THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Diane Shafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2020-UP-239
Appellate Case No. 2018-001915

The State,

Respondent

v.

Daemon Michael Crim,

Appellant

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant, through his undersigned counsel, respectfully petitions for rehearing of the Court's decision of August 12, 2020.

I. The Court of Appeals erred by ignoring important precedent.

The opinion states that "the plea court did not abuse its discretion in imposing Crim's sentence that was within the statutory range."

However, that statement ignores several important precedents. First, as to the standard of review, an abuse of discretion can occur, even when a defendant is sentenced within the statutory range. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Hicks, 377 S.C.

322, 324-25, 659 S.E.2d 499, 500 (Ct. App. 2008) citing Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). Appellant's final brief and the record on appeal reveal that trial counsel presented ample mitigating evidence that Crim had no prior record, was unlikely to reoffend, was well employed, and was of good moral character. The trial judge ignored all of the mitigating evidence, and sentenced Crim to the maximum sentence.

Indeed, a circuit judge disregarding the facts before them can constitute an abuse of discretion. State v. Hicks, 377 S.C. 322, 324-25, 659 S.E.2d 499, 500 (Ct. App. 2008). In State v. Steadman, 216 S.C. 579, 608, 59 S.E.2d 168, 182 (1950), the South Carolina Supreme Court determined:

> What the court stated in State v. Scates, 212 S.C. 150, 46 S.E.2d 693, 695, may aptly be quoted here: "An exhaustive definition of the phrase 'abuse of discretion' would be difficult, if not impossible. Each case must be determined with reference to its own peculiar facts. The exercise of a sound judicial discretion must and should be performed in every case with a conscientious regard for what is just and proper under the circumstances."

The "peculiar facts" of this case did not warrant a twenty-year sentence, and the issuing of that sentence was an abuse of discretion because it ignored all of the facts presented by the defense.

Second, the South Carolina Supreme Court has expressly sanctioned the appellate review of a sentence imposed by a trial court, even when the sentence imposed was within the limits proscribed by law. See State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941) (remanding a case for re-sentencing because it was disproportionate for the crime), State v. Kimbrough, 212 S.C. 348, 46 S.E. 2d. 273 (1948), (holding a 20 year sentence for burglary inflicted cruel and unusual punishment as it was effectively a life sentence), State v. Hazel, 317 S.C. 368, 453 S.E.2d 879

(1995) (holding a trial judge abused his discretion where he refused to sentence the defendant under the Youthful Offender Act after a trial).

II. The Court of Appeals erred in not addressing the Constitutional arguments.

The opinion in this case is silent to the Constitutional issues raised by Appellant in his final brief. The sentence imposed by Judge Goodstein was so disproportionate to the offense committed in light of all of the circumstances presented at the sentencing hearing that it constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution.

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amnd. XIII. The cruel and unusual punishment clause requires that the duration of a sentence not be grossly disproportionate with the severity of the crime. State v. McKnight, 352 S.C. 635, 652, 576 S.E. 2d 168, 177 (2003).

"What constitutes cruel and unusual punishment, and thus, what violates the Eighth Amendment, is determined by 'evolving standards of decency that mark the progress of a maturing society.'" State v. Pittman, 373 S.C. 527, 562, 647 S.E.2d 144, 162 (2007), cert. denied, 128 S.Ct. 1872, 170 L. Ed. 2d 751 (2008) (quoting State v. Standard, 351 S.C. 199, 204, 569 S.E. 2d 325, 328 (2002)). In implementing this test, the court looks to objective evidence of how our society views a particular punishment today. State v. Wilson, 306 S.C. 498, 509-10, 413 S.E.2d 19, 26 (1992).

The proportionality bedrock of Eighth Amendment jurisprudence is equally important a principle as the "evolving standards of decency," and "it is a precept of justice that punishment for

the crime should be graduated and proportioned to [the] offense." Pittman, 373 S.C. at 564-65, 647 S.E.2d at 163 (quoting Atkins, 536 U.S. at 311).

Article I, Section 15 of the South Carolina Constitution provides:

> All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

S.C. Const. art. I, §15.

In this case, Judge Goodstein's sentence fails the proportionality test. A twenty year sentence in light of these facts is grossly disproportionate to the crime committed.[1] Even where the sentence falls within the statutory limits, a grossly disproportionate sentence in light of the facts of the crime committed is still violative of the cruel and unusual punishment clauses of the U.S. Constitution and the South Carolina Constitution. "At the same time we have always recognized that even though within the statutory limits a sentence under the circumstances of a particular case may be so grossly disproportionate to the offense committed as to constitute cruel and unusual punishment in violation of the Constitution of this State. State v. Gregory, 198 S.C.

[1] A comparison of other cases with facts similar to the instant case reveals just how disproportionate the sentence is in this case. See Tim Gulla, 21-year-old Sentenced to Five Years on Criminal Sexual Conduct Charge, THE GAFFNEY LEDGER, September 2, 2016 (reporting that an eighteen year old who pled guilty to a sex crime with a victim between eleven and fourteen years old received a five year sentence); and Man Gets 8 Years After Criminal Sex. Conduct with Minor Guilty Plea, CBS-7 WSPA (Greenville-Spartanburg, S.C.), August 23, 2018 (reporting that twenty-seven year old Matthew Reynolds pled guilty to criminal sexual conduct with a minor for acts performed with a fifteen year old victim and received an eight year sentence).

98, 16 S.E. (2d) 532; State v. Gamble, 249 S.C. 605, 155 S.E. (2d) 916; and State v. Kimbrough, 212 S.C. 348, 46 S.E. (2d) 273." State v. Queen, 264 S.C. 515, 528, 216 S.E.2d 182, 188 (1975).

The power to sentence a criminal defendant is one of the most important vested in Circuit Court Judges. It is the duty of our appellate courts to correct an abuse of discretion where it may occur, and to prevent a grossly disproportionate sentence to the crimes alleged. As the Court held in Kimbrough:

> As well stated in Hawkins v. United States, 7 Cir., 14F.2d 596, 698: "There is no judicial function which makes larger drafts upon the fairness, common sense, sanity, and good judgment of the judge than that of fixing penalties for criminal offenses, no one which more vitally affects the stability of free institutions. Excessive penalties are tyrannical in the court, and abhorrent to the public; on the other hand, penalties unduly mild seriously embarrass law enforcement and encourage infractions of the criminal laws."

State v. Kimbrough, 212 S.C. 348, 357, 46 S.E. 2d 273 277 (1948).

The instant case presents a twenty-one year old Marine who had a sexual encounter with two underage girls who were seven and eight years younger than him. No force, coercion, or violence was used in the encounter, and the encounter was initiated by the under-aged girls. The evidence showed that this Marine was not likely to re-offend, was not a pedophile, was well employed, and was of high moral character. In light of these facts, Judge Goodstein abused her discretion by sentencing this Marine to twenty years of incarceration, and that sentence was so disproportionate to the facts alleged, that it constituted a violation of the cruel and unusual punishment clauses of the United States Constitution and the South Carolina Constitution.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests this Honorable Court grant rehearing.

Respectfully submitted, this 27th day of August, 2020.

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CERTIFICATE OF SERVICE

The undersigned certifies that Appellant's Petition for Rehearing was served by US Mail on August 26th to the following Counsel for Respondent:

Joshua Edwards, Esq.
David Pascoe, Esq.

Erin E. Bailey