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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON WRIT OF CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas
The Honorable Grace Gilchrist Knie, Plea Judge
The Honorable Walton J. McLeod, IV, Post-Conviction Relief Judge

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Appellate Case No. 2019-001608

JAMES LEE WILLIAMS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

BRIEF OF RESPONDENT PURSUANT TO *WHITE V. STATE*

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PETITIONER'S STATEMENT OF ISSUE ON APPEAL

Did the plea judge err in denying Petitioner the right to allocution in a serious felony case where the judge specifically assured Petitioner that he would be afforded an opportunity to address the court prior to sentencing but then sentenced Petitioner without allowing him the opportunity to speak on his own behalf?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

I. The alleged denial of Petitioner's right to allocution is not preserved for appellate review because neither plea counsel nor Petitioner objected or communicated to the court Petitioner's desire to address the court prior to sentencing.

II. Even if preserved, the plea judge did not abuse her discretion or otherwise err by sentencing Petitioner without first giving him the opportunity address the court after he knowingly and voluntarily pled guilty because no right to allocution exists in non-capital cases in South Carolina; where Petitioner never communicated to the court he wished to speak prior to sentencing; where plea counsel presented extensive mitigation on Petitioner's behalf; and where any possible error was cured by the plea judge bringing Petitioner back into the courtroom shortly after his plea, giving him the opportunity to address the court, and where Petitioner told the court he had nothing to say. Further, since Petitioner's sentence fell within the appropriate statutory sentencing limits and Petitioner does allege the existence of partiality, prejudice, oppression, corrupt motive, or any other improper considerations on the part of the plea judge, there is no proper basis upon which to disturb the sentence on appeal.

STATEMENT OF THE CASE

On January 17–18, 2016, James Lee Williams (Petitioner) went on a drug-fueled crime spree which ended with a high-speed police chase and the death of his co-defendant. On June 20, 2017, Petitioner appeared before the Honorable Grace Gilchrist Knie, circuit court judge, where he waived presentment to the grand jury, and pleaded guilty to assault and battery of a high and aggravated nature (ABHAN) (2017-GS-32-02175); armed robbery (2017-GS-32-02176); and possession of a weapon during the commission of a violent crime (2017-GS-32-02178). Assistant Public Defender Stephen R. Story, Jr. (Counsel) of the Lexington County Public Defender's Office represented Petitioner. Assistant Solicitor Casey Rankin of the Eleventh Circuit Solicitor's Office prosecuted the case.

In exchange for Petitioner's plea, the State recommended concurrent sentences and dropped several remaining charges, including first-degree burglary and an additional armed robbery charge. Following the State's recommendation, Judge Knie sentenced Petitioner to concurrent terms of twenty-five years' imprisonment for armed robbery, twenty years for ABHAN, and five years for possession of a weapon during the commission of a violent crime. Petitioner did not appeal his convictions or sentences.

Petitioner timely commenced the underlying PCR action May 14, 2018. (App. 24–31). The State requested an evidentiary hearing through its return on September 7, 2018. (App. 32–41). On April 5, 2019, the PCR court convened a hearing before the Honorable Walton J. McLeod, IV. (App. 45–79). Petitioner was present and represented by Art Aiken, Esquire. Assistant Attorney General Johnny James represented the State. Petitioner and Counsel both testified at the hearing. On July 26, 2019, the PCR court issued an order granting Petitioner belated appellate review pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), but denied but denied relief on all

other grounds. (App. 81–87). The State timely moved to alter or amend pursuant to Rule 59(e), SCRE, on August 12, 2019. (App. 88–91). Judge McLeod denied the State's motion on August 16, 2019. (App. 92–93). This appeal follows.

STATEMENT OF FACTS

On January 17, 2016, at approximately 11:15 in the evening, deputies responded to a 911 call in reference to a stabbing incident which occurred at a home in the Pelion area of Lexington County. (App. 9). They made contact with the victim's neighbor, Krystal Lawson, who was at the front door and told law enforcement that her neighbor from across the street, Joel Hendricks (Victim), was inside her house bleeding. (App. 9). EMS arrived on scene, and had to cut off Victim's clothes off in an attempt to stop the bleeding and look for any further injuries. (App. 9).

Victim told law enforcement that earlier that evening his cousin had left the residence to go to the Peanut Store to get some drinks while he stayed at home. (App. 9). Victim heard a knock on the door and when he went to answer it, he looked outside and saw someone wearing a black jacket. (App. 9). Thinking it was his cousin, Victim opened the door. (App. 9). At that point, an unknown white male with a tear drop tattoo on his face—later identified as Petitioner—pushed his way into Victim's home, tased him with a pink taser, and stabbed him in the left armpit with a knife. (App. 3–4, 9). Petitioner fled, stealing Victim's truck. (App. 4). Victim was able to run across the street to Lawson's house, where law enforcement eventually responded. (App. 9, 10).

Just prior to clearing the scene, at around 4:10 AM, patrol units were advised of an armed robbery at 44 Truck Stop by a suspect matching the description given by Victim. (App. 10). Law enforcement then responded to the 44 Truck Stop, where the cashier reported an unknown white male wearing blue jeans, a black hoodie, and something covering his face. (App. 12). The suspect—Petitioner—entered the store around 3:56 AM, and approached the cashier. (App. 12). Petitioner presented a large folding knife and taser to the cashier, demanding all the money from the cash register. (App. 12). He then reached over the counter, taking approximately $300.00 from

the register and then exited the store through the front entrance. (App. 12). The cashier told law enforcement the suspect left in a small black car and was headed toward Batesburg. (App. 12).

Several minutes later, at approximately 4:45 AM, another dispatch was transmitted about an armed robbery occurring at Hill View Truck Stop with the same suspect description. (App. 10, 13). While en route to the second armed robbery location, a deputy sheriff passed an older black model Honda Civic traveling northbound, which matched the vehicle description given by dispatch. (App. 13). He activated his blue lights, and a chase ensued. (App. 13).

The Honda Civic made an aggressive right turn onto a dirt road, increasing its speed, and turning down several other unpaved roads. (App. 13). At one point, the deputy observed what appeared to be a brown paper bag thrown from the driver's side window. (App. 13). The Civic continued to turn down random dirt roads, and eventually spun out of control. (App. 13). The deputy exited his vehicle and approached the Civic. (App. 13). Petitioner's co-defendant, Jerrid Green, was slumped over the driver's side window, unconscious and bleeding from the head. (App. 14). He died on the scene. (App. 14).

A white male with tattoos on his face, wearing a black hoodie and black bandana around his neck was in the back seat. (App. 13–14). After multiple repeated commands to put his hands out of the window, the man finally complied. (App. 14). This man was identified as Petitioner. (App. 14). Law enforcement found large amounts of money in the car. (App. 14). A pink taser and black folding knife were found on Petitioner's person. (App. 14).

Before he was apprehended, law enforcement met with Petitioner's girlfriend, Samantha Swearingen, and Green's wife, Rachel Azmer. (App. 10). Swearingen stated she and Azmer had been at home with Petitioner and Green earlier that evening. (App. 10). Later on that night, the men left, claiming they were going to Walmart. (App. 10). Shortly thereafter, Swearingen and

Amzer both attempted to call Petitioner and Green, but neither of them answered. (App. 10). Eventually they were able to make contact with Petitioner and Green, who stated they had a flat tire and would be home shortly. (App. 10). Swearingen also reported owning a pink taser, which was missing from her purse. (App. 10–11). She believed Petitioner had taken it with him. (App. 11).

Azmer testified Petitioner and Green met and became friends in prison. (App. 11). She told law enforcement she "knew something was up because [Petitioner and Green] were adamant that they had to go to Walmart and seemed to be in a hurry to go." (App. 11). She also received a call from Green's phone that went to voicemail, and inadvertently recorded a conversation between Petitioner and Swearingen. (App. 11). In the voicemail, Petitioner can be heard stating, "that was an easy thirty and they would be home soon." (App. 11). Azmer identified the knife used in the stabbing as being Swearingen's and identified the black jacket the suspect wore as belonging to Petitioner. (App. 11).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011) *see State v. Dawson*, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013) ("This Court will not overturn a sentence unless it determines the sentencing court abused its discretion in issuing a ruling; that is, the trial court's ruling must amount to an error of law."). Significantly, a "trial judge has broad discretion in sentencing within statutory limits." *Brooks v. State*, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997); *see State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is within the limit prescribed by statute." *State v. Barton*, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

ARGUMENT

I. The alleged denial of Petitioner's right to allocution is not preserved for appellate review because neither plea counsel nor Petitioner objected or communicated to the court Petitioner's desire to address the court prior to sentencing.

Petitioner contends the plea judge committed reversible error when she purportedly "denied" him the opportunity to address the court prior to sentencing. Petitioner did not ask the court for such an opportunity nor did counsel raise any objections to the plea court sentencing Petitioner before giving him said opportunity. Upon the plea judge's own realization that she forgot to ask Petitioner if he wished to address the court, she brought him back before the court, invited him to address the court, and he declined.[1] As a result, the plea judge was never asked to take the action Petitioner now contends she erroneously did not take.[2]

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912–13 (Ct. App. 2004); *see also* JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review); *cf. Sevens & Wilkinson of S.C., Inc. v. Cty. Of Columbia*, 409 S.C. 563, 567,

[1] To the extent Petitioner claims the issue is somehow preserved based on the plea judge telling Petitioner he would be able to speak prior to sentencing or bringing him back in the courtroom to give him the opportunity to speak, this Court has held that a "matter is not preserved for appeal even if the trial court raises it *sua sponte*." *Mize v. Blue Ridge Ry. Co.*, 219 S.C. 119, 129–30, 64 S.E.2d 253, 258 (1951); *Duncan v. Hampton Cnty. School Dist. No. 2*, 335 S.C. 535, 545, 517 S.E.2d 449, 454 (Ct. App. 1999) (finding issue unpreserved where it was raised *sua sponte* by the trial court and not by the respondent).

[2] Petitioner is not relieved of his preservation requirements merely because his appellate review is belated pursuant to *White*.

762 S.E.2d 693, 695 (2014) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the Court with a platform for meaningful appellate review.")).

If an issue is not presented to and ruled upon by the circuit court judge, it cannot be raised for the first time to the appellate court. *State v. Freiburger*, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). Constitutional arguments are no exception to the issue preservation rule. *State v. Carlson*, 363 S.C. 586, 595–96, 611 S.E.2d 283, 288 (Ct. App. 2005); *see, e.g., State v. Owens*, 378 S.C. 636, 664 S.E.2d 80 (2008) (confrontation clause and due process arguments not preserved for review). Accordingly, the argument now made on appeal—that Petitioner's constitutional rights were violated—is not preserved for this Court's review. *State v. Jennings*, 394 S.C. 473, 481–82, 716 S.E.2d 91, 95 (2011).

Moreover, in the context of sentencing issues, 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. *State v. Salisbury*, 330 S.C. 250, 276, 498 S.E.2d 655, 669 (Ct. App. 1998); *see State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review."). Importantly, a defendant's failure to timely object to or seek modification of a sentence in the trial court precludes him from pursuing the issue on appeal. *State v. Winestock*, 271 S.C. 473, 475, 248 S.E.2d 307, 308 (1978); *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. Shumate*, 276 S.C. 46, 47, 275 S.E.2d 288, 288 (1981) ("A defendant's failure to timely object to or seek modification of his sentence in the trial court precludes him from presenting his objection for the first time on appeal. Petitioner's contention was not advanced at

the probation revocation hearing where the results were most favorable to him. By failing to object to or seek modification of the revocation sentence in the trial court he is now foreclosed from doing so on appeal." (citations omitted)).

II. Even if preserved, the plea judge did not abuse her discretion or otherwise err by sentencing Petitioner without first giving him the opportunity address the court after he knowingly and voluntarily pleaded guilty because South Carolina does not recognize a right to allocution in non-capital cases; where Petitioner never communicated to the court he wished to speak prior to sentencing; where plea counsel presented extensive mitigation on Petitioner's behalf; and where any possible error was cured by the plea judge bringing Petitioner back into the courtroom shortly after his plea, giving him the opportunity to address the court, and where Petitioner told the court he had nothing to say. Further, since Petitioner's sentence fell within the appropriate statutory sentencing limits and Petitioner does allege the existence of partiality, prejudice, oppression, corrupt motive, or any other improper considerations on the part of the plea judge, there is no proper basis upon which to disturb the sentence on appeal.

Petitioner contends the plea judge reversibly erred by sentencing him without allowing him to first address the court. Notably, Petitioner does not challenge the knowing and voluntary nature of the plea. Nor does he argue his sentence fell outside the permissible statutory sentencing limits. Nor does he maintain the plea judge sentenced him as the result of any partiality, prejudice, oppression, or corrupt motive. Despite the fact that Petitioner declined to address the court when afforded the opportunity to do so after his plea, Petitioner maintains he is entitled to resentencing to allow him to address the court *before* his sentence is imposed. Because non-capital defendants are not entitled to allocution, there is no proper basis upon which Petitioner's sentence can be disturbed on appeal. Petitioner's convictions and aggregate sentence should be affirmed.

At common law, the practice of allocution entailed the defendant's right in *capital cases* to be *asked* by the court whether he had any reason why sentence should not be imposed. *Green v. French*, 143 F.3d 865, 881 (4th Cir. 1998) (citing *State v. Green*, 336 N.C. 142, 191, 443 S.E.2d 14, 42 (1994)), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362 (2000). At that time, however, capital defendants had no right to counsel nor could they testify on their own behalf. *French*, 143 F.3d at 881. Allocution therefore afforded a convicted defendant with his only

opportunity to address the court. *Id.* Addressing the issue in 1998, the Fourth Circuit commented that "common law history does not create a constitutional right to allocution in the quite different modern context where a criminal defendant receives other sufficient procedural rights and protections to cure any potential constitutional defect of being deprived of a formal allocution." *Id.*

Petitioner fails to cite to any authority suggesting the right to allocution in a non-capital criminal matter is a right guaranteed by the constitution of South Carolina or the United States. Petitioner admits as much, but relies on language from various opinions that, in dissent, concurrence, or otherwise in *dicta*, support his claim. Specifically, Petitioner contends his case falls between the standards set forth by this Court in *State v. Trezevant*, 20 S.C. 363 (1884) and *State v. Phillips*, 215 S.C. 314, 54 S.E.2d 901 (1949)

Nearly 150 years ago, this Court in *Trezevant* vacated a defendant's *death* sentence because he was never asked "if he ha[d] anything to say why judgment should not be pronounced on him." 20 S.C. at 364. This common law right, which is now statutorily guaranteed, applied only to capital cases even at that time. *See id.* at 363 ("There is no doubt that in capital cases the practice of asking this question before sentence has been universally recognized and followed in this State from the earliest period of our judicial history.").

Thereafter, seventy years ago, this Court in *Phillips* explained that the common law right of allocution does not apply "in the absence of statute in a misdemeanor case" and that "its omission is not fatal to affirmance of sentence *for any offense less than capital*." 215 S.C. at 318–19, 54 S.E.2d at 903 (emphasis added)). The defendant in that case was convicted of a misdemeanor, and this Court noted that the "the lengthy conversation after [the] plea and before

[the] sentence between the court and [the defendant] . . . would have met the [allocution] requirement had it been applicable." *Id.* at 319.

The seriousness of Petitioner's *charges* fall somewhere between *Trezevant* and *Phillips*; however, neither opinion supports his claim he is entitled to remand solely to allow him to address the court before resentencing him. Additionally, it is unclear whether either defendant in *Trezevant* and *Phillips* were represented by counsel. Petitioner was represented by counsel, who offered mitigation on Petitioner's behalf, and who could have communicated any of Petitioner's arguments or concerns to the plea judge.

Further, neither the United States Supreme Court (USSC) nor the Fourth Circuit have recognized a constitutional right to allocution, even in capital cases. The USSC opinions cited by Petitioner—*Green v. United States*, 365 U.S. 301 (1961), *Hill v. United States*, 368 U.S. 424 (1962), and *United States v. Behrens*, 375 U.S. 162 (1963)—all address a defendant's "right" to allocution in the context of Rule 32(i)(4)(A)(ii)[3] of the Federal Rules of Criminal Procedure. Specifically, Rule 32(i)(4)(A)(ii) mandates the sentencing court "afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment." Those cases, however, tell us nothing about what the constitution mandates in a state court sentencing proceeding.

The USSC in *Green*, which interpreted Rule 32(i)(4)(A)(ii) in light of its common law origins, merely instructed the district courts in future cases to address defendants personally as a matter of "good judicial administration"—not as a matter of constitutional right. *Id.* at 305. *See French*, 143 F.3d at 878 ("The [*Green*] opinion never held, nor did any of the Justices even hint, that the right to allocution is protected by the Due Process Clause."). The USSC *Behrens*

[3] Formerly Rule 32(a) (amended December 1, 2002).

interpreted Rule 32(i)(4)(A)(ii) in the context of sentence modification, holding a district judge cannot modify a defendant's sentence in the defendant's absence, without violating the rule. *Id.* at 165. Significantly, in *Hill*, the USSC declined to recognize a Rule 32(i)(4)(A)(ii) violation as a basis for habeas relief, stating:

> The failure of a trial court to ask a defendant represented by an attorney whether he has anything to say before sentence is imposed is not of itself an error of the character or magnitude cognizable under a writ of habeas corpus. It is an error which is neither jurisdictional nor constitutional. It is not a fundamental defect which inherently results in a complete miscarriage of justice, nor an omission inconsistent with the rudimentary demands of fair procedure. It does not present exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent.

Id. at 428.

The USSC has not addressed whether it violates due process to turn down a defendant's *affirmative request* for allocution. *McGautha v. California*, 402 U.S. 183, 219 n. 22 (1971). The Fourth Circuit, however, has held that, "when a defendant *effectively communicates* his desire to the trial judge to speak prior to the imposition of sentence, it is a denial of due process not to grant the defendant's request." *Ashe v. North Carolina*, 586 F.2d 334, 336 (4th Cir. 1978) (emphasis added); *but see State v. Green*, 336 N.C. 142, 193, 443 S.E.2d 14, 43 (1994) ("A failure to ask a convicted person whether he has anything to say before sentence is pronounced, alone, does not constitute grounds for a new trial or require a reversal of the verdict.") (citing *McGrady v. Cunningham*, 296 F.2d 600, 603 (4th Cir.1961)).

The petitioners in *Ashe* both filed federal habeas actions, claiming their due process rights were violated because "they sought to address the state trial court prior to the imposition of sentence, but that the judge through petitioners' attorney, instructed them to remain silent." 586

F.2d at 335. Notably, however, the Court did not vacate petitioners' sentences and remand for resentencing. Rather, the Court provided the following:

> Because of our view of a defendant's right, *upon request*, to speak in his own behalf, we remand the case to the district court to determine whether petitioners in fact made such a request which was denied. If the district court finds that such a request was made, it should also explore what the petitioners wished to say at their sentencing. Should this information prove to be irrelevant or cumulative in view of statements by their attorney at sentencing, the denial of their right to speak may be found to be harmless error. Otherwise, if the request was made and denied, petitioners' sentences must be vacated, and they should be resentenced in a proceeding which allows them the opportunity to speak in their own behalf.

Id. at 337 (emphasis added).

Although nothing in the record indicates he requested to speak at any point before, during, or after the plea proceeding, Petitioner contends the due process right recognized in *Ashe* applies because Judge Knie mentioned twice that she would give him the opportunity to address the court prior to sentencing. Her inadvertent failure to do so simply does not rise to the level of denying him an affirmative request to address the court. Moreover, any possible issue was cured when Judge Knie, upon realizing she forgot to give Petitioner the opportunity to speak, had security bring him back into the courtroom and went back on the record. The following exchange occurred:

THE COURT:	Mr. Williams, when you were here earlier today, sir, we took a recess for me to confer with counsel and I came back and I neglected to give you the opportunity to address the Court. If you would like to do that, I would like to give you that opportunity at this time. You are still under oath, sir, because you were sworn earlier today.
PETITIONER:	Uhm, I don't have anything to say.
THE COURT:	Are you sure?

PETITIONER: Mm-hmm. Yes, ma'am.

(App. 21). Therefore, even if *Ashe* was somehow implicated, Petitioner was already afforded the remedy provided to the *Ashe* petitioners. *See United States v. Margiotti*, 85 F.3d 100, 103 (2d Cir. 1996) (noting that, where trial court announced sentence then realized lapse and gave defendant an opportunity to speak, "[t]o decide that the judgment ought to be vacated and the case remanded for resentencing would be tantamount to ruling that a district judge cannot correct an inadvertent and harmless mistake made in the course of a sentencing hearing"). If anything, Petitioner *affirmatively declined the court's offer.*

The Court of Appeals in *Barton v. State* addressed a similar issue, where the defendant did not challenge the knowing and voluntary nature of his plea, yet claimed the court erred by refusing to allow him to speak at the plea hearing. 325 S.C. 522, 481 S.E.2d 439. In that case, Barton pleaded guilty to two separate sets of charges, and was represented by a different on each set. *Id.* at 525, 481 S.E.2d at 441. As part of the plea agreement, the solicitor agreed not to object to the defendant's request to run the sentences for the old and new charges concurrent. *Id.* Like Petitioner, Barton told the plea court he understood the possible sentences he could receive and the plea court accepted his plea on both sets of charges. *Id.* at 526, 481 S.E.2d at 441.

The plea judge imposed consecutive sentences on the new charges, which included a life sentence. *Id.* at 527, 481 S.E.2d at 442. As to the old charges, the judge ran the sentences concurrent to each other and the sentences imposed on the new charges. *Id.* After the plea judge pronounced the sentences, but before he finished stating that the sentences for the old charges and new charges would run concurrent, Barton interrupted the judge, saying, "your honor." *Id.* The judge told Barton not to interrupt him, and finished pronouncing the sentence. *Id.*

Barton and the attorney who represented him on the old charges appeared before the sentencing judge several days later on a motion to withdraw his guilty plea to the new charges. *Id.*

Counsel claimed that, "had Barton been allowed to speak during the previous proceeding, he would have withdrawn his guilty plea to the [n]ew [c]harges." *Id.* He argued he "did not commit the crimes and that [his] guilty plea was not voluntary, because [he] did not understand the sentences he faced." *Id.* at 527–28, 481 S.E.2d at 442. The plea judge allowed Barton to testify at the hearing, where Barton he told his attorney who represented him on the new charges that he was not involved. *Id.* Counsel allegedly told Barton if he accepted the plea, he would be sentenced to thirty years. *Id.* Barton further claimed the answers he had given during the plea were not true. *Id.* The plea judge denied the motion, finding that Barton's plea was entered freely, intelligently, and voluntarily. *Id.*

On appeal, Barton claimed the trial court erred by refusing to allow him to speak at the guilty plea hearing. *Id.* at 529, 481 S.E.2d at 443. The Court rejected Barton's argument, finding the court gave Barton the opportunity to speak before the sentence was pronounced, and that the plea judge did not err in refusing to allow Barton to disrupt the sentencing. *Id.* The Court in *Barton* also stated that "any error by refusing to allow him to speak was cured when the trial court allowed Barton to testify during the hearing on the motion to withdraw the guilty plea." *Id.* at 529 n.5, 481 S.E.2d at 443 n.5. Likewise, any possible error in Petitioner's case was cured when the plea court gave him the opportunity to speak after he was sentenced, and Petitioner stated he had nothing to say.

Accordingly, the plea judge did not commit any error whatsoever when imposing the agreed-upon recommended sentence. Petitioner's sentence fell within the permissible statutory sentence limits—and well below the maximum possible punishment that could have permissibly been imposed—for Petitioner's latest in his long history of convictions. Nothing appearing in the record established the plea judge imposed sentence as the result of any partiality, prejudice, corrupt

motive, or improper considerations. Under such circumstances, there is no proper basis upon which Petitioner's sentence can be disturbed on appeal. Petitioner's convictions and sentences should be affirmed.

CONCLUSION

Based on the foregoing argument, this Court should affirm Petitioner's convictions and sentences.

Respectfully submitted,

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