STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANIEL L. PEASE,

APPELLANT

APPELLATE CASE NO. 2021-000327

ANDERS BRIEF OF APPELLANT

ADAM SINCLAIR RUFFIN
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STATEMENT OF ISSUE ON APPEAL

Whether the plea judge erred in denying Appellant's motion to reconsider his sentence from his guilty plea without holding a hearing where Appellant would have presented additional mitigation evidence and the judge's failure to hold a hearing violated Appellant's due process rights?

STATEMENT OF THE CASE

Appellant was indicted by the Greenville County Grand Jury for one count of felony DUI resulting in death, and two counts of felony DUI resulting in great bodily injury. R. 43-48. On December 10, 2020, Appellant appeared before the Honorable Letitia H. Verdin and pled guilty to each of these three charges. R. 1. Appellant was represented by William Grove and the state was represented by Marc Smith. R. 1.

The judge accepted Appellant's guilty plea and sentenced Appellant to twenty-years imprisonment for the felony DUI resulting in death, and five-years imprisonment on each of the felony DUIs resulting in great bodily injury. The judge ordered all sentences to run consecutively, resulting in an aggregate sentence of thirty-years imprisonment. R. 10, ll. 2 – 6; R. 37, ll. 8 – 19.

On December 16, 2020, plea counsel filed a motion to reconsider the sentence. The judge denied counsel's motion without a hearing on January 19, 2021. The solicitor's office received the judge's order on January 21, 2021. However, the order was not filed until March 12, 2021. R. 39.

Plea counsel filed a notice of appeal along with a statement pursuant to Rule 203(d)(1)(B)(iv), SCACR on March 22, 2021. R. 41-42. On May 14, 2021, Appellate Defense received a letter from this Court indicating that the appeal of Appellant's guilty plea would be allowed to proceed.

This appeal follows.

STANDARD OF REVIEW

"On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585–86 (Ct. App. 2001). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012).

STATEMENT OF FACTS

At Appellant's guilty plea, the solicitor alleged that Appellant crashed into the back of a vehicle with three teenagers inside. The solicitor alleged that Appellant was traveling at ninety-one miles per hour when he struck the victims' car from behind while they were stopped at a red light. R. 5, l. 5 – 6, l. 22. The driver of the vehicle that Appellant struck was pronounced dead on the scene. The two passengers had extensive injuries, but both survived. R. 7, l. 15 – 8, l. 10. Appellant's blood alcohol content was measured at .179. R. 8, ll. 11 – 16.

Appellant pled guilty to the facts as stated by the solicitor. R. 9, l. 23 – 10, l. 1. Appellant expressed his sincere apology for his actions and stated that he had to live with the shame and guilt of the accident every day. R. 21, ll. 4 – 20. Plea counsel presented the plea judge with a list of the sentences imposed in felony DUI cases for the previous ten years in Greenville County. R. 25, l. 2 – 26, l. 14. Counsel informed the judge that Appellant was very remorseful and had struggled with drug addiction during his life. R. 26, l. 15 – 27, l. 12. Counsel also pointed out that Appellant had no prior convictions for DUI. R. 27, ll. 13 – 25. Counsel asked the judge to impose a sentence of twenty-five-years imprisonment suspended upon the service of eight to twelve years. R. 28, ll. 9 – 21.

Appellant's aunt, Donna Broom, also addressed the plea judge. Broom told the judge that Appellant had grown up with parents who were addicted to drugs and that Appellant "didn't have a chance from the beginning." R. 29, ll. 23 – 25. Broom stated that both of Appellant's parents had overdosed on drugs and his mom died from a drug overdose "a couple years" before the car accident. R. 30, ll. 13 – 16.

ARGUMENT

The plea judge erred in denying Appellant's motion to reconsider his sentence from his guilty plea without holding a hearing because Appellant would have presented additional mitigation evidence and the judge's failure to hold a hearing violated Appellant's due process rights.

The Fourteenth Amendment to the United States Constitution provides that a state cannot "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. See also S.C. Const. art. 1 § 3 ("The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law"). "The touchstone of due process is protection of the individual against arbitrary action of government." Wolff v. McDonnell, 418 U.S. 539, 558, (1974). "Due Process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather, it is a flexible concept that calls for such procedural protections as the situation demands." State v. Legg, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." Kurschner v. City of Camden Plan. Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citing Matthews v. Eldridge, 424 U.S. 319, 332 (1976)). Due process requires notice, an opportunity to be heard in a meaningful way, and judicial review. Id.; S.C. Const. art. 1, § 22. "In cases where important decisions turn on questions of fact, due process at least requires an opportunity to present favorable witnesses." Smith v. S.C. Dep't of Mental Health, 329 S.C. 485, 500, 494 S.E.2d 630,

638 (Ct. App. 1997). "By requiring the government to follow appropriate procedures when its agents decide to 'deprive any person of life, liberty, or property,' the Due Process Clause promotes fairness in such decisions." Daniels v. Williams, 474 U.S. 327, 331 (1986).

In State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981), the Supreme Court held that "the authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." In Smith, the trial judge refused to change the defendant's sentence on his motion to reconsider based solely on the fact that the solicitor and attorney general did not want the judge to change the defendant's sentence. Id. at 497, 280 S.E.2d at 201. The Court found that the trial judge's refusal to reconsider the sentence was based on an erroneous view of the law and noted that the refusal to exercise discretion when it is warranted is itself an abuse of discretion. Id. at 498, 280 S.E.2d at 202. The Court further stated that "the mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised." Judges should state the basis for their exercise of discretion. Id.

In State v. Hicks, 377 S.C. 322, 324, 659 S.E.2d 499, 500 (Ct. App. 2008), the defendant pled guilty to ABHAN and was sentenced to probation. The defendant was not required to register as a sex offender, although the state had requested it at his plea. The following day, the state filed a motion to reconsider the sentence because the victim's father was not able to attend the plea and wanted to be heard by the judge. Id. The judge granted the state's request and altered the defendant's sentence to include the requirement that he register as a sex offender. Id. This Court determined that the judge acted within his discretion in granting the state's motion to reconsider the sentence because the state had additional information to present from the victim's father who was not present at the guilty plea.

Here, the plea judge erred in failing to hold a hearing to allow Appellant to present his additional mitigation evidence, including Appellant's strong family support and history of drug abuse, that he was unable to present on the day of the plea. The judge's refusal to afford Appellant a meaningful opportunity to be heard violated Appellant's due process rights under the United States and South Carolina Constitutions. U.S. Const. amend. XIV, § 1; S.C. Const. art. 1 § 3. The judge sentenced Appellant without giving him the full and fair opportunity to present all the mitigating evidence that was relevant to sentencing to which Appellant was entitled.

Furthermore, as in State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981), the judge here abused her discretion by summarily denying Appellant's motion without stating the basis for the denial. The judge's failure to exercise her discretion, which was warranted under the circumstances, amounted to an abuse of that discretion. Appellant's case should be remanded to the plea court for a hearing on his motion to reconsider. See State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981).

CONCLUSION

By reason of the foregoing argument, Appellant's felony DUI convictions should be remanded to the Greenville County Court of General Sessions for a full hearing on his motion to reconsider his sentence.

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of September, 2021.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Daniel L. Pease 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 Letitia H. Verdin, which was held on December 10, 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 Daniel L. Pease.

Respectfully Submitted,

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th 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) Entire plea transcript;
(3) Defendant's motion to reconsider guilty plea sentence.
(4) Notice of Appeal
(5) Statement pursuant to Rule 203

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

Adam Sinclair Ruffin
Appellate Defender

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ATTORNEY FOR APPELLANT

September 15, 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."

Adam Sinclair Ruffin
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ATTORNEY FOR APPELLANT

September 15, 2021.