

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN DEWAYNE EDWARDS,

APPELLANT

APPELLATE CASE NO. 2021-000172

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the reconsideration court erred when it denied Appellant's motion to reconsider his sentence where Appellant correctly showed that the sentence was imposed in reliance on the state's wrongful recitation of his criminal history, which wrongfully included incidents that should not have been considered for sentencing purposes, and where the reconsideration court did not accord proper weight to Appellant's corrections to his criminal record?

STATEMENT OF THE CASE

During the March 2020 term the Lexington County Grand Jury indicted Appellant for arson in the second degree. R. 24 – 26.

On November 2, 2020, Appellant pled guilty to arson in the third degree before the honorable Frank R. Addy, Jr. R. 1; R. 3, ll. 22 – 24. Ola Johnson represented Appellant. R. 1. Russell Parker represented the state. Id. Appellant was sentenced to ten years' imprisonment. R. 16, l. 6 – 17, l. 17.

On November 4, 2020, Appellant filed a motion to reconsider his sentence because the state's recitation of his prior record was inaccurate. R. 19. In an amended motion to reconsider, filed on February 3, 2021, Appellant explained that the state's recitation of Appellant's criminal record included incidents that should not have been considered and that Appellant had a "very limited [criminal] history since 2006." R. 20 – 21.

On February 4, 2021, Judge Addy denied Appellant's motions to reconsider. R. 22 – 23. The order denying Appellant's motions to reconsider stated that Appellant's arguments regarding his prior record were correct; however, the sentence was still proper "based upon the serious nature of the crime, the potential for injury to innocent third parties, the substantial cost in inventory" damaged by the fire Appellant set. Id. The order also found that even though the fire at the Walmart was set at 3:30 AM "there was still a serious risk to the general public" and Appellant was "lucky that no one was seriously injured by his actions." Id.

This appeal follows.

STANDARD OF REVIEW

A trial judge is allowed broad discretion in sentencing within statutory limits. Garrett v. State, 320 S.C. 353, 465 S.E.2d 349 (1995); State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974). A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant. Brooks v. State, 325 S.C. 269, 271–72, 481 S.E.2d 712, 713 (1997) (citing Garrett, supra). A trial court's ruling on a motion for reconsideration will not be disturbed on appeal absent an abuse of discretion. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).

ARGUMENT

The reconsideration court erred when it denied Appellant's motion to reconsider his sentence where Appellant correctly showed that the sentence was imposed in reliance on the state's recitation of his criminal history, which wrongfully included incidents that should not have been considered for sentencing purposes, and where the reconsideration court did not accord proper weight to Appellant's corrections to his criminal record.

Relevant Facts

At 3:30 AM on April 16, 2019, police were dispatched to a Walmart in Lexington County. R. 5, l. 13 – 6, l. 23. A fire was started at the Walmart and surveillance footage from the “area where the fire started” showed three individuals leaving the store shortly before the “fire became noticeable.” Id.

Before the fire was set, Appellant was seen on camera entering the Walmart with two individuals later identified as Deanna Salis and Bobby Murphy. Id. Salis and Murphy were interviewed by police and alleged that Appellant started the fire. Id. The state alleged that damages to the property totaled around three million dollars. Id.

At Appellant's guilty plea hearing, the state recited Appellant's prior record and included a probation revocation in Georgia. R. 7, ll. 1 – 14. The state also alleged Appellant was convicted of robbery in 1995 and convicted of receiving stolen goods in 2018. Id.

Appellant filed a motion to reconsider his sentence where he alleged that the state's presentation of his criminal record was not proper. R. 19. Appellant's amended motion to reconsider specified that the state included erroneous convictions as part of his criminal history for sentencing purposes. R. 20 – 21.

The order denying the motion to reconsider recognized that Appellant correctly argued that his robbery from 1995 should not have been considered. R. 22 – 23. Appellant also correctly argued that the receiving stolen goods conviction, which was a “magistrate’s offense,” and his probation revocation in Georgia, which was dismissed, should not have been considered for sentencing purposes. Id. However, the lower court determined that the ten-year sentence of imprisonment was still proper, even if the erroneous convictions were not considered for sentencing, because “the serious nature of the crime, the potential for injury to third parties, the substantial cost in inventory which was damaged or had to be discarded, and [Appellant’s] uncontested criminal history.” Id.

Discussion

The reconsideration court abused its discretion when it denied Appellant’s motion to reconsider after Appellant explained that his sentence was imposed in reliance on the state’s wrongful recitation of his criminal record because the state included incidents that should not have been considered for sentencing purposes and, after Appellant pointed out the state’s incorrect sentencing information, the reconsideration court erred when it did not accord proper weight to his corrected, less severe criminal history.

Reconsideration of a defendant’s sentence is within the sound discretion of the trial court. State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981). It is well settled, that a defendant has a due process right to be sentenced upon information which is not false or materially incorrect. Townsend v. Burke, 334 U.S. 736, 741 (1948); United States v. Tucker, 404 U.S. 443, 446 (1972). When the state asserts inaccurate information regarding a defendant’s prior convictions for sentencing purposes in their recitation of the defendant’s prior record, the defendant’s sentence should be reconsidered if the lower court relied on the inaccurate information to

sentence him. See U.S. v. Hanna, 49 F.3d 572 (9th Cir. 1995); see also State v. Harris, 819 N.W.2d 350, 355 (Wis. Ct. App. 2012) (A defendant who requests resentencing due to the trial court's use of inaccurate information at the sentencing hearing must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing).

In U.S. v. Hanna, 49 F.3d 572 (9th Cir. 1995), the Ninth Circuit Court of Appeals determined that Hanna's sentencing after his guilty plea was improper because it was in reliance on "materially false" information. Hanna, at 576 – 77. The matter in Hanna involved a marijuana growing operation between Hanna and multiple co-defendants. Id. at 574 – 76. In order to procure a more favorable sentence, Hanna cooperated and informed the government of the farms where marijuana was being grown as well as the details of the organization. Id. Hanna and the government agreed to a negotiated sentencing range of not less than five years' imprisonment but not more than seven years' imprisonment. Id. at 574.

One of Hanna's co-defendants, Bennett, alleged to the Probation office, which was compiling a presentence investigative report (PSR), that Hanna did not cooperate fully because he underreported the extent of his profits from the marijuana growing operation to the court; he gave Bennett legal advice to evade police detection; he provided money to Bennett to finance a new marijuana growing operation in Washington state; and he supplied marijuana to fellow attorneys and law school classmates. Id. at 575. Based on the information provided by Bennett, the Probation office drafted an addendum to Hanna's PSR recommending that the level of Hanna's offenses be increased, which resulted in an updated sentencing range of 235 to 293 months' imprisonment. Id.

At Hanna's guilty plea hearing the plea court rejected the negotiated agreement between the government and Hanna for a sentence between five to seven years' imprisonment. Id. at 576. Based on the PSR, which included the information provided by Bennett to the Probation office, the plea court sentenced Hanna to 122 months' imprisonment, with five years of supervised release, a \$10,000 dollar fine, and "a special assessment of \$50." Id.

Hanna appealed and argued, inter alia, that "the district court violated his right to due process of law, and thereby committed reversible error, by imposing a sentence that was based on materially false and unreliable information, viz., the unsupported and uncorroborated allegations of Hanna's co-defendant, Ronald Bennett." Hanna, at 576 – 77. The Ninth Circuit Court of Appeals agreed with Hanna. Id. at 577.

The Ninth Circuit Court first explained that "the constitutional guarantee of due process is fully applicable at sentencing." Id. (citing Gardner v. Florida, 430 U.S. 349, 358 (1977)). Accordingly, a sentencing court violates a defendant's due process rights when it relies upon "materially false or unreliable information at sentencing." Hanna, at 577 (citing United States v. Kerr, 876 F.2d 1440, 1445 (9th Cir. 1989); (also citing United States v. Ruster, 712 F.2d 409, 412 (9th Cir. 1983)). As such, reliance on materially false or unreliable information constitutes an abuse of sentencing discretion. Hanna, at 577.

The Hanna Court then explained "Bennett's allegations [were] largely uncorroborated and unreliable. Bennett had everything to gain and nothing to lose by implicating Hanna, and Bennett presumably wanted revenge for Hanna's having fingered both Bennett and [Bennett's] brother. Bennett's claims were not only inconsistent with Hanna's denials but were unsupported by the other co-defendants' statements, or any other evidence, as well." Id. at 578. The Ninth Circuit also pointed out that "the prosecution's own view of the evidence was and remains diametrically

opposed to Bennett's story.” Id. Accordingly, the district court violated Hanna’s due process rights by sentencing him based on unreliable information and the sentence the lower court imposed was vacated. Id.

In the present case, Appellant showed that the state wrongfully included in his criminal history prior convictions that should not have been considered for sentencing. While informing the lower court of Appellant’s prior criminal history the state included Appellant’s conviction for robbery from 1995, his conviction for receiving stolen goods from 2018, and a probation revocation in Georgia. R. 7, ll. 1 – 9; R. 22 – 23.

Appellant filed a motion to reconsider and an amended motion to reconsider that informed the plea court that the prior convictions that should not have been included in his criminal history for sentencing. R. 19 – 21. Appellant explained that the conviction for robbery in 1995 should not have been included because “Appellant was a minor at the time of the conviction,” his receiving stolen goods conviction should not have been included because “it was a magistrate’s offense,” and his probation revocation in Georgia was dismissed. Id.

In the order denying reconsideration, the lower court wrongfully denied Appellant’s motion to reconsider and stated that the sentence of ten years’ imprisonment was proper even when the court set aside consideration of the improperly included prior convictions. R. 22 – 23. That denial was an abuse of discretion because the lower court relied on the state’s recitation of Appellant’s prior record, which included convictions that should not have been considered, to form Appellant’s sentence and did not accord proper weight to the corrected, less extensive criminal record that Appellant showed should have been considered for sentencing. See U.S. v. Hanna, 49 F.3d 572 (9th Cir. 1995); see also U.S. v. Curran, 926 F.2d 59 (1st Cir. 1991).

CONCLUSION

By reason of the foregoing arguments, Appellant respectfully requests that this Court remand his case to the lower court for reconsideration of his sentence.

Vict R. Seeger

Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of September, 2021.

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Honorable Frank R. Addy, Circuit Court Judge

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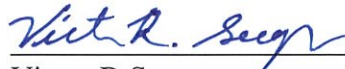
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Steven Dewayne Edwards states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Frank R. Addy, which was held on November 2, 2020, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for Steven Dewayne Edwards.

Respectfully Submitted,



Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of September, 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(s);
- (2) Plea Transcript dated November 2, 2020;
- (3) Motion to Reconsider Sentence;
- (4) Amended Motion to Reconsider Sentence;
- (5) Order Denying Motion to Reconsider Sentence; and
- (6) Sentence Sheet.

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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