defendant for the same offense and upon others for similar offenses are among a wide variety of factors, which may be considered in determining a proper punishment. *State v. Brewington*, 267 S.C. 97, 226 S.E.2d 249 (1976).

In *State v. Brouwer*, the Court reversed a sentence disproportionate to similarly situated codefendants because it punished Brouwer for exercising his right to a jury trial when the "record fails to reflect an otherwise appropriate basis for Brouwer's disparate sentence" and the trial judge "explain[ed] that [the codefendant] received a more lenient sentence because she admitted guilt." 346 S.C. 375, 387, 550 S.E.2d 915, 922 (Ct. App. 2001).

The judge erred in his denial of appellant's motion to reconsider his sentence because there was a great disparity between appellant's sentence and his co-defendants' sentences.

Appellant was sentenced to thirty-three years imprisonment. His co-defendants were sentenced to only twenty years and ten years respectively. R. 37. It is true the co-defendants in this case were both under the age of twenty at the time of sentencing and appellant was twenty-seven. However, because of appellant's previous lengthy incarceration, from the age of sixteen to twenty-six, he was emotionally stunted compared to most young men in their mid-twenties. At sentencing the court failed to consider the disparity, thirteen and twenty-three years between co-defendants' sentences. The court also failed to consider appellant's obvious lack of maturity as a young man who had spent all of his adult life incarcerated without the opportunities for growth afforded to his co-defendants.

CONCLUSION

By reason of the foregoing argument, appellant's sentence should be vacated and this case remanded for resentencing.

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of May, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
May 28 2020
SC Court of Appeals

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEVONTRE CORTELL JACKSON,

APPELLANT.

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Devontre Cortell Jackson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Walton J. McLeod, IV, which was held on March 13, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Devontre Cortell Jackson.

Respectfully Submitted,

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender
ATTORNEY FOR APPELLANT

This 28th day of May, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

V.

DEVONTRE CORTELL JACKSON,

RESPONDENT,

APPELLANT.

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire transcript of the guilty plea hearing dated March 13, 2019
- (3) Entire transcript of the sentencing hearing dated March 29, 2019
- (4) Motion to reconsider sentence
- (5) Brief of defendant in support of motion to reconsider sentence
- (6) Memo in opposition of the defendant's motion for reconsideration
- (7) Order denying motion to reconsider sentence
- (8) Statement of basis for appeal from guilty plea

I certify that this designation contains no matter which is irrelevant to this appeal.

May 28, 2020

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330
ATTORNEY FOR APPELLANT

RECEIVED
May 28 2020
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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.”

May 28, 2020.

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

May 28 2020

SC Court of Appeals