STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2019-001563

THE STATE,

Respondent,

vs.

EDMUND ANTONIO PINCKNEY,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

STATEMENT OF ISSUE ON APPEAL

Did the plea judge err when he denied Appellant's motion to reconsider his sentence where Appellant pled guilty to two counts of shoplifting in exchange for the State recommending a time served sentence and the plea judge sentenced Appellant to ten years' imprisonment instead since that "draconian" sentence was imposed because the plea judge was impermissibly influenced by the fact Appellant was acquitted of armed robbery and other serious charges involving the same store where the shoplifting occurred just before Appellant pled guilty and, therefore, the sentence should be vacated?

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the plea judge abuse his broad sentencing discretion or commit some other error of law by sentencing Appellant to an aggregate ten-year term of imprisonment and by subsequently declining to reconsider that sentence after Appellant knowingly and voluntarily pled guilty to two offenses that each permitted the imposition of a maximum term of imprisonment of ten years when the aggregate sentence imposed fell within the permissible statutory sentencing limits for Appellant's crimes and nothing appearing in the record established it was imposed as the result of any partiality, prejudice, corrupt motive, or improper considerations on the part of the plea judge?

STATEMENT OF THE CASE

In September of 2016, Appellant Edmund Antonio Pinckney was arrested in connection to two separate shoplifting incidents that occurred on back-to-back dates. Following his release from custody, Appellant was arrested in December of 2016 in connection to a violent armed robbery committed at one of the same stores involved in the earlier shoplifting incidents. In September of 2017, the Greenville County Grand Jury indicted Appellant for one count of armed robbery along with two counts of shoplifting that were subject to sentencing enhancement pursuant to Section 16-1-57 of the South Carolina Code of Laws. In May of 2018, the Greenville County Grand Jury additionally indicted Appellant for one count of assault and battery of a high and aggravated nature along with one count of possession of a weapon during the commission of a violent crime. On February 6, 2019, a jury trial was commenced in the Greenville County Court of General Sessions solely on the charges stemming from the armed robbery with the Honorable Edward W. Miller, circuit court judge, presiding. At the conclusion of two-day trial, the jury acquitted Appellant of all the charges involved. Shortly after the verdict, Appellant elected to enter guilty pleas to the two remaining shoplifting charges, and a plea hearing was commenced with Judge Miller again presiding. At the conclusion of the plea hearing, the plea judge accepted Appellant's guilty pleas and sentenced him to concurrent ten-year terms of imprisonment for each of the convictions. Thereafter, Appellant filed a motion seeking reconsideration of his sentence. Subsequently, through an order filed on September 3, 2019, the plea judge denied that motion. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On back-to-back dates in September of 2016, Appellant stole multiple packages of beer from two separate convenience stores located in Greenville, South Carolina, including a Li'l Cricket store situated on Augusta Road. (Plea Tr. pp. 4-6; Arrest Warrant # 2016A2330209245; Arrest Warrant # 2016A2330209285). After the second of the incidents, Appellant was caught while still in possession of the stolen beer, and he was swiftly arrested. (Plea Tr. pp. 5-6; Arrest Warrant # 2016A2330209245; Arrest Warrant # 2016A2330209285). Appellant then spent several weeks in jail before he was able to obtain release on bond. (Bond Order).

A few months after Appellant was released on bond, a man wearing a brown-and-tan coat entered the Li'l Cricket store that had been involved in one of the earlier shoplifting incidents and attempted to rob the store's clerk, Dorothy Miller. (Trl. Tr. pp. 49-50; pp. 52-53; p. 81; pp. 95-96). During the course of the robbery, the man cut Miller several times with a box cutter, and Miller fought back. (Trl. Tr. p. 53; p. 71; p. 100). Ultimately, due to Miller's resistance, the man was not able to steal any money, but he was able to grab a number of cigarette lighters from the store's counter before absconding. (Trl. Tr. p. 53; p. 75; p. 96; p. 99).

Within minutes of the robbery, officers from the Greenville County Sheriff's Office began arriving at the scene, and Miller, who was hysterical at that time, provided an account of the incident along with a description of the robber. (Trl. Tr. pp. 48-50; pp. 52-53; pp. 59-60; pp. 79-81; pp. 95-96; pp. 105-107). A short time after that, officers attempted to track the robber with a tracking dog based on information they obtained in regard to the direction of the robber's flight. (Trl. Tr. p. 41; pp. 54-55; pp. 81-82; pp. 113-114). During the course of the tracking attempt, the officers encountered two men—Stanley Evans and Ishma Davis—in the area, spoke with them about what had transpired, and were advised Appellant had been given a brown-and-

tan coat earlier on the same date the crime was committed. (Trl. Tr. pp. 55-58; p. 63; p. 83; pp. 119-123; p. 130; pp. 151-152).

As the search for the robber continued, Appellant was located by an officer roughly a mile away from the crime scene around one-and-a-half hours after the robbery occurred. (Trl. Tr. pp. 40-42; pp. 84-85; p. 123). At that time, Appellant matched the general physical description of the robber aside from not—or no longer—having a brown-and-tan coat. (Trl. Tr. p. 86; p. 94). Based on that, Appellant—who responded somewhat suspiciously to seeing the officer—was stopped, and, during the course of an ensuing consent-based search, ten separate cigarette lighters were located in his pockets. (Trl. Tr. pp. 86-87). At that point, Appellant was placed under arrest, and, within minutes, he was positively identified by Miller as the robber. (Trl. Tr. pp. 103-104).

A little less than a year after Appellant's arrest in connection to the armed robbery, Miller unfortunately died of natural causes. (Trl. Tr. p. 34). Subsequent to her death, Appellant was indicted for a number of crimes stemming from both the shoplifting incidents and the armed robbery, and he proceeded forward to trial on the charges connected to the armed robbery. (Trl. Tr. pp. 6-7; Plea Tr. p. 4; Indictments).

During the course of trial, the State was unable to present Miller's identification of Appellant as the robber due to her unfortunate death. (Trl. Tr. p. 27; pp. 102-104). However, the officers involved in the investigation into the incident recounted the events that led to Appellant's arrest, and surveillance footage from the robbery was admitted into evidence and played for the jury. (Trl. Tr. pp. 46-64; pp. 69-125; pp. 155-160). Likewise, Evans and Davis testified about what occurred on the date of the incident, and Evans identified Appellant from the surveillance footage of the robbery based on his personal knowledge of him. (Trl. Tr. pp. 129-

149; pp. 151-153). Conversely, Appellant testified in his own defense, denied committing the robbery, and claimed he had instead obtained his pocketful of lighters by trading a piece of crack cocaine to a "fellow" at a crack house earlier on the date of the incident. (Trl. Tr. pp. 171-176).

At the conclusion of trial, the jury acquitted Appellant of all the charges related to the armed robbery. (Trl. Tr. pp. 252-253). Shortly after that, Appellant decided to resolve the shoplifting charges that still remained pending by entering guilty pleas to the offenses. (Trl. Tr. p. 254; Plea Tr. pp. 4-5).

During the course of the ensuing plea hearing, Appellant confirmed he wished to plead guilty to the shoplifting charges, admitted his guilt for the crimes, indicated he understood he was facing a term of imprisonment of up to ten years for each of the offenses, and directly acknowledged he understood the plea judge was *not* required to follow the solicitor's sentencing recommendation of a time-served sentence. (Plea Tr. pp. 3-5). At that point, the solicitor recounted the facts of the incidents, which the solicitor described as "kind of just beer grabs," and the plea judge asked which particular Li'l Cricket store was involved in the first of the incidents. (Plea Tr. p. 6). In response, the solicitor verified the Li'l Cricket store involved in the first shoplifting incident was the one located on Augusta Road, and the plea judge noted that store was the same store that had been involved in the incident related to Appellant's trial. (Plea Tr. p. 6). The plea judge then asked what the date of the armed robbery had been, and defense counsel—without raising any objections or concerns to the query—verified it occurred on a date roughly three months after the shoplifting incidents. (Plea Tr. p. 4; p. 6). As the plea hearing continued forward, the plea judge asked the solicitor to recount Appellant's criminal record, and the solicitor presented that "very lengthy" record, which contained offenses going as far back as 1983, spanned across multiple *decades*, involved around thirty separate convictions, and

included eleven different convictions for property crimes such as shoplifting. (Plea Tr. pp. 6-7). After Appellant's substantial criminal record was presented, defense counsel asked the plea judge to go along with the solicitor's recommendation, and Appellant briefly expressed an interest in getting back to work. (Plea Tr. p. 7). Following those remarks, the plea judge noted Appellant had "an incredible record" before imposing concurrent ten-year sentences for each of Appellant's convictions. (Plea Tr. p. 7).

Thereafter, defense counsel promptly filed a motion seeking reconsideration of the sentence. (Motion for Reconsideration). As support for the request, defense counsel alleged it "reasonably appear[ed]" the plea judge considered the charges for which Appellant had been acquitted in light of the fact he asked a few questions that bore a connection to the robbery. (Motion for Reconsideration). Based on the plea judge's fact-based questioning, defense counsel contended he "believe[d]" the plea judge "may have been inappropriately swayed" by considering the charges for which Appellant had been acquitted. (Motion for Reconsideration).

Upon considering the matter, the plea judge denied the motion for reconsideration. (Order Denying Motion for Reconsideration). In doing so, the plea judge noted he took into consideration Appellant's age, employment, marital status, criminal record, education level, and any mitigating factors offered in deciding upon Appellant's sentence. (Order Denying Motion for Reconsideration). He further noted he determined the recommended sentence of time-served would not have satisfied "the interests of justice" based on the fact Appellant had a criminal record that spanned the majority of his adult life and included numerous offenses similar to the crimes to which Appellant pled guilty. (Order Denying Motion for Reconsideration). Additionally, the plea judge rejected defense counsel's contention he was improperly swayed by the acquitted charges and indicated he did not believe his "plain" consideration of Appellant's

criminal history coupled with the factual basis for the pleas amounted to prejudice to Appellant. (Order Denying Motion for Reconsideration). Beyond that, the plea judge pointed out the sentence imposed fell within the appropriate sentencing limits for Appellant's offenses and was imposed only after Appellant was advised the solicitor's sentencing recommendation was not binding upon the court. (Order Denying Motion for Reconsideration). For those reasons, the plea judge declined to reconsider the aggregate sentence imposed. (Order Denying Motion for Reconsideration).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). When reviewing a sentencing issue on appeal, an appellate court will only interfere with a trial judge's sentencing decisions in rare and unusual circumstances in light of the broad discretion afforded to trial judges on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952); see State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits."); see also State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come."). Furthermore, appellate courts in South Carolina have "no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law in the discretion of the trial judge, and is not the result of partiality, prejudice, oppression or corrupt motive." State v. Scates, 212 S.C. 150, 154, 46 S.E.2d 693, 694 (1948); cf. State v. Davis, 88 S.C. 229, __, 70 S.E. 811, 814 (1911) ("It is excepted that imprisonment for five years in this case is excessive. We have repeatedly held that we have no jurisdiction to correct a sentence on this ground, provided it is within the limits prescribed by law for the discretion of the trial court, and is not the result of partiality, prejudice, oppression, or corrupt motive.").

ARGUMENT

The plea judge did not abuse his broad sentencing discretion or commit any other error of law by sentencing Appellant to an aggregate ten-year term of imprisonment and by subsequently declining to reconsider that sentence after Appellant knowingly and voluntarily pled guilty to two offenses that each permitted the imposition of a maximum term of imprisonment of ten years because the aggregate sentence imposed fell within the permissible statutory sentencing limits for Appellant's crimes and nothing appearing in the record established it was imposed as the result of any partiality, prejudice, corrupt motive, or improper considerations on the part of the plea judge.

Appellant contends the plea judge reversibly erred by sentencing him to an aggregate ten-year term of imprisonment after he knowingly and voluntarily pled guilty to two counts of shoplifting, which were subject to statutorily-mandated sentencing enhancement as a result of Appellant's numerous earlier convictions for property crimes. In raising that particular contention, Appellant does not appear to dispute the fact his aggregate sentence fell within the permissible sentencing limits for his latest convictions. Nonetheless, Appellant maintains his sentence was improper and must be vacated on appeal. As support for that claim, Appellant personally characterizes his crimes as "mild" in nature while opining the plea judge must have improperly punished him by imposing the purportedly "draconian" and "exceedingly harsh" sentence imposed due to the fact he was acquitted of other more serious charges prior to the plea proceedings. Contrary to Appellant's wholly speculative assertions, the plea judge did not commit any error whatsoever when sentencing Appellant—or when refusing to reconsider the sentence imposed—because he imposed an aggregate sentence that fell within the permissible statutory sentence limits—and well below the maximum possible punishment that could have permissibly been imposed—for Appellant's crimes, and nothing appearing in the record established the plea judge imposed Appellant's statutorily-authorized sentence as the result of any partiality, prejudice, corrupt motive, or improper considerations. Under such circumstances,

there is no proper basis upon which Appellant's aggregate sentence can be disturbed on appeal. Appellant's convictions and aggregate sentence should be affirmed.

In South Carolina, sentencing judges are vested with broad discretion to impose a sentence falling within the statutory limits upon an offender convicted of a crime. Sidell, 262 S.C. at 398, 205 S.E.2d at 3. In exercising that broad sentencing authority, the sentencing judge must be accorded "very wide" discretion to determine the appropriate sentence and can properly consider "*any and all information* that reasonably might bear upon the proper sentence for the particular defendant, given the crime committed." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (emphasis added). Importantly, so long as the sentence imposed falls within the permissible sentencing limits for an offender's crime, the sentencing judge's decision regarding the appropriate sentence will not be found to be improper *unless* it violated the constitutional prohibition against cruel and unusual punishment or resulted from partiality, prejudice, oppression, or corrupt motive. See Wood v. State, 257 S.C. 179, 182, 184 S.E.2d 702, 703 (1971) ("It is well settled in this State that this Court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute itself violates the constitutional injunction . . . against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive.").

In the case sub judice, Appellant pled guilty to two counts of shoplifting, and both those offenses were subject to statutorily-mandated sentencing enhancement due to Appellant's numerous prior convictions for property crimes. See S.C. Code Ann. § 16-13-110 (outlining the offense of shoplifting); see also S.C. Code Ann. § 16-1-57 (mandating an offender convicted of a third or subsequent property crime "must" be punished in the manner prescribed for a Class E felony). As a result, the plea judge was statutorily vested with discretion to sentence Appellant

to a term of imprisonment not exceeding ten years for *each* of Appellant's offenses. See S.C. Code Ann. § 16-1-57 ("A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a Class E felony."); see also S.C. Code Ann. § 16-1-20(A)(5) (mandating a person convicted of a Class E felony be sentenced to a term of imprisonment of "not more than ten years"). Thus, in total, Appellant was facing a maximum potential aggregate sentence of up to twenty years as a result of the guilty pleas he knowingly, voluntarily, and intelligently elected to enter. See State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997) ("[W]hether multiple sentences should run consecutively or concurrently is a matter left to the sound discretion of the trial judge.").

Although the plea judge had the discretionary authority to sentence Appellant to up to a twenty-year term of imprisonment for his crimes, he did not do so and, instead, sentenced Appellant to an aggregate ten-year term of imprisonment, which was a sentence equal to half the length of the maximum potential term of imprisonment that could have permissibly been imposed. Significantly, in imposing that particular sentence, the plea judge contemporaneously pointed to Appellant's "incredible" criminal record, which—with Appellant's latest convictions factored in—spanned *four decades*, consisted of *more than thirty* convictions, included *eleven* different properties crimes similar to the offenses to which Appellant entered his guilty pleas, and constituted a compelling and legitimate reason for the imposition of a harsher punishment since the recidivist nature of Appellant's latest crimes reflected heightened culpability along with an enhanced need for deterrence and incapacitation. See Nichols v. United States, 511 U.S. 738, 747 (1994) (instructing a defendant's prior criminal record is—and has traditionally been recognized as—an "important factor" for purposes of determining what sentence to impose upon

conviction); see also United States v. Rodriquez, 553 U.S. 377, 385 (2008) ("[A]n offense committed by a repeat offender is often thought to reflect greater culpability and thus to merit a greater punishment. Similarly, a second or subsequent offense is often regarded as more serious because it portends greater future danger and therefore warrants an increased sentence for purposes of deterrence and incapacitation."). Meanwhile, the plea judge did *not* make any statements suggesting he was imposing Appellant's sentence for any improper reasons, and he certainly did not make any statements supporting a conclusion he decided to impose the sentence imposed in order to punish Appellant for the crimes for which he had been acquitted as opposed to the ones for which he was actually convicted. Cf. Davis v. State, 336 S.C. 329, 333, 520 S.E.2d 801, 803 (1999) ("[T]he trial judge *unequivocally* stated that the other defendants had, in fact, pled guilty. The trial judge further expressed his preference for guilty pleas by explaining that such admissions of responsibility were the first steps towards rehabilitation. We find these statements clearly revealed that the trial judge, in sentencing petitioner, improperly considered petitioner's decision to proceed with a jury trial." (emphasis added)); State v. Hazel, 317 S.C. 368, 370, 453 S.E.2d 879, 880 (1995) (reversing Hazel's sentence based on the trial judge's improper consideration of Hazel's exercise of his right to a jury trial where the trial judge specifically stated he would have considered a lesser sentence if Hazel had pled guilty); Scates, 212 S.C. at 154, 46 S.E.2d at 694 (*affirming* the trial judge's decision to impose the maximum penalty of twenty-five years for armed robbery and rejecting Scates's argument the sentence was affected by prejudice even though the trial judge informed Scates during the sentencing proceedings his version of events was "nothing more than a 'cock and bull' story," stated the jury could not have believed that version of events unless they were "dumb simpletons," and called Scates a "husky young man"); State v. Brouwer, 346 S.C. 375, 388, 550 S.E.2d 915, 922

(Ct. App. 2001) (finding the trial judge improperly considered Brouwer's exercise of his constitutional right to a jury trial where the trial judge specifically stated there was no reason to ever give a person convicted by a jury the same sentence as a person who pled guilty and where there was no appropriate justification for the disparity between Brouwer's sentence and the sentence of his identically-situated co-defendant who pled guilty). Moreover, the aggregate sentence imposed was not unconstitutional as it fell within the statutorily-permitted sentencing limits for Appellant's crimes and was not grossly disproportionate to those offenses, which warranted heightened punishment due to their repetitive nature. See State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) ("The cruel and unusual punishment clause requires the duration of a sentence not be grossly out of proportion with the severity of the crime."); see also Brooks v. State, 325 S.C. 269, 272, 481 S.E.2d 712, 713 (1997) ("A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant."); State v. Williams, 380 S.C. 336, 348, 669 S.E.2d 640, 647 (Ct. App. 2008) (recognizing—while rejecting a constitutional challenge to a sentence—" a state is justified in punishing a recidivist more severely than it does a first offender"). Under such circumstances, the plea judge did not abuse his broad discretion or otherwise err when sentencing Appellant, and there is simply no proper basis upon which the plea judge's discretionary sentencing decision could be disturbed on appeal. See State v. Bass, 242 S.C. 193, 197, 130 S.E.2d 481, 483-484 (1963) ("This Court has no jurisdiction to correct a sentence alleged to be excessive when it is within the limits prescribed by law.").

In arguing to the contrary, Appellant contends the aggregate sentence imposed was not warranted given the "mild" nature of his crimes while pointing to the fact his sentence exceeded the sentence recommended by the solicitor. Significantly though, that particular argument

ignores the fact the aggregate sentence imposed by the plea judge fell squarely within the sentencing limits our legislature determined were, in fact, warranted for the criminal conduct in which Appellant admittedly engaged. See State v. Brannon, 341 S.C. 271, 278, 533 S.E.2d 345, 348 (Ct. App. 2000) ("Under most circumstances, the severity of a sentence prescribed for a particular offense remains a matter of legislative prerogative."); see also State v. Pittman, 373 S.C. 527, 563, 647 S.E.2d 144, 162 (2007) (recognizing legislation constitutes the clearest and most reliable evidence of society's contemporary values in regard to sentencing). Likewise, Appellant's personal views about the relative mildness of his crimes fail to take into account the fact his crimes were warranting of greater punishment due to their repetitive—and seemingly undeterrable—nature. See State v. Lewis, 325 S.C. 324, 327, 478 S.E.2d 696, 698 (Ct. App. 1996) (recognizing shoplifting is an offense subject to the recidivist " 'three strikes and you're out' statute"); cf. Rummel v. Estelle, 445 U.S. 263, 276 (1980) ("[T]he interest of the State of Texas here is not simply that of making criminal the unlawful acquisition of another person's property; it is in addition the interest, expressed in all recidivist statutes, in dealing in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to the norms of society as established by its criminal law."). Moreover, the plea judge certainly was not bound by a sentencing *recommendation*, which Appellant directly confirmed he understood before entering his guilty pleas, and, therefore, in no conceivable way abused his broad discretion by electing not to go along with what was simply a non-binding suggestion. See State v. Green, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999) ("[T]he State's sentence recommendation is not binding on the trial judge."); see also Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one

acknowledges on the record that one knows the range of sentences and that no promises have been made."); State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982) ("[W]hen the State fulfills its agreement to recommend a specific sentence, the fact that the judge does not accept the recommendation does not affect the validity of the plea.").

Beyond that, Appellant—in challenging the propriety of his aggregate sentence—speculates the plea judge must have considered the fact he was acquitted of the charges stemming from the armed robbery when imposing the sentence while maintaining doing so would have been improper. Importantly though, the plea judge did not make any statements to support such a conclusion. Instead, he simply made a few brief queries to determine the facts underlying the offenses to which Appellant entered his guilty pleas and then shifted his focus to Appellant's "incredible" criminal history just before announcing the aggregate sentence. See Franklin, 267 S.C. at 245, 226 S.E.2d at 897 ("If justice is to be done, a sentencing judge should know all the material facts."); State v. Saxon, 261 S.C. 523, 530, 201 S.E.2d 114, 118 (1973) ("The statement made by the trial judge must be considered in context."); see also State v. Quinn, 430 S.C. 115, 125, 843 S.E.2d 355, 360 (2020) ("Generally, a sentencing judge has great discretion in the kind of evidence she may use to assist her in determining the punishment to be imposed. Indeed, she is obligated to consider information material to punishment and may exercise a wide discretion in the sources and types of evidence used to assist her in determining the kind and extent of punishment to be imposed within limits fixed by law." (citations, internal quotations, and brackets omitted)). Under such circumstances, there was simply nothing establishing the plea judge sentenced Appellant based on anything other than the pertinent facts and circumstances before him when imposing statutorily-authorized terms of imprisonment for

Appellant's offenses.[1] See State v. Benning, 338 S.C. 59, 64-65, 524 S.E.2d 852, 855-856 (Ct. App. 1999) (affirming the trial judge's imposition of the maximum potential sentence upon Benning following his conviction for lewd act and acquittal for first-degree criminal sexual conduct with a minor and rejecting Benning's contention the trial judge improperly considered the evidence related to the first-degree criminal sexual conduct with a minor charge *even though* the trial judge directly stated during the sentencing proceedings he would have convicted Benning of that charge); see also State v. Mercado, 263 S.C. 304, 309, 210 S.E.2d 459, 461 (1974) ("[Mercado] argues that the trial judge abused his discretion in sentencing him to ten years on the grand larceny charge. In support of this argument he points to a series of comments by the judge prior to sentencing. The judge indicated that he was not in agreement with the acquittal of the murder charge and said that he was satisfied that [Mercado] voluntarily participated in the unlawful actions. He further commented that violence is a way of life with migrant workers like the defendant. The trial judge heard all of the testimony and observed the demeanor of the witnesses. Although the statements might have been better left unsaid, we cannot say that the record before us reflects that the maximum sentence imposed was the result

[1] Notably, although nothing suggests the plea judge actually relied upon the acquitted charges when fashioning Appellant's aggregate sentence, the United States Supreme Court has explained it is not improper for a sentencing judge to consider facts and evidence related to a charge that resulted in an acquittal when imposing a sentence for another offense. See United States v. Watts, 519 U.S. 148, 156-157 (1997) (recognizing a verdict of acquittal does *not* mean a defendant is actually innocent of a charged offense and holding "a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence"); see also United States v. Lawing, 703 F.3d 229, 241 (4th Cir. 2012) ("A verdict of acquittal demonstrates only lack of proof beyond a reasonable doubt; it does not necessarily establish the defendant's innocence. At sentencing, a district court may consider conduct of which a defendant has been acquitted if the conduct has nonetheless been proved by a preponderance of the evidence. Accordingly, the mere fact that the jury acquitted Lawing of firearms charges did not preclude the district court from considering whether Lawing did in fact possess a firearm." (citations and internal quotations omitted)).

of partiality, prejudice, oppression or corrupt motive."), abrogated on other grounds by State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

Accordingly, since Appellant's aggregate sentence fell within the appropriate statutory sentencing limits for his latest convictions in his long history of convictions and nothing suggested it was unconstitutional or imposed based on partiality, prejudice, oppression, corrupt motive, or any other improper considerations, the plea judge did not abuse his broad sentencing discretion or commit any other error of law by imposing Appellant's aggregate ten-year sentence and by declining to reconsider it, and there is no proper basis upon which to disturb that aggregate sentence on appeal. See State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) ("[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion."); State v. Johnson, 159 S.C. 165, 170, 156 S.E. 353, 354 (1930) ("This Court has no jurisdiction on appeal to correct a sentence alleged to be excessive, when it is within the limits prescribed by law. The length of the prison sentence rests in the sound discretion of the trial Court unless partiality, prejudice, oppression, or corrupt motive is shown."). Appellant's convictions and aggregate sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: _____
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

August 12, 2020

RECEIVED
Aug 12 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2019-001563

THE STATE,

Respondent,

vs.

EDMUND ANTONIO PINCKNEY,

Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Victor R. Seeger, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 12th day of August, 2020.

CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Caroline Collins

From: Caroline Collins
Sent: Wednesday, August 12, 2020 11:56 AM
To: 'vseeger@sccid.sc.gov'
Cc: 'Stock, Chris'; Mark Farthing; William Blitch
Subject: The State v. Edmund Antonio Pinckney (2019-001563)
Attachments: Pinckney.IBOR (02350168xD2C78).PDF

Follow Up Flag: Worldox

Good Afternoon Mr. Seeger,

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter in The State v. Edmund Antonio Pinckney (2019-001563). This document will be submitted today to the Court of Appeals through the AIS One Drive system.

If you will, please reply to confirm receipt of this email.

Thank you!

Caroline Collins
Administrative Coordinator
South Carolina Attorney General's Office
P: (803) 734-3723