STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO O. SIMMONS,

APPELLANT

APPELLATE CASE NO 2020-00088

INITIAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Whether the resentencing court abused its discretion when it failed to exercise its discretion to hear Appellant's motion to withdraw his guilty plea and proceed to trial where the initial sentence imposed by the guilty plea court was illegal and where the PCR order remanding Appellant's case to the same lower court conferred jurisdiction to consider Appellant's motion to withdraw his guilty plea?

2. Whether the resentencing court violated Appellant's due process rights where it resentenced Appellant more severely, ten more years, than Appellant's original sentence, and where the court's comments at the resentencing hearing showed its intention was to punish Appellant for succeeding at his PCR appeal where the same judge imposed both the initial sentence at the guilty plea hearing and the subsequent harsher sentence at the resentencing hearing?

STATEMENT OF THE CASE

During the December 2014 term, the Charleston County Grand Jury indicted Appellant for ten counts of armed robbery. R.*.

On March 20, 2018, Appellant pled guilty to five counts of armed robbery[1] before the Honorable R. Markley Dennis. Tr. 1. Michael Apicella represented Appellant. Id. David Osborne represented the state. Id.

Appellant was sentenced pursuant to a negotiated sentencing range of seventeen to twenty-eight years' imprisonment. Tr. 4, ll. 9 – 19. The plea court sentenced Appellant to thirty years' imprisonment suspended upon eighteen years' imprisonment, and twelve years' probation. Tr. 37, l. 4 – 38, l. 14. The probationary sentence terminated upon Appellant's completion of two years of counseling and regularly taking his medication. Tr. 38, l. 18 – 39, l. 21.

Appellant proceeded to a post-conviction relief (PCR) hearing on September 19, 2019 before the Honorable Judge Michael G. Nettles. Tr. 3, ll. 7 – 21. Christopher Murphy represented Appellant. R. p. *. Judge Nettles found that Appellant was sentenced improperly because sentences for armed robbery convictions cannot be suspended. PCR Order, p. 11 – 12, R. p. *. Accordingly, the sentence imposed by Judge Dennis was vacated and the case was remanded to the plea court. Id.

On January 10, 2020, Appellant proceeded to a resentencing hearing before the Honorable R. Markley Dennis. Resentencing hearing, p. 1. Christopher R. Geel represented Appellant. Id. David L. Osbourne represented the state. Id. Judge Dennis sentenced Appellant to twenty-eight years' imprisonment. Resentencing hearing, p. 21, l. 6 – 23, l. 5.

This appeal follows.

[1] Appellant's remaining charges were dismissed pursuant to the guilty plea. Guilty plea transcript, p. 4, ll. 9 – 14.

STANDARD OF REVIEW

1. "Once a defendant enters a plea of guilty, the decision whether to allow withdrawal of the plea is left to the trial court's sound discretion." State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct. App. 2002) (citing State v. Riddle, 278 S.C. 148, 292, S.E.2d 795 (1982); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000)). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id. (citing State v. Hughes, 346 S.C. 339, 552 S.E.2d 35 (Ct. App. 2001)). "The failure to exercise discretion, however, is itself an abuse of discretion." State v. Mansfield, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) (citing Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997)).

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

ARGUMENT

1. The resentencing court abused its discretion when it failed to exercise its discretion to hear Appellant's motion to withdraw his guilty plea and proceed to trial where the initial sentence imposed by the guilty plea court was illegal and where the PCR order remanding Appellant's case to the same lower court conferred jurisdiction to consider Appellant's motion to withdraw his guilty plea.

Relevant Facts

Appellant pled guilty to five armed robberies where the state alleged that between the dates of December 10, 2013 and March 30, 2014 Appellant and a codefendant committed "a series of armed robberies" in the Charleston area. Guilty plea transcript, p. 19, l. 25 – 22, l. 21. Pursuant to the negotiated sentencing range of seventeen to twenty-eight years imprisonment Judge Dennis sentenced Appellant to thirty years' imprisonment suspended upon eighteen years of service and twelve years' probation, where the probationary sentence would be terminated after two years of counseling and Appellant taking his medication. Guilty plea transcript, p. 4, ll. 9 – 19; Guilty plea transcript, p. 37, l. 4 – 38, l. 14.

On September 19, 2019, Appellant proceeded to a PCR hearing, before the Honorable Judge Nettles. Resentencing hearing, p. 3, l. 9 – 4, l. 15. Appellant alleged, inter alia, the PCR court ruled that the sentence imposed on Appellant was illegal because according to the armed robbery statute the sentence of an armed robbery conviction cannot be suspended. PCR Order, p. 11 – 12; R. p. *; S.C. Code Ann. § 16-11-330. Accordingly, the order remanded his case to the lower court and put Appellant in the same position he was in after the guilty plea was accepted but before the initial sentence was imposed. PCR Order, p. 11 – 12; R. p. *.

At the resentencing hearing, Appellant repeatedly stated that he wanted to withdraw his guilty plea and proceed to a jury trial. Resentencing hearing, p. 9, ll. 1 – 17; p. 18, ll. 16 – 17. Judge Dennis noted that both the Appellant and he did not want to accept the sentencing range, but he was bound by it. Resentencing hearing, p. 13, l. 14 – 14, l. 10. Despite not wanting to accept the sentencing range, the lower court opined on multiple occasions that it did not have the discretion to consider Appellant's motion to withdraw his guilty plea. Resentencing hearing, p. 9, l. 20 – 11, l. 6. After Appellant requested again to withdraw his plea and proceed to a jury trial, the court stated "you can't have that option." Resentencing hearing, p. 11, ll. 11 – 15.

At the resentencing hearing, defense counsel Geel pointed out that the initial sentence of thirty years' imprisonment suspended upon eighteen years of service would be treated as an eighteen year prison sentence by the department of corrections, and that the resentencing court should not sentence Appellant more harshly than the original sentence. Resentencing hearing, p. 5, ll. 4 – 10. Later at the resentencing hearing, the lower court made troubling remarks that showed the court was upset with Appellant for exercising his PCR appellate rights. The lower court reprimanded Appellant for appealing his original sentence because, according to the lower court, the original suspended sentence imposed at the 2018 guilty plea hearing was the plea court[2] "trying to give Appellant a break." Resentencing hearing, p. 8, ll. 8 – 13. The court then complained about Appellant appealing the negotiated sentence versus appealing a "straight up plea." Resentencing hearing, p. 9, l. 20 – 11, l. 6.

After those remarks, lower court stated it "wanted to make the record clear" that it was not punishing Appellant for exercising his PCR appeal rights; however, that pronouncement of impartiality was undercut when the court sentenced Appellant to ten additional years'

[2] Again, the plea court judge and the resentencing judge were the same, Judge Dennis. Guilty plea transcript, p. 1; Resentencing transcript, p. 1.

imprisonment, a much more severe sentence than the initial sentence imposed at the 2018 guilty plea. Resentencing hearing, p. 13, l. 14 – 14, l. 4; Resentencing hearing, p. 21, l. 6 – 23, l. 5.

This appeal follows.

Discussion

In the present case, the resentencing court abused its discretion by failing to exercise its discretion when it refused to consider Appellant's motion to withdraw his guilty plea where the PCR order vacated Appellant's sentence and remanded his case for a new sentencing hearing. Accordingly, the PCR order placed Appellant in the same position he was in prior to the initial sentence being imposed such that the lower court had jurisdiction to consider Appellant's motion to withdraw his guilty plea.

Once a defendant enters a plea of guilty, the decision whether to allow withdrawal of the plea is left to the trial court's sound discretion. State v. Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982); State v. Barton, 325 S.C. 522, 481 S.E.2d 439 (Ct.App.1997); State v. Rosier, 312 S.C. 145, 439 S.E.2d 307 (Ct.App.1993). The failure to exercise available discretion, however, is itself an abuse of discretion. State v. Mansfield, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) (citing Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct.App.1997); See also Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987)("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."); State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.")

Here the lower court stated it did not have the discretion to consider Appellant's motion to withdraw his guilty plea ostensibly because the guilty plea had already been accepted, the

sentence imposed, and the term of court passed. Resentencing hearing, p. 18, l. 18 – 19, l. 12. However, in the present case, the initial sentence imposed against Appellant was invalid and the PCR court's order vacating Appellant's sentence remanded jurisdiction to the lower court for resentencing. PCR Order, p. 11 – 12; R. p. *. Since the PCR order put Appellant back in the position he was in before the initial sentence was imposed, the lower court had discretion to hear Appellant's motion to withdraw his guilty plea. See State v. Lee, 274 S.C. 372, 376 264 S.E.2d 418, 419 – 20 (1980) (holding that the trial court had discretion to consider the defendant's withdrawal of his guilty plea after the guilty plea had been accepted and after defendant was sentenced); see also State v. Lambert, 266 S.C. 574, 580, 225 S.E.2d 340, 342 – 43 (1976). Accordingly, the lower court abused its discretion by failing to exercise its discretion when it refused to consider Appellant's motion to withdraw his guilty plea.

In Santobello v. New York, 92 S.Ct. 495 (1971), Santobello sought an order from the Supreme Court to vacate his sentence and allow him to withdraw his guilty plea and proceed to trial. Santobello, at 497. In that case, Santobello pled guilty and the state agreed to make no recommendation as to sentencing, but a new prosecutor was appointed to the case and at Santobello's guilty plea hearing the new prosecutor recommended the maximum sentence. Id.

The Supreme Court held the state breached the guilty plea agreement and remanded the case for the lower court to determine whether there should only be specific performance of the agreement on the plea, in which case petitioner should be resentenced by a different judge, or whether the circumstances require granting the relief sought by Santobello i.e., the opportunity to withdraw his plea of guilty. Santobello, at 499. Accordingly, on remand the lower court had the jurisdiction to hear Santobello's motion to withdraw his guilty plea after his sentence was vacated.

In State v. Gilliam, 274 S.C. 324, 262 S.E.2d 923 (1980), Gilliam pled guilty to assault and battery of a high and aggravated nature. Id. at 325, 262 S.E.2d at 924. The guilty plea agreement was a recommendation to defer sentencing if Gilliam would leave South Carolina. Id. Under the agreement, Gilliam would only be sentenced to a term of imprisonment if he returned to South Carolina. Id.

Gilliam did not leave South Carolina and was brought back to the trial court for sentencing. Id. Gilliam moved to withdraw his guilty plea, but the lower court refused to hear the motion. Id. Gilliam was sentenced to nine years' imprisonment, suspended upon three years of service. Id. Our Supreme Court held that the sentence banishing Gilliam was invalid and, despite the fact that Gilliam's guilty plea had been accepted and the sentence imposed, the trial court erred in not exercising its discretion to allow Gilliam to withdraw his guilty plea. Id. at 325 – 36, 262 S.E.2d at 924.

In the present case, the resentencing court's statements in this case showed that it refused to exercise its available discretion to hear Appellant's motion to withdraw his guilty plea. State v. Mansfield, 343 S.C. 66, 87, 538 S.E.2d 257, 268 (Ct. App. 2000). In Mansfield, the issue on appeal was whether the lower court failed to exercise its discretion to consider Mansfield's motion to withdraw his guilty plea. Id. at 87, 538 S.E.2d at 268.

After the jury found Mansfield guilty of attempted burglary in the first degree, he pled guilty to unlawful carrying of a pistol. Mansfield, at 86, 538 S.E.2d at 267. After the plea, but prior to sentencing, defense counsel moved to withdraw Mansfield's guilty plea because he was uncomfortable with a new sentencing form Mansfield was required to sign. Id. The trial court stated, "I don't know how I can let you withdraw [the guilty plea]. I've already accepted it now," and "How can I let you withdraw it? I've already accepted it now." Id. at 86, 538 S.E.2d at 267.

Mansfield contended the lower court's statements showed that it failed to exercise its discretion to hear his motion to withdraw his guilty plea. Id. at 86 – 87, 538 S.E.2d at 267 – 68. This Court held that the lower court's comments did not constitute a refusal to exercise its discretion because "the comment and question regarding [the request to withdraw the guilty plea] were merely rhetorical." Id. at 87, 538 S.E.2d at 268. The trial court, having already found Mansfield's guilty plea was voluntarily made, simply determined the stated reason to withdraw the guilty plea was insufficient. Id. Notably, this Court held *it was within the trial court's discretion to consider the motion to withdraw his guilty plea after the plea was accepted*, but the trial court properly considered and denied Mansfield's motion to withdraw the guilty plea.

Here the lower court's statements were not rhetorical. During the resentencing hearing, Appellant requested to withdraw his guilty plea and proceed to a jury trial. Resentencing hearing, p. 11, l. 13. The resentencing court replied that it *could not* consider that request. Resentencing hearing, p. 11, l. 14 – 12, l. 13. The resentencing court stated that "this court must go forward with the [guilty] plea." Resentencing hearing, p. 16, ll. 18 – 23. Appellant maintained that he wanted to withdraw his guilty plea and go back to "square one." Resentencing hearing, p. 18, ll. 4 – 12. The court reiterated that it did not have the ability to vacate Appellant's guilty plea and sentenced Appellant to twenty-eight years' imprisonment. Resentencing hearing, p. 18, l. 18 – 19, l. 12; Resentencing hearing, p. 21, l. 6 – 23, l. 5.

Thus, the lower court abused its discretion when it failed to exercise its discretion to consider Appellant's motion to withdraw his guilty plea because the PCR order that vacated Appellant's illegal sentence placed Appellant back in the position he was in before the initial sentence was imposed such that it was within the lower court's discretion to consider his motion to withdraw his guilty plea at resentencing. See State v. Lee, 274 S.C. 372, 376 264 S.E.2d 418,

419 – 20 (1980) (holding that the trial court had discretion to consider the defendant's withdrawal of his guilty plea after it had been accepted and after defendant was sentenced); see also State v. Lambert, 266 S.C. 574, 580, 225 S.E.2d 340, 342 – 43 (1976).

Accordingly, the lower court committed prejudicial error when it stated it did not have the discretion to consider Appellant's motion to withdraw his guilty plea and his case should be remanded to properly consider Appellant's guilty plea withdrawal motion.

2. The resentencing court violated Appellant's due process rights where it resentenced Appellant more severely, ten more years, than Appellant's original sentence, and where the court's comments at the resentencing hearing showed its intention was to punish Appellant for succeeding at his PCR appeal where the same judge imposed both the initial sentence at the guilty plea hearing and the subsequent harsher sentence at the resentencing hearing.

Relevant Facts

Appellant's initial sentence for his guilty plea to five counts of armed robbery was thirty years' imprisonment suspended on eighteen years of service and twelve years' probation. Guilty plea hearing, p. 37, l. 4 – 38, l. 14. Thus, Appellant received the equivalent of an eighteen-year active prison sentence.

At his PCR hearing, Appellant's requested relief was to vacate his guilty plea on multiple grounds because it was involuntarily made or, in the alternative, to be resentenced because the sentence imposed was illegal. PCR Order, p. 2; R. p. *. The PCR court found that Appellant's guilty plea was not involuntarily made; however, it did find the sentence imposed was illegal. PCR Order, p. 11 – 12; R. p. *. Accordingly, Appellant's sentence was vacated, and his case was remanded to the lower court for a new sentencing hearing because a sentence for armed robbery cannot have any portion suspended[3]. Id.; S.C. Code Ann. § 16-11-330.

At Appellant's new sentencing hearing, he was resentenced much more harshly than the initial eighteen-year sentence, and the resentencing court made comments that showed a reasonable probability that Appellant was being punished for succeeding at PCR. Resentencing hearing, p. 8, ll. 13 – 11, l. 6; Resentencing hearing, p. 21, l. 6 – 23, l. 5.

[3] Notably, while the PCR court found that Appellant's guilty plea was not made involuntarily, it did not state that Appellant was prohibited from moving to withdraw his guilty plea at the resentencing hearing.

At the resentencing hearing, defense counsel first pointed out that "before [Appellant] proceeded with PCR [the department of corrections] would have treated the sentence that was imposed… as a eighteen year sentence… which is what he had in hand prior to his filing the PCR." Resentencing hearing, p. 5, ll. 4 – 10. Defense counsel also cited North Carolina v. Pearce, 89 S.Ct. 2072 (1969) regarding the "presumption of a due process violation" if the sentence after a reconsideration is higher without a valid reason. Resentencing hearing, p. 5, ll. 15 – 22.

The lower court expressed annoyance at having to resentence Appellant because the court was "trying to give Appellant a break" with regard to the initial sentence imposed at the 2018 guilty plea hearing. Resentencing hearing, p. 8, ll. 8 – 13. The court also complained about Appellant appealing a negotiated sentence versus appealing a "straight up plea." Resentencing hearing, p. 9, l. 20 – 11, l. 6.

The resentencing court stated the reason it was imposing a much harsher sentence was because he could not suspend any portion of the sentence for armed robbery, as the court did at the 2018 guilty plea hearing. Resentencing hearing, p. 13, l. 14 – 14, l. 10. The lower court also mentioned in passing that it was "not punishing" Appellant, but then sentenced Appellant to ten additional years' imprisonment when it increased Appellant's sentence to an active twenty eight years' imprisonment. Id.; Resentencing hearing, p. 21, l. 6 – 23, l. 5.

Discussion

The plea court violated Appellant's due process rights when it resentenced Appellant ten additional years' imprisonment where the resentencing court's justification for imposing a more severe sentence was a pretense and the actual reason for the increased sentence was to punish

Appellant for succeeding at his PCR appeal and where the judge who sentenced Appellant at his guilty plea hearing was the same judge who imposed the subsequent sentence at resentencing.

In North Carolina v. Pearce, 89 S.Ct. 2072 (1969), overruled by Alabama v. Smith, 109 S. Ct. 2201(1989), the Supreme Court held that due process of law required that "vindictiveness against a defendant for having successfully attacked his first conviction **must play no part**" during resentencing. Id., at 2080. (emphasis added) Accordingly, it was a violation of due process when the lower court in Pearce imposed an increased sentence upon Pearce, without offering a valid justification for that sentence. Id. At 2081.

The U.S. Supreme Court has limited the holding in Pearce; however, under the current circumstances the presumption of vindictiveness still applies. In State v. Higgenbottom, 344 S.C. 11, 542 S.E.2d 718 (2001), our Supreme Court discussed the holding in Pearce, and the jurisprudence that followed. Id., at 14 – 15, 542 S.E.2d at 719 – 20.

The Higgenbottom Court noted that the Pearce presumption did not apply when the harsher sentence was imposed by the higher court in a two-tiered trial system, as the United States Supreme Court held in Colten v. Kentucky, 92 S.Ct. 1953 (1972). The Higgenbottom Court recognized the circumstance in Colten that made the Pearce presumption of a due process violation not applicable was that the higher court which conducted Colten's trial and imposed the final sentence "was not the court with whose work Colten was sufficiently dissatisfied [with] to seek a different result on appeal; **and it is not the court that is asked to do over what it thought it had already done correctly**." State v. Higgenbottom, 344 S.C. 11, 15, 542 S.E.2d 718, 720 (2001) (citing Colten v. Kentucky, 92 S.Ct. 1953, 1960). (emphasis in original)

The Higgenbottom Court explained that the Pearce presumption does not apply when a second jury on retrial imposes a harsher sentence than the first jury. State v. Higgenbottom, 344

S.C. 11, 15–16, 542 S.E.2d 718, 720 (2001) (citing Texas v. McCullough, 106 S.Ct. 976 (1986)). Our Supreme Court also recognized the limitation put forth in Alabama v. Smith, 109 S.Ct. 2201 (1989) where the Pearce presumption of vindictiveness does not apply when a defendant is sentenced more harshly upon retrial after successfully appealing from a guilty plea, nor does it apply when the **second sentencing judge is someone other than the original trial judge.** State v. Hilton, 291 S.C. at 279, 353 S.E.2d at 284 (1987). (emphasis added)

However, the Higgenbottom Court stated the Pearce presumption of a due process violation **still applied where the defendant successfully appealed his original conviction and was resentenced more harshly before the same judge that imposed the original sentence**. Higgenbottom, at 17, 542 S.E.2d at 721. (emphasis added)

In the present case, the same circumstances as in Higginbottom exist. Appellant was resentenced by the same court that originally sentenced him. Guilty plea hearing, p. 1; Resentencing hearing, p. 1. Moreover, the resentencing court lamented Appellant successfully appealing his negotiated sentence during the resentencing hearing where it imposed the much more severe twenty-eight-year sentence of imprisonment. Resentencing hearing, p. 8, ll. 8 – 13; Resentencing hearing, p. 9, l. 20 – 11, l. 6. Accordingly, the fact that Appellant successfully appealed his initial sentence was a consideration during resentencing, in contravention of North Carolina v. Pearce, which stated that the Appellant exercising his appellate rights should play no part in the resentencing determination. Pearce, at 2080.

The lower court stating that it was not punishing Appellant for exercising his appellate rights did not rebut the presumption of vindictiveness for sentencing Appellant to ten additional years' imprisonment. Resentencing hearing, p. 13, l. 14 – 14, l. 10. Furthermore, that the court could not suspend any portion of Appellant's sentence did not justify drastically increasing his

sentence by ten years' imprisonment because the factors for consideration regarding sentencing where nothing changed between when the initial sentence of eighteen years' imprisonment, with twelve years' probation[4] was imposed and when the sentence of twenty-eight years' imprisonment was imposed.

Accordingly, the resentencing court, which was the same as the initial sentencing court, violated Appellant's due process rights when it imposed a much more severe sentence at resentencing without providing a valid justification for doing so such that it is reasonably likely Appellant was punished for exercising his appellate rights.

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4 A probationary sentence is a less severe form of punishment than an imprisonment sentence. See State v. Hamilton, 333 S.C. 642, 648, 511 S.E.2d 94, 97 ("Probation is a matter of grace…") State v. McCray, 222 S.C. 391, 396, 73 S.E.2d 1, 3 (1952); State v. White, 218 S.C. 130, 135, 61 S.E.2d 754, 756 (1950). Moreover, any additional time spent in prison is considered prejudicial. Glover v. U.S., 121 S.Ct. 696, 700 (2001) ("Authority does not suggest that a minimal amount of additional time in prison cannot constitute prejudice. Quite to the contrary, our jurisprudence suggests that any amount of actual jail time has Sixth Amendment significance.")

CONCLUSION

By reason of the foregoing arguments, Appellant respectfully requests that this Court vacate his sentence and conviction, and remand his case to the Charleston County Court of General Sessions for a new trial.

s/ Victor R. Seeger
Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of January, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
Jan 04 2021
SC Court of Appeals

Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO O. SIMMONS,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Antonio O. Simmons, #279418, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 4th day of January, 2021.

s/ Victor R. Seeger
Victor R Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

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January 4, 2021

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Columbia, SC 29201

VIA EMAIL ONLY

Re: The State v. Antonio O. Simmons

Dear Mr. Blitch:

Enclosed is an electronic copy of the Initial Brief of Appellant and Designation of Matter in the above entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

s/ Victor R. Seeger
Victor R Seeger
Appellate Defender

VRS/cws

Enclosure

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Wanda H. Carter, Deputy Chief Appellate Defender

January 4, 2021

Mr. Antonio O. Simmons, #279418
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your appeal

Dear Mr. Simmons:

Enclosed please find a copy of the Initial Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

s/ Victor R. Seeger
Victor R Seeger
Appellate Defender

VRS/cws

Enclosure