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Nov 08 2021
SC Court of Appeals

FILED-RECEIVED
2021 OCT 28 PM 2: 39
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
YORK COUNTY) SIXTEENTH JUDICIAL CIRCUIT

State of South Carolina,) ORDER DENYING MOTION TO RECONSIDER AND TO REDUCE SENTENCE

vs.)

Terry Shaimek Tyler,) 2019GS4601336, 1336a, 1337, 1338, 1339, 1340.

Defendant.)

Defendant Terry Shaimek Tyler has moved to reconsider the Court's two consecutive 30-year sentences on charges of Armed Robbery and Criminal Sexual Conduct, 1st Degree. The Court fully considered the facts, the law, and the arguments of counsel at the August 16th sentencing and sees no reason to disturb its prior sentence. The Court finds its sentence does not violate the South Carolina Constitution, South Carolina law, or the United States Constitution. The Defendant's Motion to Reconsider and to Reduce the Sentence is therefore DENIED.

PROCEDURAL AND FACUTAL HISTORTY

Defendant Tyler pled guilty on July 8th, 2021 to Kidnapping, Criminal Sexual Conduct in the First Degree, Armed Robbery, Possession of a Weapon During Commission of a Violent Offense, Unlawful Possession of a Pistol, and Grand Larceny, $10,000 or greater. Sentencing was deferred at the request of the Defendant until August 16, 2021. Defendant Tyler was sixteen years old when he committed the offenses and is eighteen now. At both the guilty plea and sentencing, Defendant was represented by his retained counsel, Zachary Merritt of the

Michael Brown Law Firm. The sentencing hearing was lengthy, lasting more than four hours, and the Court heard from the State regarding sentencing, including testimony from the victim, as well as lengthy mitigation from the Defendant, including a defense expert psychiatrist, Dr. Amanda Salas. Following the hearing, this Court sentenced Defendant to consecutive 30-year sentences on the charges of Armed Robbery and Criminal Sexual Conduct, 1st Degree, and concurrent sentences on the remaining four charges.

The Defendant through his retained counsel, Zachary Merritt, filed a Motion to Reconsider and Reduce Sentence on August 26, 2021 along with additional affidavits and a memorandum filed on September 27, 2021. Defendant Tyler argues that two consecutive 30-year sentences represent an illegal sentence for a defendant who was 16 years old at the time of the offenses. The Court has reviewed The State's Motion in Opposition, filed on October 5, 2021 as well as all of Defendant's submissions, including the new affidavits.

The horrific facts that Defendant pled guilty to include the following: that he waited in the parking lot of Victim's apartment complex in the wee hours of the morning until the victim returned to her apartment complex, he was dressed in black, and he was armed with a handgun. He then falsely told Victim he was a student to convince her to let him in to the building, at which point he showed her the handgun and forced her to a secluded area where he raped her vaginally and orally. Defendant then took Victim's keys, car, and wallet, left Victim naked from the waist down. The Defendant was found later that day joyriding around Charlotte with friends in the victim's car.

Defendant's primary argument is that the consecutive sentence is unlawful under State v. Slocumb, 426 S.C. 297 (2019). The Court does not agree. Slocumb upheld a 130-year

sentence for non-homicide crimes committed at age 13 and 16. The Slocumb court summarized its holding as:

> Slocumb now contends an aggregate 130-year sentence for multiple offenses committed on multiple dates violates the Eighth Amendment to the United States Constitution, as extrapolated from the principles set forth in the United States Supreme Court's ... decisions in Graham v. Florida and Miller v. Alabama, among others. We acknowledge ostensible merit in Slocumb's argument, for it is arguably a reasonable extension of Graham and Miller. Yet precedent dictates that only the Supreme Court may extend and enlarge the protections guaranteed by the United States Constitution. Once the Supreme Court has drawn a line in the sand, the authority to redraw that line and broaden federal constitutional protections is limited to our nation's highest court. Because the decision to expand the reach and protections of the Eighth Amendment lies exclusively with the Supreme Court, we are constrained to deny Slocumb relief.

Id. at 299. Later, the Slocumb court added: "We agree Graham's explicit holding applies to de jure life sentences alone, and its rationale may implicate de facto life sentences ... Nonetheless, several factors caution us against extending the reach of Graham to provide Slocumb with relief without further input from the Supreme Court." Id. at 306 (internal citation and quotation omitted). The Slocumb decision could not be plainer: the recent US Supreme Court decisions apply only to de jure life sentences, and the Slocumb court would not extend that any further. Here, Defendant asks this court to do exactly what our Supreme Court in Slocumb said it could not do: "extend and enlarge the protections guaranteed by the United States Constitution" to encompass not just actual life sentences, but de facto life sentences as well. This Court cannot do so under Slocumb.

It is true that the Slocumb court did discuss factual differences between that case and the crime at issue in Graham v. Fla., 560 U.S. 48 (2010), principally noting that Slocumb committed two different assaults that were three years apart and further tried to kill one of his victims. However, that discussion is entirely dicta. The holding of Slocumb was that our

Supreme Court lacked the authority to expand federal constitutional rights beyond the limits set out by the U.S. Supreme Court. "[O]ur duty to follow binding precedent is fixed upon case-specific holdings rather than general expressions in an opinion that exceed the scope of any particular holding." Slocumb, 426 S.C. at 307. Defendant in this case invites this Court to do exactly what Slocumb counsels lower courts not to do: read broad dicta to expand rights beyond the actual holding of the court. This Court therefore declines to expand the holding of Slocumb, and as a trial court, lacks the authority to do so.

Defendant also argues that the sentence is unlawful for failing to consider the juvenile sentencing factors from Aiken v Byars:

> (1) the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence; (2) the family and home environment that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys; and (5) the possibility of rehabilitation.

Aiken v. Byars, 410 S.C. 534 (2014) (internal citations omitted). The first difficulty with this argument is that Byars, by its own holding is explicitly limited to de jure life sentences, not de facto life sentences, as Defendant asserts is the case for Defendant Tyler. The Byars court described the cases to which the decision applied as: "any juvenile offender who receives a sentence of life without the possibility of parole." Id. at 544. Defendant Tyler did not receive such a sentence.

Nevertheless, out of an abundance of caution, the Court did consider the Byars factors both at the original sentencing and subsequent to the motion to reconsider. The Byars factors

weigh against the Defendant in this case. Under the first factor, Defendant was 16 years old and so possessed the mind of an adolescent. But there was no testimony or evidence that the Defendant had a traumatic home life under factor two. Nor was there any testimony the Defendant could not assist his lawyers or refused to meet or cooperate with the psychiatrist retained by the Defense, Dr. Amanda Salas, with regard to factor three. In fact, Dr. Salas testified Defendant had an IQ in the normal range. With regard to factor four, this offense was exceptionally heinous for the following reasons:

1) Defendant was not a student at Winthrop University, but waited in ambush for a student victim in the early hours of the morning, dressed in black and armed with a handgun. These factors evince significant premeditation;
2) Defendant raped the victim at gunpoint;
3) Defendant left the victim without any pants and took her cell phone;
4) Defendant took the victim's keys and car, and was arrested later in the day joyriding in the stolen car with his friends;
5) Defendant attempted to mislead the investigating officers with a yarn about a mysterious person named "Bodybag" who forced Defendant to commit these acts. Law enforcement expended considerable effort investigating this story and found absolutely no evidence supporting it;
6) Defendant has still not told law enforcement what happened to the firearm;
7) When discussing his case with his own retained private psychiatrist after his guilty plea, but before sentencing, and knowing the psychiatrist's report would be used in mitigation, Defendant offered another mysterious figure, "Eli", who told him to

commit these acts. No evidence of "Eli" exists;

8) Most disturbingly, Defendant reported to his psychiatrist that while he admitted that he robbed the victim, he believed the sex was consensual. This statement is offensive, not credible in the least, and suggests a total lack of remorse and empathy.

Finally, as to the fifth Byars factor, the fact that Defendant told his psychiatrist that he believed the sex-at-gunpoint was consensual certainly does not weigh in favor of rehabilitation.

The court did not give incorrect weight to Dr. Salas' findings. The Court accepts Defendant's brain is less developed than that of an adult, and that he suffers from A.D.H.D. and uses marijuana. The Court took these factors into account, and felt that a 60-year sentence was appropriate. In addition to the significant aggravating factors outlined previously, the Court did not observe the Defendant express any remorse, and even at the end, speaking to his retained psychiatrist, Defendant was trying to deflect blame onto the imaginary "Eli" and claim the sex was consensual. Even though the Defendant was sixteen at the time of the incident, used marijuana, and suffered from A.D.H.D., these factors do not justify a reduced sentence when considered along with the horrific and premediated nature of the crimes, the tremendous suffering of the victim, and the Defendant's lack of remorse for these crimes.

Consequently, the Defendant's sentence of two 30-year sentences served consecutively is within the Constitutional and statutory limitations and appropriate to the facts of this case.

CONCLUSION

Therefore, the Motion to reconsider the sentence is DENIED for the reasons set forth in this order.

WAM

IT IS SO ORDERED.

The Honorable William A. McKinnon
Chief Judge for Administrative Purposes &
Resident Circuit Judge

York, South Carolina

October 28, 2021

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