STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley, Charleston, and Dorchester Counties
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2019-000957

THE STATE,

Respondent,

vs.

LOUIS NEAL REVILLE,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

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

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Moss Justice Center
Summerville, SC 29483
(843) 871-2640

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
OT Wallace Building
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the plea judge abuse his discretion by improperly sentencing Appellant and then denying Appellant's motion for reconsideration of sentencing, which denied Appellant an effective opportunity to enter the sexually violent predator program?

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the plea judge abuse his discretion or otherwise err by sentencing Appellant to an aggregate term of imprisonment that fell well below the maximum potential sentence authorized by law after Appellant was convicted of numerous sexual offenses— including first-degree criminal sexual conduct with a minor—involving twenty-two separate and distinct juvenile victims when the aggregate sentence imposed fell within the permissible sentencing limits for Appellant's many terrible crimes and nothing was presented suggesting it was unconstitutional in any manner or resulted from any partiality, prejudice, oppression, or corrupt motive?

STATEMENT OF THE CASE

In October of 2011, Appellant Louis Neal ReVille was arrested following an investigation into allegations he sexually abused dozens of young boys over the span of roughly a decade. In March of 2012, the Charleston County Grand Jury indicted Appellant for five counts of second-degree criminal sexual conduct with a minor, twelve counts of lewd act upon a child, and five counts of disseminating obscene material to a minor. Later that same month, the Berkeley County Grand Jury indicted Appellant for five additional counts of second-degree criminal sexual conduct with a minor, five additional counts of lewd act upon a child, and one additional count of disseminating obscene material to a minor. In April of 2012, the Dorchester Grand Jury indicted Appellant for one count of first-degree criminal sexual conduct with a minor, one more count of second-degree criminal sexual conduct with a minor, four more counts of lewd act upon a child, seven counts of criminal solicitation of a minor, and two more count of disseminating obscene material to a minor. On June 13, 2012, Appellant appeared in the Charleston County Court of General Sessions, waived any venue issues, and entered guilty pleas to twenty-two of the forty-eight charges for which he had been indicted before the Honorable R. Markley Dennis, Jr., circuit court judge. More specifically, Appellant pled guilty to one count of first-degree criminal sexual conduct with a minor, seven counts of second-degree criminal sexual conduct with a minor, seven counts of lewd act upon a child, three counts of criminal solicitation of a minor, and four counts of disseminating obscene material to a minor. At the conclusion of the plea hearing, the plea judge accepted Appellant's guilty pleas, sentenced him to an aggregate sixty-five-year term of imprisonment, and suspended fifteen years of that sentence to a five-year

term of probation.[1] Thereafter, Appellant timely filed a motion seeking reconsideration of the sentence, and a hearing was held on the matter on May 29, 2019, in the Charleston County Court of General Sessions with the plea judge again presiding. At the conclusion of the hearing, the plea judge orally denied the motion for reconsideration. Nine days later, Appellant filed a notice of appeal. Subsequently, the plea judge formally confirmed the denial of the motion for reconsideration through a written order filed on July 5, 2019. Appellant then timely filed another notice of appeal following the issuance of the written order.

[1] In structuring the aggregate sentence, the plea judge sentenced Appellant to a fifty-year term of imprisonment for the first-degree criminal sexual conduct with a minor conviction, a consecutive—and suspended—fifteen-year term of imprisonment for one of the lewd act upon a child convictions, and concurrent terms of imprisonment ranging from ten to twenty years for all the remaining convictions. (R. pp. 126-130; pp. 192-193; p. 245; p. 261; p. 278; Supp. R. p. 1; pp. 28-29).

STATEMENT OF FACTS

Beginning around 2000, Appellant began taking on a variety of roles, including camp counselor, teacher, tutor, basketball coach, tennis coach, director of student ministries, one-on-one trainer, foster parent, and Bible study leader, that allowed him access to young boys. (R. pp. 26-28). Once he had gained access to the children, Appellant groomed them, manipulated them, and exploited their trust in order to get them to engage in sexual acts with him.[2] (R. pp. 26-28; pp. 32-45). Amongst the acts committed, Appellant fondled the boys' genitals, engaged in acts of masturbation with them, performed oral sex on them, made them perform oral sex on him, showed them pornography, and encouraged them to masturbate. (R. pp. 32-45). Furthermore, with a number of his victims, Appellant made the boys—including one who was just ten years old at the time—lick peanut butter off his penis, and he also personally licked chocolate syrup off at least one of the children's penises. (R. pp. 32-33; pp. 35-36; p. 43; p. 45). Appellant continued those many acts of sexual abuse for roughly a decade, and he was able to accrue dozens and dozens of victims during that time period. (R. pp. 26-28; pp. 29-45; p. 108; p. 118).

Unfortunately, it took until October of 2011 for Appellant's pervasive campaign of sexual abuse to finally be brought to a halt, and it was only stopped because a concerned mother began communicating with other parents after hearing vague allegations of inappropriate behavior Appellant had been engaging in with some children. (R. pp. 28-29). However, the parents were initially unaware of the true extent of Appellant's heinous acts, and they attempted

[2] Demonstrating the deliberate and premeditated nature of Appellant's scheme, Appellant later candidly admitted he—amongst other things—encouraged his victims to write to him about their family dynamics so he could gain insight that allowed him to determine what they were "looking for" and then try to provide it. (R. pp. 165-166). Additionally, Appellant also confessed he targeted boys he characterized as "social alphas" because such boys had a large following of friends and, thus, were capable of enabling him to gain access to a greater number of victims. (R. pp. 165-166). Furthermore, Appellant acknowledged he came to view each of his minor victims as a "challenge" to overcome in his quest to satisfy his own sexual desires. (R. p. 166).

to resolve the situation merely by getting a pastor to speak with Appellant. (R. pp. 29-30). Upon learning his misdeeds were beginning to surface, Appellant responded by sending messages to the parents that minimized his behavior and alleged it was simply being "blown out of proportion." (R. p. 26; pp. 29-30). Beyond that, Appellant sought to manipulate the parents into not alerting law enforcement by claiming doing so would only draw attention to their children, their families, and their churches. (R. p. 30). As an alternative and for the purported good of the children, Appellant suggested he should simply be permitted to leave the area while offering to pay for any counseling the children might need. (R. p. 30). Ultimately though, Appellant's manipulative efforts were not successful that time, and several of the children were taken for forensic interviews that led to Appellant's appalling crimes finally coming to light. (R. p. 26; p. 30). At that point, law enforcement was notified, and Appellant was swiftly arrested. (R. p. 26; pp. 30-31).

In the ensuing investigation into Appellant's acts, numerous victims were identified, but many did not wish to cooperate out of fear they would be publicly revealed in connection to the abuse.[3] (R. pp. 32-45; p. 108; p. 118). However, based on the victims who were willing to cooperate, Appellant was nonetheless indicted by grand juries from three different South Carolina counties for *forty-eight* separate sexual offenses—including first-degree criminal sexual conduct with a minor—related to a total of *twenty-two* distinct victims. (R. p. 2; pp. 179-220; pp. 222-258; p. 309; Supp. R. pp. 2-33).

After he was indicted, Appellant elected to waive his jury trial rights and was permitted to plead guilty to just one charge for each of the twenty-two cooperating victims. (R. pp. 4-19;

[3] Notably, the fear that led many of Appellant's victims not to cooperate with the investigation was the exact same fear Appellant sought to exploit through his efforts to manipulate his victims' parents into not alerting law enforcement of his actions. (R. p. 30).

pp. 26-44). In doing so, Appellant admitted his guilt for all the charges, including the charge of first-degree criminal sexual conduct with a minor, and confirmed there was no question he was actually guilty of the charged offenses. (R. pp. 4-19; p. 25). He further directly acknowledged he understood his potential sentences for the offenses to which he was admitting his guilt, and he specifically stated he understood he was facing a mandatory minimum term of imprisonment of twenty-five years up to life without parole just for the first-degree criminal sexual conduct with a minor charge alone.[4] (R. pp. 4-25). At that point, the solicitors involved in the multi-county prosecution of Appellant's misdeeds recounted the details of the many acts of sexual abuse Appellant perpetrated upon his juvenile victims, and Appellant confirmed those details were, in fact, wholly accurate. (R. pp. 26-44). A number of statements from Appellant's victims and their family members were then presented detailing the lasting and life-shattering harm caused by Appellant's actions, and one of Appellant's victims personally explained he was still "tormented" years later by the abuse he suffered at the hands of Appellant, whom he described as a highly-intelligent "master manipulator" and a "wolf in sheep's clothing." (R. pp. 47-93). Following those remarks, the plea judge accepted Appellant's guilty pleas as knowingly, voluntarily, and intelligently entered. (R. p. 95).

Once Appellant's guilty pleas were accepted, defense counsel offered some commentary from Dr. William Burke, who had substantial experience dealing with sex offenders. (R. p. 95). At the outset of his remarks, Dr. Burke expressly noted he was not offering anything to excuse or minimize Appellant's behavior in any way. (R. p. 97). Dr. Burke then explained he and his staff had met with Appellant prior to the guilty plea hearing, and those interactions led him to opine Appellant would meet the criteria of a sexually violent predator in the event he was ever released

[4] Beyond that, Appellant also affirmed he understood he could be *civilly* committed as a sexually violent predator if he ever finished serving any sentence imposed. (R. pp. 45-46).

from prison. (R. pp. 97-101). Dr. Burke further noted "treatment" and "containment" were the only effective options to deal with child molesters and pedophiles as there was no way to "cure" them. (R. p. 101). However, Dr. Burke opined Appellant could potentially be "controlled" in the community if he was ever released from both prison and the sexually violent predator program. (R. p. 101). Following those remarks, defense counsel acknowledged there were no grounds for mercy or leniency in Appellant's "horrible" and "egregious" case, and Appellant personally addressed the court and apologized for what he had done. (R. p. 105). Several of the solicitors involved in the prosecution then noted Appellant used religion and sports to prey upon his "landslide" of minor victims in order to satisfy his own sexual urges for roughly a decade and only really displayed any semblance of remorse after his crimes were exposed by others. (R. pp. 108-119).

At the conclusion of the sentencing proceedings, the plea judge indicated he had carefully considered Appellant's case and had elected not to give Appellant the maximum possible sentence. (R. pp. 121-126). Instead, the plea judge chose to impose an aggregate term of imprisonment of sixty-five years with a fifteen-year portion of that sentence suspended to a five-year term of probation. (R. pp. 126-130; Supp. R. p. 1). In imposing that particular sentence, the plea judge specifically noted his sentencing intention was for Appellant not to be released from incarceration until he was at least seventy-four years old. (R. pp. 128-129).

Subsequent to the plea hearing, Appellant sought reconsideration of his sentence on the basis it was purportedly unnecessarily severe and excessive, and a hearing was held on the matter a number of years later.[5] (R. p. 132; pp. 136-137; pp. 156-159). During the course of the

[5] As noted by the plea judge, the hearing was delayed for a number of years because the plea judge had been unaware a motion for reconsideration was filed in Appellant's case. (R. pp. 147-148).

hearing, defense counsel opined Appellant had a potential to be rehabilitated and, based on that, asked the plea judge to reduce Appellant's sentence "to allow him to seek some specialized and individual treatment as a sex offender through the" sexually violent predator program, which defense counsel asserted Appellant was willing to enter. (R. pp. 137-142). In rebuttal, the solicitor asserted Appellant's aggregate sentence was an appropriate one due to the threat Appellant posed to the community while further noting Appellant had a history of engaging in manipulative behavior. (R. pp. 144-147).

After considering the arguments of counsel, the plea judge declined to reconsider the sentence imposed. (R. p. 154). In doing so, the plea judge noted he specifically fashioned Appellant's sentence in order to keep Appellant incarcerated until he was approximately seventy-four years old in order to reduce the risk Appellant posed to society. (R. pp. 149-150). Likewise, the plea judge stated the sentence imposed was designed to have a powerful deterrent effect on other offenders and to punish Appellant specifically for his actions. (R. pp. 151-152). For those reasons, the plea judge denied Appellant's reconsideration motion. (R. p. 154). Furthermore, the plea judge indicated he had not personally seen a more egregious case than Appellant's in his lengthy career, and he noted some people had expressed a belief the sentence he imposed upon Appellant had been *too lenient* for Appellant's substantial crimes. (R. pp. 152-154).

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 sentencing judge's sentencing decisions in rare and unusual circumstances in light of the broad discretion afforded to sentencing 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 [sentencing] 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 discretion or otherwise err by sentencing Appellant to an aggregate term of imprisonment that fell well below the maximum potential sentence authorized by law after Appellant was convicted of numerous sexual offenses— including first-degree criminal sexual conduct with a minor—involving twenty-two separate and distinct juvenile victims because the aggregate sentence imposed fell within the permissible sentencing limits for Appellant's many terrible crimes and nothing was presented suggesting it was unconstitutional in any manner or resulted from any partiality, prejudice, oppression, or corrupt motive.

Appellant contends the plea judge abused his discretion by imposing an aggregate fifty-year term of imprisonment upon him after he was convicted of twenty-two separate sexual offenses involving twenty-two distinct juvenile victims.[6] In raising that particular contention, Appellant does *not* argue his aggregate sentence fell outside the permissible sentencing limits for his many, many crimes. Likewise, Appellant does *not* expressly contend his sentence was unconstitutional in any manner.[7] Furthermore, Appellant does *not* maintain the plea judge

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[6] Notably, the plea judge actually imposed an aggregate sixty-five-year term of imprisonment while suspending fifteen of those years to a five-year term of probation. (R. pp. 126-130; Supp. R. p. 1).

[7] Although Appellant does not expressly argue his aggregate sentence was unconstitutional, he does at a single point in his appellate brief characterize the sentence as a "cruel" one. (App. Br. p. 12). To the extent such a characterization could be construed as an argument his sentence violated the constitutional prohibition against cruel and unusual punishment, that argument is far too conclusory to have properly raised a constitutional challenge to his sentence for appellate review. See State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding an argument to be abandoned where it raised in a conclusory manner); Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691-692 (Ct. App. 2001) (holding an argument raised on appeal in a conclusory fashion without citation to authority was abandoned for appellate purposes and noting "South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review"). Moreover, Appellant never argued to the plea judge the sentence imposed was unconstitutional and, therefore, is precluded from doing so for the first time on appeal. See In re Care & Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). However, even assuming a constitutional challenge to Appellant's aggregate sentence had actually been raised, it would have been meritless in light of

sentenced him as the result of any partiality, prejudice, oppression, or corrupt motive. Instead, Appellant simply contends he believes the sentence imposed will not allow him to receive the rehabilitation he wishes to receive while further opining the time he has already served was sufficient to have fully satisfied the penological goals of retribution and deterrence in his case. Based on those claims, Appellant asks this Court to directly reduce his aggregate sentence on appeal in some unspecified manner in order to allow him to obtain treatment and rehabilitation through South Carolina's sexually violent predator program.[8] Importantly though, the aggregate sentence imposed by the plea judge fell well within the permissible sentencing limits for Appellant's numerous crimes.[9] Beyond that, nothing was presented during the circuit court

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the exceedingly serious and harmful nature of Appellant's many crimes. See State v. Johnson, 159 S.C. 165, __, 156 S.E. 353, 354 (1930) ("Complaint is made . . . that the sentences of defendants are excessive and inhuman. [An appellate 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."); cf. Gibson v. State, 721 So. 2d 363, 364 (Fla. Dist. Ct. App. 1998) ("Although a sentence of life with no possibility of parole—effectively imprisonment until death—must seem harsh from the perspective of this 23-year-old prisoner with no prior criminal record, [Gibson] was convicted of a serious offense[—committing a sexual battery upon a child—]for which this penalty is neither cruel nor unusual.").

[8] Significantly, Appellant's request for this Court to directly reduce his sentence instead of for this Court to reverse and remand would be inconsistent with the limited role of an appellate court reviewing a sentencing issue on appeal. See State v. Petty, 245 S.C. 40, 42, 138 S.E.2d 643, 645 (1964) ("In the case of an illegal sentence, the well settled practice in this jurisdiction is to affirm the conviction but set aside the sentence and remand the case to the trial court for the purpose of resentencing the defendant."); see also United States v. Johnson, 934 F.3d 498, 502 (6th Cir. 2019) ("Reasoned judgments about the appropriate length of a sentence are largely for trial courts, not appellate courts."); Reina-Rodriguez v. United States, 655 F.3d 1182, 1193 (9th Cir. 2011) ("Appellate courts are not sentencing courts."); People v. Cox, 412 N.E.2d 541, 547 (Ill. 1980) ("We have consistently held that it is not our function to serve as a sentencing court, and we will not substitute our judgment for that of the trial court merely because we would have balanced the appropriate factors differently if the task of sentencing had been ours.").

[9] Although Appellant's aggregate sentence fell within the permissible sentencing limits for his vast number of crimes, Appellant was sentenced to concurrent ten-year terms of imprisonment for two of the counts of disseminating obscene material to a minor that stemmed from acts

proceedings suggesting the aggregate sentence was unconstitutional in any manner or resulted from any partiality, prejudice, oppression, or corrupt motive. Under such circumstances, the plea judge did not abuse his discretion by sentencing Appellant to a total term of imprisonment that fell below the potential sentence Appellant was facing for just one of the many heinous crimes for which he was convicted, and there is no proper basis upon which the aggregate sentence imposed could legitimately 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

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committed in 2002 and 2003. (R. pp. 210-211; pp. 214-215; pp. 266-267). At the time those acts were committed, the maximum permissible sentence for disseminating obscene material to a minor was a five-year term of imprisonment, and, therefore, the concurrent ten-year sentences imposed for those particular offenses appear to have exceeded the permissible sentencing limits. See S.C. Code Ann. § 16-15-345 (Supp. 2001) (authorizing—at that time—the imposition of a term of imprisonment of up to five years upon a person convicted of disseminating obscene material to a minor); see also Act No. 208, § 5, 2004 S.C. Acts & Joint Resolution (increasing the maximum penalty for disseminating obscene material to a minor under the age of eighteen to a ten-year term of imprisonment). Nonetheless, Appellant did not argue those specific concurrent sentences exceeded the permissible sentencing limits to the plea judge, and he has similarly not raised such a contention on appeal. (R. p. 130; pp. 135-142; p. 154; Supp. R. p. 1; App. Br. pp. 1-13). As a result, any issue regarding the propriety of those concurrent sentences was not properly preserved for appellate review and cannot appropriately be considered or addressed for the first time on appeal. See State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) ("No objection to sentencing was raised at trial and this issue is not properly before the court."); State v. Walker, 252 S.C. 325, 327-328, 166 S.E.2d 209, 210 (1969) (declining to address Walker's appellate contention the sentence he received could not have properly been imposed "on the elementary ground that the question was not raised below"); State v. Salisbury, 330 S.C. 250, 276, 498 S.E.2d 655, 669 (Ct. App. 1998) (explaining a criminal defendant is required to contemporaneously object to an alleged sentencing error during trial in order to preserve an issue with a sentence for appellate review); see also State v. Sheppard, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) ("[T]he plain error rule does not apply in South Carolina state courts."); Taylor v. State, 258 S.C. 369, 375, 188 S.E.2d 850, 853 (1972) (holding a ground was waived because it was not argued on appeal).

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). Furthermore, the sentencing judge is fully permitted to consider one or more of variety of legitimate penological justifications—including retribution, incapacitation, deterrence, and rehabilitation—in deciding what sentence is appropriate under the circumstances. See Jones v. United States, 463 U.S. 354, 368-369 (1983) ("A particular sentence of incarceration is chosen to reflect society's view of the proper response to commission of a particular criminal offense, based on a variety of considerations such as retribution, deterrence, and rehabilitation."); see also Ewing v. California, 538 U.S. 11, 25 (2003) (plurality opinion) (instructing "[a] sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation[,]" and explaining there is no constitutional mandate requiring adoption of any one penological theory). 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 was convicted of *twenty-two* separate and distinct sexual offenses involving *twenty-two* separate and distinct juvenile victims. Amongst his offenses, Appellant was convicted of the "most serious" offense of first-degree criminal sexual conduct

with a minor, which—based on the applicable sentencing limits for that crime—meant the plea judge was *required* to sentence Appellant to a term of imprisonment of no less than twenty-five years up to life without parole for that conviction alone.[10] See S.C. Code Ann. 16-3-655(C)(1) (Supp. 2006) (mandating a person convicted of first-degree criminal sexual conduct with a minor be sentenced to a term of imprisonment of no less than twenty-five years up to life without parole and instructing no part of the sentence may be suspended); see also S.C. Code Ann. § 17-25-45(C)(1) (Supp. 2019) (defining any degree of criminal sexual conduct with a minor as a "most serious" offense). Beyond that, Appellant was also convicted of seven counts of the "most serious" offense of second-degree criminal sexual conduct with a minor, and those convictions collectively authorized the plea judge to sentence Appellant to up to an additional one-hundred-forty years of imprisonment. See S.C. Code Ann. § 16-3-655(C)(2) (Supp. 2006) (mandating a person convicted of second-degree criminal sexual conduct with a minor be imprisoned for up to twenty years); see also S.C. Code Ann. § 17-25-45(C)(1) (Supp. 2019) (identifying any degree of criminal sexual conduct with a minor as a "most serious" offense). Further still, Appellant was convicted of seven counts of lewd act upon a child, three counts of criminal solicitation of a minor, and four counts of disseminating obscene material to a minor, which—based on the applicable sentencing limits for those offenses—meant the plea judge had the discretionary authority to impose an additional one-hundred-sixty-five years of imprisonment upon Appellant.

[10] Regarding that particular offense, the solicitor provided the following details: "[T]hese incidents occurred on or about January 1st, 2007, to December 31st, 2008. The victim became acquainted with [Appellant] through another victim and began hosting the victim at his home in North Charleston, in Dorchester [C]ounty. Again, after a certain period of time, [Appellant] showed the victim pornography, encouraged the victim to masturbate in [Appellant]'s presence, manually masturbated the child and instigated some of the same tests of how long he could stay erect in a cold shower, gave him gifts -- specifically birthday presents -- in regard to sexual performance, performed oral sex on the child and, similarly had the victim lick peanut butter off his penis and had the victim perform oral sex on him. The victim was ten years old at the time." (R. p. 43). Notably, Appellant confirmed all those details were accurate. (R. p. 45).

See S.C. Code Ann. § 16-15-140 (Supp. 2001) (authorizing the imposition of a term of imprisonment of up to fifteen years upon a person convicted of committing a lewd act upon a child); S.C. Code Ann. § 16-15-342 (Supp. 2004) (authorizing the imposition of a term of imprisonment of up to ten years upon a person convicted of criminal solicitation of a minor); S.C. Code Ann. § 16-15-345 (Supp. 2004) (authorizing the imposition of a term of imprisonment of up to ten years upon a person convicted of disseminating obscene material to a minor); S.C. Code Ann. § 16-15-345 (Supp. 2001) (authorizing—at that time—the imposition of a term of imprisonment of up to five years upon a person convicted of disseminating obscene material to a minor). Thus, in total, Appellant was facing a sentence of no less than a non-suspendible twenty-five-year term of imprisonment up to a sentence of life without parole *plus* an additional three-hundred-five years of imprisonment for his plethora of convictions. 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.").

Despite having the discretionary authority to sentence Appellant to life without parole along with a consecutive term of imprisonment of over three-hundred additional years, the plea judge—mercifully for Appellant—elected not to impose such a sentence. Instead, the plea judge imposed a much lower aggregate sentence that fell well within the permissible sentencing limits, and, in doing so, the plea judge did not say or do anything suggesting that sentence was imposed as the result of any improper motivations or considerations. See State v. Fleming, 228 S.C. 129, 133-134, 89 S.E.2d 104, 106 (1955) ("In this question, appellants complain of the sentence in that their accomplice received a sentence of 18 months while they received a sentence of 10 years. This Court has 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, oppressive or corrupt motive."). Likewise, the aggregate sentence imposed, which amounted to a sixty-five-year term of imprisonment with fifteen of those years suspended to a probationary term, was in no way grossly disproportionate to Appellant's appalling crimes, which involved repeated acts of sexual abuse perpetrated upon more than twenty children over the course of roughly a decade, and, therefore, did not violate the constitutional prohibition against cruel and unusual punishment. 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 Kennedy v. Louisiana, 554 U.S. 407, 435 (2008) ("Rape has a permanent psychological, emotional, and sometimes physical impact on the child. We cannot dismiss the years of long anguish that must be endured by the victim of child rape."); cf. Adaway v. State, 902 So. 2d 746, 750 (Fla. 2005) ("We conclude that Adaway's sentence of life imprisonment without parole is not grossly disproportionate to his crime of oral union with the vagina of a girl under the age of twelve. We reiterate that the length of the sentence actually imposed is generally said to be a matter of legislative prerogative. Although the penalty is harsh, we accept the Legislature's judgment about the gravity of the crime." (citations and internal quotations omitted)); State v. Gladding, 585 N.E.2d 838, 845 (Ohio Ct. App. 1990) ("[C]onsidering the heinousness of the crime of raping a nine-year-old child, it cannot be said that [Gladding]'s sentence was disproportionate or shocking to the moral sense of the community."). 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.").

Apparently unsatisfied with the leniency extended to him by the plea judge, Appellant argues to the contrary and contends the plea judge somehow abused his discretion by imposing the aggregate sentence imposed. In support of that contention, Appellant accuses the plea judge of losing sight of the penological goal of rehabilitation by sentencing him to term of imprisonment that will prevent him from having any chance of release from incarceration until he is seventy-four years old. Then, conducting his own analysis of the penological goals of sentencing, Appellant offers his personal—and completely self-serving—opinion the penological goal of retribution has been sufficiently satisfied in his case by the approximately *eight* years of incarceration he has already served, posits that eight-year term of imprisonment will also serve as a sufficient deterrent for others involved in similar situations, and asserts he *must* be resentenced in order to permit him to receive the rehabilitation he "deserves" by being transferred into the sexually violent predator program, which involves civil—and non-punitive—commitment. See In re Treatment & Care of Luckabaugh, 351 S.C. 122, 135, 568 S.E.2d 338, 344 (2002) (explaining the Sexually Violent Predator Act is "a civil, non-punitive scheme"); see also In re Care & Treatment of Matthews, 345 S.C. 638, 651-652, 550 S.E.2d 311, 317 (2001) (rejecting a contention the Sexually Violent Predator Act is punitive in nature and retributive). Thus, in essence, Appellant seeks to choose his own sentence for his terrible crimes, and the sentence he wishes to choose would perversely and incongruously require him to serve a total term of punishment *shorter than* the period of time he spent carrying out those crimes.

However, in raising his appellate challenge to his aggregate sentence, Appellant ignores the fact the plea judge—and not Appellant himself—was the one tasked with weighing the

various penological goals and deciding upon what sentence to impose based upon the circumstances involved. See Hill v. United States ex rel. Wampler, 298 U.S. 460, 464 (1936) ("The choice of pains and penalties, when choice is committed to the discretion of the court, is part of the judicial function."); see also United States v. Batchelder, 442 U.S. 114, 125 (1979) (recognizing a criminal defendant has no right "to choose the penalty scheme under which he will be sentenced"). Similarly, in focusing heavily on his desire for rehabilitation, Appellant ignores the fact the plea judge was *not* required—constitutionally or otherwise—to ensure Appellant received the treatment Appellant wished to receive for purposes of rehabilitation and, instead, was fully permitted to focus on other penological goals—such as retribution, incapacitation, and deterrence—when choosing Appellant's sentence.[11] See State v. Harrison, 402 S.C. 288, 309, 741 S.E.2d 727, 738 (2013) ("The Eighth Amendment does not mandate adoption of a national penological theory."); see also Jones, 463 U.S. at 369 ("The State may punish a person convicted of a crime even if satisfied that he is unlikely to commit further crimes."); Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51, 55 (1937) ("[A state] may inflict a deserved penalty merely to vindicate the law or to deter or to reform the offender or for all of these purposes."); State v. Fletcher, 322 S.C. 256, 260, 471 S.E.2d 702, 704 (Ct. App. 1996)

[11] Significantly, the plea judge did, in fact, appear to primarily focus on the penological goals of retribution, incapacitation, and deterrence when imposing Appellant's sentence. (R. pp. 128-129; pp. 149-154). However, due to the nature of Appellant's crimes, the plea judge's decision to do so was an exceedingly prudent and reasonable one. See Smith v. Doe, 538 U.S. 84, 103 (2003) ("The risk of recidivism posed by sex offenders is 'frightening and high.' " (citation omitted)); McKune v. Lile, 536 U.S. 24, 32-33 (2002) ("Sex offenders are a serious threat in this Nation. . . . When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault."); Gibson, 721 So. 2d at 368-369 ("Child sexual predation is a serious concern. Even when it leaves no physical scars, it can create emotional damage that lasts a lifetime. There is evidence that victims of abuse become abusers and that this crime can transmit its injuries across generations. Because victims hesitate to report this crime and proof of the offense is often difficult to obtain, there is a risk that perpetrators will believe they can escape detection and punishment. As a result, there is a need for a harsh penalty to act as a sufficient deterrent.").

(recognizing "punishment of the offender" is a proper motivation for a sentencing judge). Finally, in arguing his service of roughly eight years of incarceration was sufficient to satisfy the penological goals of retribution and deterrence, Appellant completely ignores the fact the sentencing limits set by the legislature *required* the plea judge to sentence Appellant to a mandatory minimum term of imprisonment of no less than twenty-five years, which would have rendered any sentence falling below those limits patently illegal. See S.C. Code Ann. 16-3-655(C)(1) (Supp. 2006) (mandating a person convicted of first-degree criminal sexual conduct with a minor involving the commission of a sexual battery upon a child under eleven years old receive a sentence of no less than a non-suspendible, mandatory minimum term of imprisonment of twenty-five years); cf. State v. Taub, 336 S.C. 310, 318, 519 S.E.2d 797, 802 (Ct. App. 1999) (reversing Taub's sentence and remanding for resentencing because his sentence fell below the mandatory minimum sentencing limits established for his offense).

In the end, despite the fact Appellant now wishes he was sentenced to a term of imprisonment well more than a decade shorter than the mandatory minimum term of imprisonment our legislature has deemed appropriate—and required—for just one of his crimes, the decision of what sentence to impose fell to the plea judge and the plea judge alone. 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. Miller, 187 S.C. 271, __, 197 S.E. 310, 311 (1938) ("Where left to his discretion by the law, the presiding judge, in the exercise of a wise judgment, determines what sentence, within the law, would be just and proper in any particular case."). In exercising the broad sentencing discretion extended to him, the plea judge imposed a sentence that fell squarely within the permissible sentencing limits for Appellant's many reprehensible crimes and, by

doing so, in no way abused his discretion or otherwise erred. See 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."); see also State v. King, 222 S.C. 108, 115, 71 S.E.2d 793, 795-796 (1952) ("It is only in rare and unusual circumstances that this Court will interfere with the discretion of the Trial Judge in the imposition of a sentence."). In fact, by sentencing Appellant to a term of imprisonment far shorter than what could have permissibly and justifiably been imposed for Appellant's egregious crimes, the plea judge extended far more leniency to Appellant than Appellant was entitled to under the law. Cf. United States v. Fowler, 948 F.3d 663, 670 (4th Cir. 2020) (rejecting Fowler's challenge to the forty-year sentence he received after he pled guilty to charges related to his sexual abuse of two minor victims and noting "the judge cut Fowler a significant break" by sentencing him to a term of imprisonment substantially lower than the 140-year sentence that could have permissibly been imposed for Fowler's crimes). Under such circumstances, there are no proper grounds upon which to disturb Appellant's aggregate sentence on appeal, and any suggestion to the contrary is manifestly without merit. See State v. Sanders, 251 S.C. 431, 444, 163 S.E.2d 220, 228 (1968) (instructing the "established rule" in South Carolina is an appellate court will not reverse a sentence for being "excessive" if it falls within the statutory sentencing limits and was not imposed as the result of partiality, prejudice, oppression, or corrupt motive); cf. Sidell, 262 S.C. at 398, 205 S.E.2d at 3 ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits. The sentence of thirty (30) years, although the maximum, was within the limits permitted by law, and no abuse of discretion is shown. After a full examination of the record, we are convinced that the appeal is manifestly without merit and wholly frivolous."). 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

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

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

ATTORNEYS FOR RESPONDENT

November 6, 2020

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley, Charleston, and Dorchester Counties
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2019-000957

THE STATE,

Respondent,

vs.

LOUIS NEAL REVILLE,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

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

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