

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**RECEIVED**  
**Jan 26 2021**  
SC Court of Appeals

Appeal from Clarendon County

R. Ferrell Cothran, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JOE TAJHAREY NATRON MCFADDEN,

APPELLANT

APPELLATE CASE NO. 2019-001390

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ANDERS BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred where it resentenced Appellant to fifteen years' imprisonment despite Appellant's assistance with a murder investigation, since Appellant's cooperation should have resulted in a more significant sentence reduction?

## STATEMENT OF THE CASE

During the March term of 2018, a Clarendon County Grand Jury indicted Joe McFadden, Appellant, for six counts of distribution of cocaine base and one count of possession with intent to distribute (PWID) cocaine base. R. 43 – 56. On December 19, 2018, Appellant appeared before the Honorable Kristi F. Curtis for a guilty plea hearing. Appellant was represented by Scott Robinson. The State was represented by Christopher Durant. R. 1.

Pursuant to a plea bargain, Appellant pleaded guilty to the above offenses, and sentencing was deferred to January 22, 2019. R. 3, l. 4 – 4, l. 1; R. 11, ll. 2-9; R. 12, ll. 4-16. On January 22, 2019, the parties reconvened before the Honorable R. Ferrell Cothran, Jr. Appellant was not present. R. 14; R. 16, ll. 23-24. The court sentenced Appellant, sealed the sentences, and issued a bench warrant. R. 19, ll. 2-6; R. 20, ll. 11-13.

On June 20, 2019, the parties reconvened before the Honorable George M. McFaddin for unsealing of the sentences.<sup>1</sup> The court unsealed the sentences and Appellant was sentenced to a total of twenty years' imprisonment: a concurrent term of fifteen years' imprisonment and a \$25,000 fine for one count of distribution of cocaine base; concurrent terms of fifteen years for four counts of distribution of cocaine base; a concurrent term of fifteen years for PWID cocaine base; and a consecutive five year term for the remaining count of distribution of cocaine base. R. 26, ll. 7-17; R. 32, l. 23 – 33, l. 8.

On August 7, 2019, the parties appeared before the Honorable R. Ferrell Cothran, Jr., for a motion to reconsider sentencing.<sup>2</sup> R. 30; R. 33, ll. 8-9. The court resentenced Appellant to a total of fifteen years' imprisonment by sentencing him to a concurrent term of five years rather

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<sup>1</sup> Kataryzna Timmons replaced Christopher Durant as the prosecutor. R. 22.

<sup>2</sup> Hugh McMillan replaced Kataryzna Timmons as prosecutor. R. 30.

than a consecutive term of five years on one count of distribution of cocaine base (Indictment 2018-GS-14-0157). R. 63; R. 40, l. 1 – 41, l. 21.

This appeal follows.

## **STANDARD OF REVIEW**

“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

The court erred where it resentenced Appellant to fifteen years' imprisonment despite Appellant's assistance with a murder investigation, since Appellant's cooperation should have resulted in a more significant sentence reduction.

### *Relevant facts*

On December 19, 2018, Appellant pleaded guilty to six counts of distribution of cocaine base and one count of PWID cocaine base; offenses which were reduced to first offenses pursuant to a plea bargain. Sentencing was deferred.<sup>3</sup> R. 1; R. 3, ll. 5-11; R. 16, ll. 10-16; R. 11, l. 2 – 12, l. 16.

Appellant did not appear for sentencing on January 22, 2019, and the court issued and sealed Appellant's sentences. R. 14; R. 19, ll. 1-10; R. 20, ll. 11-13. The sentences were eventually unsealed and imposed, and Appellant was sentenced to a total of twenty years' imprisonment: six fifteen-year sentences that ran concurrently and one five-year sentence that ran consecutively. R. 22; R. 26, ll. 8-17. Appellant moved to reconsider sentencing and the court changed the five-year sentence from consecutive to concurrent, which reduced Appellant's sentence to fifteen years. R. 30; R. 33, ll.8-9; R. 40, ll. 1-4; R. 41, ll. 14-21.

At the hearing on Appellant's motion to reconsider, defense counsel requested that the court reduce Appellant's sentences to total an active ten year term. R. 34, ll. 5-8. Defense counsel explained that Appellant had assisted the State by cooperating with a murder investigation. Appellant had taken and passed a lie detector test and he provided information that

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<sup>3</sup> The State initially recommended that Appellant be sentenced to fifteen years' imprisonment suspended to twelve years' imprisonment, with five years of probation. The State also recommended that Appellant be released prior to sentencing, which was to be held on January 22, 2019. If Appellant was on good behavior and timely reported back to court for sentencing, the solicitor said he would stand by the recommendation. R. 3, l. 4 – l. 1.

law enforcement was able to verify. R. 37, ll. 12-19. The court took a recess and independently confirmed that Appellant had so cooperated. R. 39, ll. 12-21. Nevertheless, the court did not reduce Appellant's sentence to ten years, as defense counsel requested. R. 40, l. 1 – 41, l. 21.

### ***Discussion***

Appellant cooperated with law enforcement in a murder case in reliance on the assumption that he would receive consideration in the form of a lower sentence; an assumption that may be equated with a plea bargain. The court confirmed that Appellant cooperated, and, therefore, the court should have weighed that cooperation more heavily during the motion to reconsider, and it should have further reduced Appellant's sentences.

“The United States Supreme Court in *Santobello v. New York*, 404 U.S. 257 (1971), held that where a guilty plea rests on a promise or agreement which can be said to be a part of the inducement or consideration, then the agreement must be fulfilled.” *State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994). “The State may withdraw from a plea bargain arrangement at any time prior to, but not after, the actual entry of the guilty plea by defendant or any other change of position by him constituting detrimental reliance upon the arrangement.” *Custodio v. State*, 373 S.C. 4, 11, 644 S.E.2d 36, 39 (2007). “Detrimental reliance may be demonstrated where the defendant performed some part of the bargain; for example, where the defendant provides beneficial information to law enforcement.” *Id.* “[A] defendant who provides beneficial information to law enforcement can be said to have relied to his detriment.”<sup>4</sup> *Reed v. Becka*, 333 S.C. 676, 689, 511 S.E.2d 396, 403 (Ct. App. 1999).

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<sup>4</sup> *But see State v. Miller*, 375 S.C. 370, 389, 652 S.E.2d 444, 454 (Ct. App. 2007) (“State is not bound to accept a defendant's terms simply because a defendant reveals otherwise undiscoverable facts in the hope of securing a favorable plea agreement.”) *Accord State v. Whipple*, 324 S.C. 43, 48, 476 S.E.2d 683, 686 (1996).

“The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge.” *State v. Warren*, 392 S.C. 235, 237–38, 708 S.E.2d 234, 235 (Ct. App. 2011) (citing *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). “An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support.” *Id.* (citing *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010)). Here, the court abused its discretion when it failed to further reduce Appellant’s sentence since there was evidentiary support that would sustain such a reduction.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests this Court to reverse his sentences and remand for a new sentencing hearing.

*s/ Joanna K. Delany*

Joanna K. Delany  
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of January, 2021.

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APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joe Tajharey Natron McFadden states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's guilty plea and sentencing hearings before the Honorable Judges Kristi F. Curtis, George M. McFaddin, and R. Ferrell Cothran, which were held on December 19, 2018, January 22, 2019, June 20, 2019, and August 7, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Joe Tajharey Natron McFadden.

Respectfully Submitted,

s/ Joanna K. Delany

Joanna K. Delany  
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of January, 2021.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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.”

January 26, 2021.

*s/ Joanna K. Delany*

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