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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAMESHA MONET BRANTLEY,

APPELLANT.

APPELLATE CASE NO. 2020-001713

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
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STATEMENT OF ISSUE ON APPEAL

Did the plea judge fail to exercise judicial discretion during sentencing when defense counsel made a motion for alternative sentencing requesting that Appellant serve a portion of her sentence under the Home Detention Act, and where the plea judge sentenced Appellant to sixty years imprisonment without ruling on the motion for alternative sentencing?

STATEMENT OF THE CASE

During the December 2019 term of the Lancaster County grand jury, Appellant was indicted for one count of homicide by child abuse, three counts of unlawful conduct toward a child, and one count of possession with intent to distribute marijuana. R. 77-90. On December 3, 2020, Appellant appeared before the Honorable Brian M. Gibbons to enter a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). R. 1; 3. The State was represented by Luck Campbell. Appellant was represented by William Frick. R. 1.

The court accepted the Alford plea and sentencing was deferred. R. 12. On December 17, 2020, the parties reconvened before Judge Gibbons for sentencing. R. 17. After a two-hour sentencing hearing Judge Gibbons sentenced Appellant to thirty-five years imprisonment on homicide by child abuse, ten years imprisonment on two of the unlawful conduct toward a child counts, and five years imprisonment on the third unlawful conduct toward a child count. The judge ordered the sentences to run consecutively, for an aggregate term of sixty years. Appellant was sentenced to five years imprisonment on the possession with intent to distribute marijuana count, sentence to run concurrent to the other counts. R. 74-75.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). A sentence will not be overturned absent an abuse of discretion; an abuse of discretion occurs "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). "A trial judge has broad discretion in sentencing within statutory limits." Id. "A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant." Id.

ARGUMENT

The plea judge failed to exercise judicial discretion during sentencing when defense counsel made a motion for alternative sentencing requesting that Appellant serve a portion of her sentence under the Home Detention Act, and where the plea judge sentenced Appellant to sixty years imprisonment without ruling on the motion for alternative sentencing.

Factual Basis for Plea

On November 6, 2018, De'Yontae Miller called 911 to report that his fifteen-month-old son, Minor One, was not breathing. First responders arrived on scene and began CPR on Minor One. R. 9, ll. 6-10. EMS personnel noted multiple bruises in different stages of healing on Minor One's body. R. 9, ll. 6-13; R. 23, ll. 13-20. Minor One was transported to Springs Memorial Hospital where he was eventually pronounced dead. R. 9, ll. 14-16; R. 24, ll. 3-10. The hospital staff had also noted multiple bruises in various stages of healing on Minor One's body. R. 24, ll. 11-13 (T.2). An autopsy revealed that Minor One died as a result of non-accidental blunt force trauma to the head, neck, and extremities. R. 10, ll. 1-15; R. 29, ll. 1-2.

In the home at the time of Minor One's death were Appellant, Remesha Brantley, her co-defendant and fiancé, De'Yonate Miller and three minor children[1]. Minor One and Minor Two were the biological children of Miller and Destiny Underwood. Minor Three was the biological child of Appellant and Miller. R. 8, l. 19-R. 9, l. 6; R. 20, ll. 1-6. As a result of the 911 call, Minor's Two and Three were removed from the home, placed into emergency protective custody and examined by a forensic pediatrician. Minor Two was found to have multiple injuries and bruises consistent with physical abuse. No bruising or injures were found on Minor Three. R. 10, ll. 15-25; R. 24, l. 23-R. 25, l. 7.

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[1] At the time of the incident Minor One was fifteen months old, Minor Two was three year's old, and Minor Three was fourteen months old. R. 8, l. 25-R.9, l. 6; R. 19, l. 24.

The death of Minor One led to law enforcement obtaining a search warrant for Appellant and Miller's home. Upon execution of the search warrant, law enforcement found crack cocaine, marijuana, and digital scales. Additionally, agents with the South Carolina Department of Social Services[2] observed multiple safety hazards in the home including large blocks of rat poison, loose pills, brass knuckles, and drugs, all within reach of the children. The home was found to be in "deplorable and unlivable" conditions with no running water. R. 9, ll. 16-24; R. 24, ll. 16-22.

In July of 2019 Appellant was interviewed by officers with the SLED Child Fatality Task Force. Appellant[3] initially denied any involvement in the injuries to the children. However, towards the end of the roughly five-hour interview Appellant eventually "broke down." Appellant then told officers that on the day of Minor One's death both he and Minor Three had been crying, she became frustrated, struck the boys with her fists and "threw them into the pack and play." Appellant stated when she threw Minor One into the pack and play, she heard his head hit something which she believed was the wall, but she did not check on him. After making her statement to officers, Appellant requested she be able to tell Miller that she caused Minor One's death. R. 11, ll. 5-17; R. 25, l. 18-R. 26, l. 9.

Sentencing Hearing

Prior to the sentencing hearing, Counsel Frick filed a Motion for Alternative Sentencing requesting that Appellant be sentenced pursuant to the Home Detention Act (the Act) under S.C.

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2 DSS had been involved with the family since the birth of Minor One. Minors One and Two had been removed from the custody of their biological mother and eventually were placed in the custody of Appellant and Miller. Appellant had a separate DSS case involving Minor 3 that was closed after Appellant properly completed the DSS treatment plan. R.

3 Appellant was thirty-three weeks pregnant at the time of her interview. Counsel Frick informed the plea court that Appellant had entered the beginning stages of labor at the time she made her incriminating statement to law enforcement. Minor Four was born the day after Appellant's interview with law enforcement. R. 49, ll. 13-24.

Code Ann. § 24-13-1530. In the motion and at the hearing, Counsel Frick argued that the plea judge had discretion to allow Appellant to serve a portion of her sentence on home detention, despite the Court of Appels holding in State v. Simpson, 429 S.C. 83, 837 S.E.2d 669 (2020) (holding the Home Detention Act does not apply to violent offense as defined in S.C. Code Ann. 16-1-60). R. 14-16. At the end of the sentencing hearing Counsel Frick addressed the motion stating,

> What I am asking you is to allow -- and quite frankly what I want is a 15-year sentence and five years to be spent on home incarceration...I think it's State v. Simpson, that says -- this is a recent case by our court of appeals that came out this year, that said that a violent charge could not be given home detention. Judge, I think that's a misreading of that statute. I believe that the language in that statute -- of course I've laid it out in my motion that you have and have read, I know, states in the vernacular in the colloquial use of the word non-violent offender, and I believe that was the intent of the legislature. Because they could have simply said, "We want this to apply to 16-1-60," but they did not. I think there's further evidence of that because I believe that sentence goes on to say that the Court can essentially choose who is a non-violent offender. So, I think it is to your discretion, I would ask you to exercise that discretion and ask you to impose the minimum sentence with the alternative of allowing her to serve home incarceration.

R. 73, ll. 2-24.

The State responded stating the Simpson case "clearly lays out the whole legislative intent of the violent home detention, it's not allowed, so we would just ask that you follow the law." R. 74, ll. 2-5. Judge Gibbons then proceeded to sentence Appellant to sixty years in prison, without ever ruling on or addressing the motion for alternative sentencing. R. 74, 1. 6-R. 75, l. 12.

Discussion

The appellate courts of this State have repeatedly held that the failure of a judge to exercise discretion is, in and of itself, an abuse of discretion. Patton v. Miller, 420 S.C. 471, 804 S.E.2d 252 (2017); State v. Hawes, 411 S.C. 188, 767 S.E.2d 707 (2015); Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987). In State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981), the South Carolina

Supreme Court held that a trial judge who does not exercise discretion regarding a motion to modify or vacate a sentence, abused their discretion. Smith was convicted in his absence for a third offense of driving under the influence. Smith, at 496, 280 S.E.2d at 201. On a motion to modify or vacate Smith's sentence, the trial judge in Smith ruled that he had no jurisdiction to change the sentence. Id. at 497, 280 S.E.2d at 201. The Supreme Court held that the authority to change a sentence rests in the hands of the sentencing judge, within the exercise of discretion, and that the trial judge in Smith abused that discretion when he failed to exercise it. Id. at 498, 280 S.E.2d at 202.

In State v. Hughes, 346 S.C. 339, 552 S.E.2d 35 (Ct. App. 2001), Hughes was indicted for two counts of criminal sexual conduct with a minor in the second degree. During the trial, an expert in child sex abuse treatment testified that the victim's behavior was consistent with sexual abuse. Hughes, at 341, 552 S.E.2d at 36. On cross examination Hughes asked the expert if she reviewed her notes to refresh her memory prior to testifying. Id. After the expert responded in the affirmative, Hughes asked to inspect her notes. Id. The trial court refused to order inspection of the expert's notes because they were in Columbia and the trial was taking place in Orangeburg. Id. The jury convicted Hughes as indicted. Id.

This Court held that the trial court in Hughes erred when it refused to allow Hughes to access the expert's notes under Rule 612, SCRE. Hughes, at 343 – 344, 552 S.E.2d at 37. The trial court believed it could not order the production of the expert's notes because they were not located inside the courtroom. Id. at 343, 552 S.E.2d at 37. This Court held that the trial court erred because, "[U]nder the plain language of [Rule 612, SCRE] the trial court has the discretion to allow or refuse examination by an adverse party of writings used by a witness prior to trial to refresh her memory." Id. The Hughes Court held that the trial judge abused his discretion when "his ruling

revealed that no discretion was, in fact, exercised." Id. at 342, 552 S.E.2d at 342 (quoting Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987)).

The plea judge in Appellant's case failed to exercise his discretion during the sentencing hearing. Counsel Frick made a cogent argument to allow for Appellant to serve a portion of her sentence on home detention. The record reflects that the plea judge considered the motion in some fashion because the judge requested the State reply to the motion. However, there was not an outright ruling denying the motion for alternative sentencing. There was only an implicit rejection of the motion when the plea judge sentenced Appellant to sixty years imprisonment. While the rules of error preservation generally require an outright ruling or refusal of the court to rule, a ruling by implication may be sufficient to present a question for appellate review. See Doe v. City of Duncan, 417 S.C. 277, 282, 789 S.E.2d 602, 605 (Ct. App. 2016) (finding the issues preserved because "although the circuit court did not specifically state it did not believe the Act applied in this case, it implicitly rejected Doe's argument by finding service was not timely").

Given that the judge delivered the sentenced immediately following the State's request that he "follow the law," it is logically to conclude that the judge felt he could not consider home detention because of the holding in Simpson, *supra*. However, the Home Detention Act specifically calls upon a judge to exercise discretion. The Home Detention Act states in relevant part,

> *Notwithstanding another provision of law which requires mandatory incarceration*, electronic and nonelectronic home detention programs *may be used* as an alternative to incarceration for *low risk, nonviolent adult and juvenile offenders as selected by the court* if there is a home detention program available in the jurisdiction.

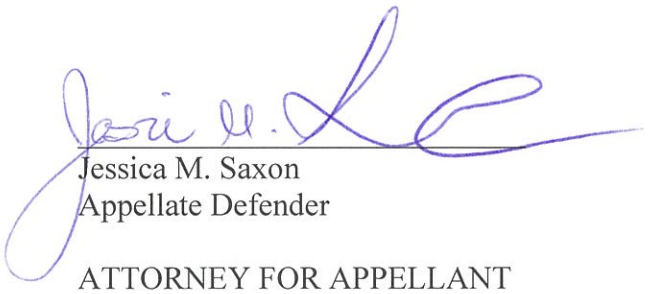
S.C. Code Ann. § 24-13-1530 (emphasis added). As stated plainly in the statute, it is up to the judge to determine whether a person is a "low risk, nonviolent" offender. The language of the statute requires that a judge make this determination on a fact specific, case-by-case basis.

Appellant's case is distinguishable from Simpson. First, Simpson requested to serve his entire sentence on home detention while Appellant was requesting to only serve a portion of her sentence on home dentition. Additionally, all of charges that Simpson was convicted of were violent offenses pursuant to S.C. Code Ann. § 16-1-60, while only one of Appellant's charges was classified as a violent offense. While the plea judge may not have sentenced Appellant to serve any portion of her homicide by child abuse sentence on home detention, he could have allowed her to serve the unlawful neglect and possession with intent to distribute charges on home detention without running afoul of the holding in Simpson

Admittedly, Counsel Frick asked the lower court to fashion a sentence which was contrary to this Court's holding in Simpson. Such a request required the plea judge to exercise his discretion by considering whether home detention was a possible sentencing option. To have met his duty, the plea judge needed to consider whether Appellant was a low risk, nonviolent offender, and whether the holding in Simpson applied to her case. Had the judge properly exercised his discretion, he could have sentenced Appellant to home detention on the statutorily non-violent charges that she pled guilty to. Accordingly, the failure of the plea judge to consider Appellant's alternative sentencing motion and explicitly rule on the motion was an abuse of discretion.

CONCLUSION

Based on the foregoing, Appellant respectfully request this Court vacate her sentence and remand her case to the Lancaster County Court of General Sessions for resentencing.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2021.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ramesha Monet Brantley 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 Brian M. Gibbons, which was held on December 3 & 17, 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 Ramesha Monet Brantley.

Respectfully Submitted,

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 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) December 3, 2020 Alford Plea Hearing Transcript
(2) Motion for Alternative Sentencing
(3) December 17, 2020 Sentencing Hearing Transcript
(4) Clerk of Court's Records

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

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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."

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