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Oct 21 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMUEL LEE JACKSON,

APPELLANT

APPELLATE CASE NO 2020-000949

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The plea judge erred in denying appellant's sentence reconsideration motion, which in effect denied appellant an opportunity to have his wife appear and testify directly in front of the plea judge regarding her request that appellant not receive prison time for his convictions, because this limited appellant's right to have all relevant sentencing information presented in his case.

STATEMENT OF THE CASE

Appellant Samuel L. Jackson 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 an aggregate four-year term.

Appellant filed a sentence reconsideration motion on June 11, 2020, but Judge McLeod issued an Order denying the motion to reconsider sentence on June 23, 2020. On June 24, 2020, counsel filed a Rule 203(B) explanation with the South Carolina Court of Appeals and an accompanying Notice of Appeal as well. Subsequently, an amended notice of appeal was filed with the South Carolina Court of Appeals. This brief follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Vick, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous.” Id. (quoting Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court “does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court’s ruling is supported by any evidence.” State v. Slocumb, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). “A sentence will not be overturned absent an abuse of discretion 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).

ARGUMENT

The plea judge erred in denying appellant's sentence reconsideration motion, which in effect denied appellant an opportunity to have his wife appear and testify directly in front of the plea judge regarding her request that appellant not receive prison time for his convictions, because this limited appellant's right to have relevant sentencing information presented in total.

At the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Apparently, on April 8, 2020, appellant went to his wife's home, despite the no contact order issued on his bond grant, and gained entry inside and punched her, and then continued to call and text her thereafter. R. 11. 1.3-p. 12, 1.2. The solicitor stated that appellant's wife relayed to state officials that she loves appellant and wants him to get help. R. 12, 13-15. Defense counsel apprised the plea judge of appellant's wife's sentiments indicating her love for appellant and her request that he receive treatment for his alcohol and drug problems, and further, her plea for appellant not to be sent to prison. R. 16, 1.4-p.17, 1.19. Appellant received a prison sentence.

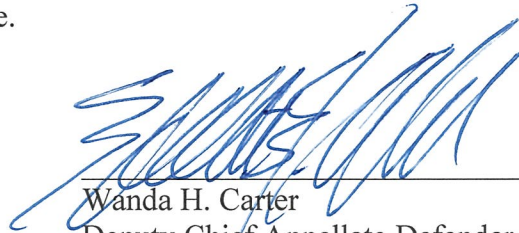
The basis for the motion to reconsider the sentence in the case was a request to have his wife appear in court directly in front of the plea judge to testify and present her case for a sentence that did not include incarceration for appellant. Appellant's wife was unable to appear at the plea proceeding. The plea judge denied the sentencing reconsideration motion.

In State v. Franklin, 267 S.C. 240, 226, 226 S.E.2d 896 (1976), the Court held that if justice is to be done, a sentencing judge should know all material facts, and that the fair administration of justice requires the judge to listen and give serious consideration to any information material to punishment. In the case at bar, the trial judge did not hear from appellant's wife and clearly her position as the victim was relevant and material to sentencing. The court denied appellant an opportunity to present sentencing information. This was error.

The plea judge erred in denying appellant's sentence reconsideration motion, which in effect denied appellant an opportunity to have his wife appear and testify directly in front of the plea judge regarding her request that appellant not receive a sentence of incarceration, because this limited appellant's right to have all relevant sentencing information presented on his behalf.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request a remand for a new sentencing hearing to be held in the case.



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Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of October, 2021.

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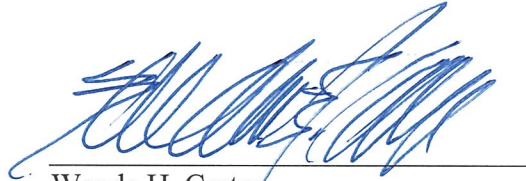
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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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