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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Appellate Case No. 2020-000631

The Honorable George McFaddin

The State of South Carolina……Respondent,

v.

Charles Davenport……Appellant.

REPLY BRIEF

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ARGUMENTS

I. The circuit court judge should not have sentenced C.J. Davenport to 25 years suspended on the service of 20 years given C.J.'s significant mitigation.

The State relies on *State v. White*, 311 S.C. 289, 428 S.E.2d 740 (Ct. App. 1993) to make its case that the sentence imposed in this case was appropriate. The case, frankly, illustrates why C.J. Davenport's sentence is disproportionate to his crime and suggests why the South Carolina appellate courts should provide more guidance to the bench and bar about appropriate sentences in difficult cases. White's 21 year sentence is much more appropriate for his case given the significant aggravating factors present. As the opinion notes, upon his first contact with law enforcement, White lied to the police about what happened. He told the Trooper he had been in a fight. Then, at the hospital, he informed medical personnel that he had been hit by a truck he was trying to flag down. Then, after becoming verbally abusive, White had to be placed in "four-point restraints" for the night. Only then, after having been at the hospital for over 3 hours, did he tell the nurse that he had been in a driving accident and he expressed fear that his passenger had been killed. Troopers finally found the passenger who had sustained fatal chest and neck injuries. Under these facts, the Court found that White's claim that his 21 year sentence was "excessive as a matter of law" had no merit since it was still below the statutory maximum of 25 years. Appellant agrees.

Appellant's claim is not that a 20 year sentence for felony DUI with death is "excessive as a matter of law." Rather Appellant argues that the circuit court judge

did not adequately consider the extensive mitigation that was offered on Appellant's behalf by family, friends, and his lawyers. As detailed in the initial brief, Appellant offered extraordinary mitigation on his own behalf. This tragedy was not the nadir of an otherwise troubled life. Instead, C.J. has had many accomplishments and has shown himself to be a really decent person who made a horrible and devastating mistake.

According to the State, a sentencing judge does not have to consider any particular factors. The State argues, "[a]nd, while Appellant may have preferred the plea judge focus exclusively on Appellant's purported potential for rehabilitation or past positive actions, the plea judge was *not* required to do so and, instead, was fully permitted to consider other penological goals, such as deterrence or incapacitation, when deciding upon an appropriate punishment for Appellant's offense." Respondent's Brief, p. 15 (emphasis in original). First of all, Appellant never suggested that the circuit court should have discounted the very real and tragic loss associated with Newell's death. That has never been Appellant's position and the State's imputing that view to Appellant is wrong and unfair. But also, the State's view appears to be that a circuit court has absolutely no duty to consider mitigation evidence at all. The State's position here would leave criminal sentencing in South Carolina without any meaningful guardrails. It's this free-for-all view of criminal sentencing that promotes continued "judge-shopping" issues and ultimately undermines faith in our criminal justice system. Given the extraordinary growth in guilty pleas over the past several decades, this Court should take the opportunity to

revisit its sentencing jurisprudence to make the system more equitable and just. Respectfully, Appellant asks this Court to begin that process by finding the sentence in this case to be unduly harsh in light of C.J.'s significant mitigation.

II. The State's argument that Appellant's claim is procedurally barred.

Appellant concedes that this issue was not raised to the circuit court judge. This Court, however, possesses the inherent authority to do what is necessary to promote justice and fairness in the criminal justice system. *See State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012) (a court's power to hear and decide cases "carries with it the inherent power to control the order of its business); *Hagy v. Pruitt*, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (2000) ("The legislature cannot restrict the judicial branch's exercise of its inherent authority… which includes the inherent authority to set aside a judgment on the ground of extrinsic fraud."); *Matter of Ferguson*, 304 S.C. 216, 403 S.E.2d 628 (1991) (recognizing inherent authority to suspend circuit judge indicted for serious crime despite constitutional article providing that legislature may remove judge by impeachment). Given the significance of this issue as argued in Appellant's brief, this Court should exercise its authority and provide guidance to the bench and bar about what factors circuit courts should be considering when imposing sentences despite the lack of a timely objection made the circuit court below.

CONCLUSION

Respectfully, this Court should remand this case for resentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this Reply brief on counsel of record, Mark Farthing, by sending via email on this date, 3/2/21.

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