

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN ERNEST PERRY,

APPELLANT

APPELLATE CASE NO. 2017-002107

SUPPLEMENTAL RECORD ON APPEAL

RECEIVED
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SC Court of Appeals

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1 back in I believe 1997.

2 MR. EPTING: Your Honor, if I can be of some assistance in
3 this. I have copies of certified and I would ask that they be
4 entered into the record as Court's 16 or 17, these have been
5 provided to the defense but I have provided him court copies so
6 that he doesn't have to work through the NCIC for his
7 objections.

8 MR. NOWIKI: Your Honor, one of the incidents that
9 occurred on February 13th of 1996, and the other I believe
10 February 29th in 1996, these are the two convictions that they
11 are planning on using. Your Honor, the State's (sic) position,
12 and this is in accordance with section 17-25-30 -- nope, I'm
13 sorry, 50, 17-25-50, that these are so closely connected in
14 time they could be treated as one continuous event and
15 therefore this should only serve as one and not two convictions
16 for determining the life without parole.

17 THE COURT: All right.

18 MR. EPTING: The State's position is that on the face of
19 the -- not on the face of the indictment but the factual
20 description given there is almost two weeks passing between the
21 two incidents happening and we believe those make those
22 separate and distinct offenses for purposes of enhancement.

23 MR. NOWIKI: Your Honor, even if they are separate and
24 distinct under the statute it still can be considered as one.

25 MR. EPTING: I don't believe that's correct, with all due

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1 respect to Mr. Nowiki I don't believe that's a correct
2 statement of law as far as enhancements under the three strikes
3 rule.

4 THE COURT: All right. Counsel, are you in agreement on
5 those coming in as a Court's Exhibit? We need to get that
6 clarified.

7 MR. NOWIKI: I'm going to object, you know, based on this
8 should only be one under 17-25-50. Because it does say "The
9 Court shall treat as one offense any number of offenses which
10 have been committed at times as closely connected in the point
11 of time that they may be considered as one offense." Also,
12 Your Honor, just one more, both of these were taken care of on
13 the same date as far as the convictions date, it was 4/24/97.

14 THE COURT: The case notes pretty well clarify the
15 arguments that are before the Court. Based on State versus
16 Muldrow, South Carolina 414 -- no, correction, South Carolina
17 1972 259SC414, the State versus Muldrow, which discusses the
18 distinct elements give some clarification. That is, of course,
19 a different scenario from what we're dealing here and
20 specifically on point -- let me correct that, that is the one
21 that's specifically on point with what we have here, State
22 versus Muldrow. There's a further discussion on separate and
23 distinct offenses which gives further clarification to where it
24 would be or should be considered as one -- discuss it in there
25 where you've got two prior convictions that were closely

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1 connected, it makes a distinction there. So based on Muldrow I
2 have to agree with the State so that one is on point. What
3 else?

4 MR. NOWIKI: Your Honor, I just want to renew my objection
5 to that.

6 THE COURT: So noted.

7 MR. EPTING: So I believe Court's 16 and 17 are into the
8 record?

9 THE COURT: Correct, subject though to objection.

10 MR. EPTING: We would also seek to enter Court's 15. This
11 is an email copy of the convictions as well as notice of our
12 intention to seek life emailed directly to defense counsel in
13 this case, I neglected to put that in in the start of that case
14 and ask to rectify that by allowing me to enter that as a
15 Court's Exhibit at this time.

16 THE COURT: You know -- that's in without objection.

17 MR. EPTING: Your Honor, as to the defendant's prior
18 record if Your Honor wished to hear that at this time I would
19 like to read that for the record.

20 THE COURT: Yes, sir.

21 MR. EPTING: Your Honor, the defendant's record dates back
22 to 1987, he was convicted for grand larceny. 1990 disobedience
23 to police and failure to stop for a blue light. '93, failure
24 to stop for blue light. 1994, an unlawful carry and assault
25 and battery charge. 1995, public disorderly conduct. In 1997

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1 he was convicted of crack distributions, two counts as well as
2 a proximity charge, he did receive an incarcerative sentence
3 for that. In 2001 he was convicted of domestic violence. In
4 2002 he was convicted of domestic violence of a high and
5 aggravated nature where he was again sent to prison. In 2010
6 he was convicted of receiving stolen goods between \$1,000 and
7 \$5,000, two counts of that. And in 2014 he was convicted of
8 habitual traffic offender charge. He has a current pending
9 felony level unlawful neglect or abuse of a child charge, that
10 is currently pending with our office, that is with another
11 prosecutor so I cannot speak to what is going to happen to that
12 case but I imagine -- the resolution of this case will also be
13 a resolution in that case. Your Honor, the victim in this,
14 Dalton Taylor, is present in Court and at the appropriate time
15 would like to very briefly address the Court.

16 THE COURT: I'll be glad to hear from him at this time or
17 if he would prefer to wait and hear the defense mitigation to
18 be heard at that time, that's fine.

19 MR. EPTING: Beg the Court's indulgence.

20 (Break in proceedings.)

21 MR. EPTING: He's electing to wait until after mitigation,
22 Your Honor.

23 THE COURT: Okay. Counsel?

24 MR. NOWIKI: Your Honor, Mr. Perry is 47 years old. He
25 does have diabetes and has the lost eyesight I believe in the

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1 right eye and is losing eyesight in the left eye based on
2 diabetes. As far as other mitigation, he has been working. He
3 has been working with Larry Farmer doing home repairs so he was
4 out there being a productive member of society. I understand
5 the verdict and everything. Mr. Perry is -- he made a mistake
6 and, you know, based on his record and he does have a few
7 incidents, you know, as far as being like assault incidents but
8 nothing of this nature. And again I just -- I disagree with
9 the verdict from the jury. There is a lot of evidence going
10 towards it being a mistake, accident, whatever it was, but I
11 understand the jury, they're the ones that are the judge of the
12 facts and the law and all of that. I know he's got family here
13 and I'm sure they're going to want to address the Court. I
14 know there's not a whole lot of room but I just please just ask
15 that you don't go along with the life without parole and we're
16 just asking mercy from the Court.

17 THE COURT: What discretion do you think I have in this
18 matter?

19 MR. NOWIKI: None.

20 THE COURT: I'll be glad to hear from -- I'll let you call
21 them as you so see fit.

22 SPEAKER: Patricia Perry, I am John Perry's wife. Over
23 the course of years he has made mistakes but I know my husband,
24 my husband did not try to kill anyone. I don't think this is a
25 fair trial, I don't. But he is 47, he's totally blind in his

1 right eye. He is a good person. He has provided for us. He
2 has a son that's in the Army and I would like to see him one
3 day be out of jail. But this was not a fair trial. They were
4 out to get him and I believe that. But he would not as God as
5 my witness ever try to kill anyone. And that's all I have to
6 say.

7 THE COURT: Ms. Perry, I appreciate you being here.

8 SPEAKER: My name is Teresa Sims Anderson. I have three
9 children and John is my only son and my daughter is sitting
10 beside. My son has made a lot of mistakes. He don't know how
11 to pick his friends. But I feel in my heart that I know my
12 son, my son had no intentions of killing anyone. I had written
13 a letter but I wasn't allowed to give it to you. My health is
14 not good and I just hope and pray that you'll be lenient with
15 my son. If he gets sentenced today could we just get a hug
16 from him? I'm not trying to take up for anything that happened
17 because it could have been worse. My son is a good person, he
18 will take the cloths off his back if he had to. Thank you,
19 sir.

20 THE COURT: Thank you for being here.

21 MR. NOWIKI: And Mr. Perry's father would like to address
22 the Court. Would you state your full name?

23 SPEAKER: John Ernest Perry, Sr. and I would like to
24 address the Court with my son.

25 THE COURT: Yes, sir.

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1 SPEAKER: None of us are perfect, we all have made
2 mistakes in our life. I know my son is not perfect, but I do
3 know for a fact he's not out here trying to kill anyone, has no
4 intention of that. I just can't see it. I mean, listening to
5 all of this evidence I can't see where they've proven anything
6 as far as intention for him trying to do anything of this
7 nature. And if it's in your power, I know he's going to do
8 time but I ask that you be lenient as far as that goes. And I
9 thank you.

10 THE COURT: Thank you.

11 SPEAKER: My name is James Anderson, I'm John Perry's
12 stepfather, and I know him for most of his life. I know it
13 don't look good. I truly don't believe he was trying to kill
14 this officer. Just like it was stated in the courtroom, nobody
15 knows what happened but the officer and John, so whose telling
16 the truth? I don't think any of us knows. I just know what
17 I'm saying -- I'm saying the evidence, I mean it just ain't
18 matching up. I just don't see how nobody who is blind in his
19 right eye could shoot over his shoulder, him get shot in the
20 back, it just don't add up. I'm not taking nobody's side or
21 nothing. Just like I said, nobody knows what happened but the
22 officer and John. And another thing, the night it happened the
23 officer here come to my house, which he stated he went back to
24 the police department and turned his weapon in, that's a lie.
25 He come to my house, went all of the way through my house still

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1 looking for John. I truly believe if he would have told us he
2 had shot John we could have got in contact with John some kind
3 of way and this wouldn't have been gone on for a whole year.
4 It looked like he would have had the decency to say, "Your son
5 has been shot," he didn't have to say he shot him, he could
6 have said that your son had been shot, outside of that he
7 didn't say anything. Thank you.

8 SPEAKER: I'm Cheryl Perry Gore and John is my brother.
9 We have been through a lot. My brother has made mistakes and
10 all of us have, but the way we were raised is to take care of
11 each other and look out for each other. John did not try to shoot
12 or kill anybody, I believe that within my whole heart and soul.
13 And I just ask that you show leniency with my brother. Thank
14 you.

15 THE COURT: Thank you. Mr. Perry, anything you would like
16 to say?

17 THE DEFENDANT: Yes, sir. Your Honor, I made a mistake --
18 two mistakes. Yesterday I made a mistake not getting on the
19 stand myself and clarifying the parts what happened because I
20 probably could have freed myself out of this, not freed
21 completely. And on the second thing, I'm sorry we're here.
22 From a senseless act we are standing here today for attempted
23 murder, what I never intended on happening, never pointed or
24 did any of those things but we're here today before you for
25 that and I'm sorry taking up your time for it. But I never

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1 tried to shoot the officer, I never pointed at the officer but
2 I'm here before you now for sentencing and I would just ask you
3 to be lenient with me. And for the record I don't know how it
4 will work but I want to go on the record for a direct appeal
5 and all of the things that I could get to try to get myself
6 situated on this situation here.

7 THE COURT: Okay. Since you posed that issue let me go
8 ahead and let's get that established on the record. Once
9 sentence is passed you have ten days to file notice of appeal,
10 of course, you'll make sure that's followed up. It is crucial
11 that a notice of appeal be filed within ten days. Of course,
12 to prevail on appeal you have to show some error, counsel will
13 assist you. Under normal circumstances once that notice of
14 appeal is filed within that ten days then quite often appellate
15 defense steps in, but when you have private counsel that can go
16 either way so I don't know how you wish to proceed on that and
17 how counsel will advise you. But the critical thing I need to
18 make sure you understand me is that ten day rule.

19 THE DEFENDANT: I won't get to do it, then who will file
20 it for me? Because I will be in the department of corrections.

21 MR. NOWIKI: I'm going to file it.

22 THE COURT: Your counsel will file that, and then from --
23 where it goes from there could be several angles.

24 THE DEFENDANT: I'm sorry I took up the Court's time for
25 this but I thought we was working it out just ten minutes ago

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1 with the plea that they all came together on and I was signing
2 the papers and I guess it's where we're at now.

3 THE COURT: Okay. Thank you. All right, you can be
4 seated.

5 MR. EPTING: Your Honor, I believe Dalton Taylor wishes to
6 address the Court.

7 THE COURT: Officer Taylor?

8 SPEAKER: I just want to say, Your Honor, there's a lot of
9 times we get where you're told that, "Hey, you're a cop, you
10 can't be scared." That night I was petrified. Having stared
11 down the barrel of a gun and having the potential to get shot I
12 acted the way I was supposed to act. I have in my heart and in
13 my mind that he had every intent to kill me or at least try to
14 shoot me so he could get a way. Having to make a phone call to
15 my mother at 12:00 at night saying, "Hey, I just got shot at,"
16 was not the easiest thing to do. I would just ask that he gets
17 life with no parole. Thank you.

18 THE COURT: Thank you, sir.

19 MR. EPTING: That's all from the State, Your Honor.

20 THE COURT: I want to make sure I understand something
21 correctly. One of the defendant's family had a statement about
22 Mr. Perry being blind in one eye, I thought -- I was the under
23 the impression from what I heard somewhere in this trial that
24 that didn't occur until after this incident.

25 THE DEFENDANT: No, sir.

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1 THE COURT: Am I wrong about that?

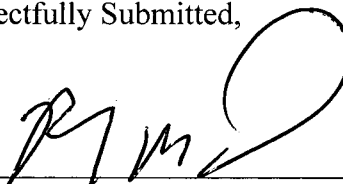
2 THE DEFENDANT: Yes, sir, you're wrong. I went -- I was
3 blind in both eyes two years ago, I woke up one morning and
4 couldn't see anything, I had to go to Duke to Chapel Hill and
5 they restored 16 percent to my left, but it has been completely
6 blind in the left eye. They have the paperwork back there with
7 my mom and my wife. This didn't occur after, this has been
8 going on way before I got arrested. That's why I lost my job
9 in the kitchen at Fatz because I was a liability so I had to go
10 out and find another job and that's when I seeked to do dry
11 wall and home repair.

12 THE COURT: I misunderstood that. I just remembered there
13 was somewhere in the statements was the diabetic situation and
14 you lost sight in an eye but I wasn't sure about the timing of
15 it. Okay. Well, I want everybody to understand when I threw
16 the question back to counsel a few minutes ago, the legislature
17 in its ultimate wisdom has not given me any discretion. But I
18 will say this, I'm not sure what the intent was about the
19 statements of not being a fair trial, a jury of 12 reached a
20 decision and they deliberated -- well, I hadn't counted the
21 number of hours but they gave all due consideration and
22 deliberation in this matter and they reached a verdict. The
23 prior record, not the first problems that Mr. Perry has had.
24 Of course, we don't know what considerations the jury took in
25 all of the facts as they saw them, but at this point now that

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

Respectfully Submitted,



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This 2nd day of January, 2019.

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