

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CURTIS CHANNING PEARSON,

APPELLANT

APPELLATE CASE NO 2020-000376

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in punishing Appellant for exercising his constitutional right to a jury trial by imposing a thirty-five year sentence when the co-defendants who entered guilty pleas received sentences of ten and fifteen years?

STATEMENT OF THE CASE

In November of 2019, the Sumter County Grand Jury indicted Appellant, Curtis Channing Pearson, and two co-defendants, Davnus Quavon Toney and Jamacia R. Simon, for armed robbery and possession of a weapon during the commission of a violent crime, indictment #2019-GS-43-1184. (R. pp. 162-163). On February 19, 2020, Appellant proceeded to jury trial before the Honorable George M. McFadden. Timothy L. Griffith represented Appellant at trial. Jason Corbett prosecuted the case. At the time of Appellant's trial the two co-defendants had entered guilty pleas to armed robbery and were awaiting sentencing. (R. p. 114, lines 14-20). One of the co-defendants, Davnus Quavon Toney, testified against Appellant at trial. The jury found Appellant guilty. Judge McFadden sentenced Appellant to thirty (30) years for armed robbery and five (5) years consecutive for the weapon charge. (R. pp. 164-165). A timely notice of intent to appeal was served on February 26, 2020. 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 trial judge erred in punishing Appellant for exercising his constitutional right to a jury trial by imposing a thirty-five year sentence when the co-defendants who entered guilty pleas received sentences of ten and fifteen years.

The jury found Appellant guilty of robbing the Speedway convenience store with two co-defendants, Davnus Quavon Toney and Jamacia R. Simon. At the time of Appellant's trial the two co-defendants had entered guilty pleas to armed robbery and were awaiting sentencing. (R. p. 114, lines 14-20). One of the co-defendants, Davnus Quavon Toney, testified against Appellant at trial. Toney testified that the three men were armed with BB guns. (R. p. 68, lines 5-12). The State's case against Appellant was based solely on the testimony of Toney. Surveillance video from the store at the time of the robbery, admitted without objection as State's exhibit #1, shows three men but two of the three men covered their faces. (R. p. 49, lines 3-10). The clerk from the store could only identify Toney, the one man who did not cover his face. (R. p. 47, line 22 – p. 48, lines 1-11). The clerk later learned that Appellant was the store manager's daughter's boyfriend. (R. p. 48, lines 16-21). No other witness placed Appellant at the store at the time of the robbery and there was no forensic evidence linking Appellant to the robbery.

At sentencing counsel for Appellant told the judge, "Your Honor, Mr. Curtis is 28-years old. He has no significant - - he's never been in trouble before. This is his first time and he would ask the Court to be lenient in that he, of course, has a right to go to trial, and he took that right although he was found guilty, Your Honor. He maintains his innocence. But, at the same time, Your Honor, he is local to Sumter and has family here, and we just ask that the Court consider all of the circumstances, and, and give some leniency toward him." (R. p. 159, lines 12-21). Despite the lack of prior criminal record, the judge sentenced Appellant to the maximum

thirty (30) year sentence for armed robbery pursuant to S.C. Code §16-11-330. Although the five (5) year sentence for the weapons charge could have been imposed concurrent to the sentence for armed robbery pursuant to S.C. Code §16-23-490(B), instead, the judge ordered that the sentence be served consecutively, resulting in a cumulative sentence of thirty-five (35) years. According to the South Carolina Department of Corrections inmate records, Toney, the co-defendant who testified against Appellant, was later sentenced to ten (10) years. The other co-defendant, Simon, was later sentenced to fifteen (15) years. The trial judge punished Appellant for exercising his constitutional right to a jury trial by imposing the maximum possible sentence although Appellant had no prior criminal record.

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .” U.S. Const. amend VI. An accused has the right to put the State to its proof. See Griffin v. California, 380 U.S. 609, 85 S.Ct.1229, 14 L.Ed.2d 106 (1965). An accused can not be punished for exercising a constitutional right. See Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) (comment upon accused’s post arrest silence); Griffin v. California, supra. (comment upon accused’s failure to testify at trial).

In State v. Hazel, 317 S.C. 368, 370 453 S.E.2d 879, 880 (1995), this Court recognized that “[C]ourts have long adhered to the principle forbidding a trial court from improperly considering the defendant’s exercise of his constitutional right to a jury trial as an influential factor in determining the appropriate sentence.” (citation omitted). In Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999), this Court found that Davis was entitled to post conviction relief based on trial counsel’s failure to object when the judge considered Davis’s exercise of his constitutional right to a jury trial in imposing sentence. In State v. Brouwer, 346 S.C. 375, 550 S.E.2d 915 (Ct.App.2001) the South

Carolina Court of Appeals found that the trial judge violated Davis by improperly considering the assertion of the right to trial by jury in determining sentence.

In Brouwer, the South Carolina Court of Appeal wrote:


We find the trial court's comments in this instance indistinguishable from those expressly disapproved in Davis. Although the court herein also stated it had never, and never would, "punish someone for exercising their right to a jury trial," we believe the mere disavowal of wrongful intent cannot remove the taint inherent in the court's commentary, especially since the record fails to reflect an otherwise appropriate basis for Brouwer's disparate sentence. *See id.* at 322, 520 S.E.2d at 802 (finding trial court's sentencing rationale impermissible, despite fact that court concluded comments by stating "and when a fellow wants a trial [-] which he's entitled to as a matter of law-[-] that's fine").

Brouwer 346 S.C. at 388, 550 S.E.2d at 922.

The sentencing judge in the present case did not specifically mention Appellant's exercise of his right to a trial by jury but the judge was aware that at the time of Appellant's trial both of the co-defendants had entered guilty pleas and were awaiting sentencing. The judge took judicial notice of the fact and advised the jury at Appellant's trial. (Tr. p. 114, lines 14-20). The record fails to reflect an otherwise appropriate basis for Appellant's disparate sentence. The co-defendants who pled guilty received sentences of ten (10) and fifteen (15) years. Appellant, on the other hand, received a sentence of thirty-five (35) years). The judge abused his discretion in considering the fact that Appellant exercised his right to a jury trial in imposing the maximum possible sentence when Appellant had no prior criminal history and the State's case against Appellant was based solely on the testimony of one of the co-defendants.

CONCLUSION

Based on the above argument this Court should reverse the sentence and remand the case for a new sentencing hearing.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of January, 2021.

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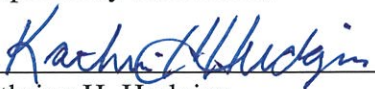
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Curtis Channing Pearson 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 trial before Judge George M. McFaddin, which was held on February 19 - 20, 2020, 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 Curtis Channing Pearson.

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 28th day of January, 2021.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Complete trial transcript;
- (3) State's Exhibit #1 – video surveillance – **TO BE TRANSPORTED TO THE COURT.**

I certify that this designation contains no matter which is irrelevant to this appeal.

January 28, 2021



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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 28, 2021.



Kathrine H. Hudgins
Appellate Defender

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