STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2020-000949

THE STATE, Respondent,

v.

SAMUEL LEE JACKSON, Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF ISSUE ON APPEAL

I. The circuit court judge did not abuse his discretion in denying Appellant's motion to reconsider sentence without a hearing.

STATEMENT OF THE CASE

Appellant pled guilty to first degree domestic violence, harassment first degree, and removal of an electronic monitor device during the June 2020 term of the Lexington County General Sessions Court before Judge Walton T. McLeod, IV, and was sentenced to imprisonment for four years. Appellant filed a motion to reconsider sentence on June 15, 2020 (R.34). Judge McLeod issued an order denying the motion to reconsider sentence on June 23, 2020. (R. 35). On June 24, 2020, counsel filed a Rule 203(B) explanation with the South Carolina Court of Appeals and an accompanying Notice of Appeal (R. 36-38). Subsequently, Appellant filed an amended notice of appeal and an initial brief with the South Carolina Court of Appeals. (R. 39-40) This brief follows.

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. "The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008).

ARGUMENT

The circuit court judge did not abuse his discretion in denying Appellant's motion to reconsider sentence without a hearing.

Appellant contends that the plea court erred in denying his motion to reconsider his sentence without holding a hearing or allowing the parties to file briefs because it effectively denied Appellant the opportunity to have his wife testify directly in front of the judge which prevented him from having the relevant sentencing information presented. First, the State notes Appellant's argument is not properly preserved for appellate review as the Appellant neither specifically asked for a hearing or briefing nor has provided this Court with any additional relevant sentencing information that would have been argued or presented at a hearing or in subsequent briefing that was not already before the court. Secondly, the judge made no error in denying the motion for reconsideration of sentence without convening a hearing or requesting briefs when according to statute it was in the judge's discretion to do so, when the written motion sufficiently informed the judge of the reasons to reconsider the sentence, and when all relevant sentencing information was before the court.

Error Preservation

Appellant never asked the plea court to hold a hearing or to allow briefing. His motion does not include any request for a hearing or briefing, but simply asks the plea court to reconsider his sentence. As the South Carolina Supreme Court recently explained:

> Successive Rule 29(a) motions are generally not permitted. However, where a second Rule 29(a) motion is related to the disposition of the first Rule 29(a) motion, the trial court retains authority to hear and dispose of the subsequent motion, provided the subsequent motion is filed within ten days of the disposition of the prior post-trial motion.

State v. Pfeiffer, 427 S.C. 10, 13, 828 S.E.2d 764, 766 (2019). In this case, since Appellant would have been arguing that there was an error in the procedure utilized by the court, which he could not have known would occur until receipt of the denial of his motion, he certainly would be entitled and expected to file a subsequent motion to allow the court the opportunity to correct any error Appellant alleged occurred. Because the court was never asked to hold a hearing or to allow briefing, the issue is not preserved for review on appeal. See Jean H. Toal, Amelia W. Walker & Margaret E. Baker, Appellate Practice in South Carolina 185 (3d ed. 2016) ("There are four basic requirements to preserving issues at trial for appellate review. . . . [T]he issue must have been (1) raised to and ruled upon by the [trial] court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the [trial] court with sufficient specificity.").

Additionally, Appellant has failed to provide this Court with any information regarding what would have been argued or presented at a hearing or in subsequent briefing that was not already presented to the circuit court. As a result, the issue is not properly before the Court because Appellant has failed to provide the Court with the ability to determine and consider any alleged prejudice which occurred. See State v. Roper, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) ("It is well settled that a reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been."); State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 402-03 (1986) ("Ordinarily, this [c]ourt will not review alleged error of the exclusion of testimony unless a proffer of testimony is properly made on the record.").

Merits

On the merits, Appellant contends Rule 29(a), SCRCrimP, requires the judge to either hold a hearing or accept "briefs" filed by the parties. He asserts because he was not asked to file a brief,

the plea court should have held a hearing. However, a clear reading of the rule allows for flexibility and discretion by the court, not a mandated process, in determining the motion.

"In interpreting the language of a court rule, we apply the same rules of construction used in interpreting statutes." Green By & Through Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In interpreting statutes, the court looks to the plain meaning of the statute and the intent of the legislature. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. Id. at 33, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. Id.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Pittman, 373 S.C. at 561, 647 S.E.2d at 161. The statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010).

Rule 29 provides:

> Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence. . . . The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion. The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial or hearing was held. The motion **may**, in the discretion of

> the court, be determined on briefs filed by the parties without oral argument.

Rule 29(a), SCRCrimP (emphasis added).

Nothing in the language of the Rule requires the court to have a hearing or allow briefing. The language is written that the judge "may" request briefs. Rule 29(a) is written in a manner that allows the judge flexibility and discretion in ruling on the motion based on whether the he believes additional information is necessary or warranted, which is clearly the legislative intent behind the Rule. Accordingly, there should not be a requirement of a hearing or briefing when the judge, in his discretion, determines he has all the information necessary to make the requisite decision. The determination should be made on a case-by-case basis by the judge, who is in the best position to determine the necessity of a hearing or brief. Cf. State v. Manning, 418 S.C. 38, 44, 791 S.E.2d 148, 151 (2016) (finding a full evidentiary hearing is not necessary in all cases regarding a determination of immunity, and instead finding a case by case "approach permit[s] the trial judge to tailor the hearing to the needs of each case, [and] it serves to save precious judicial resources in cases like this one where an extensive hearing is simply unnecessary."); State v. Wessinger, 408 S.C. 416, 420, 759 S.E.2d 405, 407 (2014) (finding "the scope and necessity of a separate evidentiary hearing" regarding whether a crime should be considered sexually violent for SVP purposes "is to be determined on a case-by-case basis.").

The written motion sufficiently informed the judge of the reasons to reconsider the sentence and all relevant sentencing information was presented to the court. In his motion, plea counsel states "[a]t the hearing his attorney relayed his conversation with the victim regarding her wishes that Defendant not be incarcerated" but "he feels that if the victim had presented her wishes directly to the Judge, the result would have been more favorable." (R. 34.) During the guilty plea hearing, plea counsel informed the judge that Appellant's wife (Victim) told plea counsel she "loves her

husband, [knows] that he's got a drug and alcohol problem, [and thinks that] [w]hen he doesn't drink or do drugs, he's the best man in the world"; plea counsel also told the judge the victim "thinks he needs some kind of drug treatment, … doesn't want him to go to prison, and she actually coordinated with a place called Oxford House." (R. 16). There was no need for the court to convene a hearing or to require briefing when the court already had all relevant sentencing information in the file, was presented with all relevant sentencing information at the hearing, and was able to give the matter proper consideration. Appellant did not present any new information for the court to consider in his motion. Instead Appellant opined that if the judge had heard the same information directly from the victim's mouth there would have been a different outcome. Further, there was no information as to why the victim was not present for the plea and sentencing hearing. In the Order Denying Motion to Reconsider Sentence, the judge makes note that the victim was asking the court not to impose an active sentence. (R. 35). It is clear that the judge had this information before him and, within the bounds of his discretion, denied this motion without convening a hearing or requesting briefing. Therefore this Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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October 21, 2021

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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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