

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

Opinion No. 2020-UP-012 (S.C. Ct. App. Filed January 15, 2020)
2015-GS-37-00348; 2015-GS-37-00349

THE STATE,

PETITIONER,

V.

KENNETH STROTHER COLLINS,

RESPONDENT

APPELLATE CASE NO. 2020-000531

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATE'S QUESTION PRESENTED

1.

Did the Court of Appeals commit a fundamental error of law by ignoring South Carolina's well-established issue preservation requirements and vacating a twenty-year portion of the aggregate fifty-year sentence Collins received for his "terrible" crimes based on a sentencing error that was neither raised to nor ruled upon by the trial judge and, thus, was not properly preserved for appellate review?

COUNTERSTATEMENT OF THE ISSUE

Did the Court of Appeals properly follow a long line of precedent in vacating a sentence the State concedes (on appeal) is illegal?

STATEMENT OF THE CASE

On April 13, 2015, an Oconee County grand jury indicted respondent for murder, kidnapping and a weapons charge. R. 275 – 278. On October 17, 2017, respondent’s trial began after conducting jury selection and pretrial motions the day before. R. 1. Respondent 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 respondent. R. 1. The jury convicted respondent on all counts. R. 118, l. 11 – 119, l. 13. Judge Sprouse sentenced respondent 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. On January 15, 2020, in an unpublished opinion, a panel of the Court of Appeals consisting of Chief Judge Lockemy, Judge Konduros, and Judge Hill vacated respondent’s kidnapping sentence. State v. Collins, Op. No. 2020-UP-012 (S.C. Ct. App. Jan. 15, 2020). After the State’s petition for rehearing *en banc* was denied, it sought certiorari at this Court.

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

The Court of Appeals properly followed a long line of precedent in vacating a sentence the State concedes (on appeal) is illegal.

Despite conceding that respondent's sentence for kidnapping is error, the State contends, in a lengthy treatise on issue preservation, that the Court of Appeals' rote vacation of the illegal sentence in an unpublished opinion is worthy of a grant of certiorari from this Court. The State argues that strict adherence to error preservation is required to prevent the terrible evil of "sandbagging" by respondent's trial counsel, who the State says "improperly held back for appeal" her client's twenty-year illegal sentence. State's Pet. Cert. at 9-10.

The State's attempt to manufacture a certiorari-worthy issue ignores that the solicitors collaborated in respondent's sentence, the impropriety of which is plainly written in the kidnapping statute. S.C. Code Ann. § 16-3-910. The kidnapping statute itself, in section 910—not some obscure point of case law—proscribes sentencing a defendant for kidnapping when he is also sentenced for murder. S.C. Code Ann. § 16-3-910. The indictment prepared by the solicitor cites section 910. R. 277. The sentencing sheet signed by the solicitor and the judge cites section 910. R. 281. The trial judge read portions of section 910 in his charge to the jury. R. 259, l. 15 – 260, l. 17.

Respondent's assistant public defender who supposedly "held back" this issue for appeal had been practicing law for a little over three (3) years in South Carolina at the time of this murder trial.¹ The State was represented by two solicitors, with a combined twenty (20) years' experience practicing law in South Carolina.² The lead solicitor asked for a life sentence. R. 268, l. 18 – 21. After the judge pronounced his illegal sentence, the lead solicitor with fifteen years' experience said

¹ See <https://www.sccourts.org/attorneys/locateAttorney.cfm?barnumber=101544>.

² See <https://www.sccourts.org/attorneys/locateAttorney.cfm?barnumber=70224>; <https://www.sccourts.org/attorneys/locateAttorney.cfm?barnumber=100529>.

only, “Thank you, Judge.” R. 274, l. 4 – 14. See Fishburne v. State, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (“We do not place the blame on a single party below for an insufficient PCR order. The preparation and finalization of a PCR order is often a collaborative effort.”).

The Court of Appeals undoubtedly recognized the State’s complicity in respondent’s illegal sentence. The Court of Appeals found, “We find the State’s request to vacate and remand the entire sentence for resentencing is improper because neither party raised any issues relating to Collins’s sentence for murder or his sentence for possession of a weapon during the commission of a violent crime or argued the sentences were improper. Therefore, Collins’s thirty-year sentence for murder and concurrent five year sentence for possession of a weapon during the commission of a violent crime stand.” State v. Collins, Op. No. 2020-UP-012, at n.1 (S.C. Ct. App. Jan. 15, 2020). In its petition to this Court, the State sharply criticizes the Court of Appeals for this observation, quoting a phrase from the United States Supreme Court about the stretching of fairness to a filament. State’s Pet. Cet. at 16, n.3.

The Court of Appeals’ unpublished decision followed a long line of published precedent vacating illegal kidnapping sentences on appeal despite the lack of a contemporaneous objection from defense counsel. Over thirty years before respondent’s trial, in 1982, this Court vacated a sentence for kidnapping when the defendant was sentenced to death for murder. State v. Copeland, 278 S.C. 572, 597, 300 S.E.2d 63, 77-78 (1982). The Court cited the kidnapping statute’s plain language as the reason for its reversal. Id. A year later, in 1983, this Court again vacated kidnapping sentences that violated section 16-3-910. State v. Perry, 278 S.C. 490, 495, 299 S.E.2d 324, 327 (1983). The Court then vacated another kidnapping sentence in 1984. State v. Livingston, 282 S.C. 1, 8, 317 S.E.2d 129, 133 (1984). 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 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), the Court of Appeals applied this Court’s precedent to vacate a kidnapping sentence that violated the plain language of the kidnapping statute. In State v. Vick, 384 S.C. 189, 201-202, 682 S.E.2d 275, 281 (Ct. App. 2009), 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. The Court of Appeals vacated the kidnapping sentence over the State’s preservation objection. Id. Here, just like in Vick, the Court reached the concededly illegal sentence in the interest of judicial economy.

The Court of Appeals’ unpublished decision has not stretched fairness to the State to a mere filament. The State benefits greatly from appellate procedural bars that are among strictest in the nation. See Tory A. Weigand, Esq., Raise or Lose: Appellate Discretion and Principled Decision-Making, 17 Suffolk J. Trial & App. Advoc. 179, 222 (2012) (listing South Carolina as one of only eight (8) states without plain error review). No reason exists to grant certiorari in this case and the State’s petition should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition for certiorari.

This 4th day of June, 2020.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT