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Nov 23 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No: 2018-000366

THE STATE,

Respondent,

v.

SHELLIE LAVETTE DAVIS,

Appellant.

RETURN TO MOTION TO VACATE SENTENCE

Respondent, through undersigned counsel, making the Return to Appellant's Motion to Vacate Sentence, would respectfully show this Court:

I.

On April 25, 2014, Appellant Shellie Davis was convicted by a Lexington County jury of murder. Attorneys Aimee J. Zmroczek and M. Wade Downtin represented Appellant at trial. Assistant Solicitors C. Dayton Riddle, III, and Shannon A. Davis represented the state. At trial, the State presented evidence that Appellant shot her estranged husband Jerome Davis in the back of the head in his apartment where he lived following their separation. Appellant pursued a self-defense strategy, alleging a history

of abuse by her husband. Appellant testified and made allegations of a history of abuse. She also called several of her friends as corroboration of her claims and presented expert from two expert witnesses related to a "battered spouse" defense. Following her conviction, Appellant sought a finding that she suffered a history of domestic abuse in order to gain parole eligibility pursuant to S.C. Code §16-25-90. The State opposed the motion. Sentencing was deferred to the following week. On April 30, 2014, Judge Russo convened a sentencing hearing. The transcript of that hearing has been lost, but Judge Russo sentenced Appellant to thirty years' incarceration and denied her motion for early parole eligibility.

Davis filed a post-trial motion for Judge Russo to reconsider his ruling denying her motion for early parole eligibility. The written order denying this motion was not filed until February 7, 2018. Following receipt of that order, a notice of appeal was filed with the South Carolina Court of Appeals on February 28, 2018. Davis filed a motion on December 6, 2018, seeking a new sentencing hearing or, in the alternative, for an order remanding the case for reconstruction of the sentencing hearing. Davis argued remand was necessary because Judge Russo's order denying her motion for reconsideration "does not provide any information about what evidence and/ or testimony was presented at the [sentencing] hearing." The Court of Appeals issued an order on January 24, 2019, denying Davis's motion for a new sentencing hearing and remanding the case "for reconstruction." The Honorable Walton J. McLeod, Circuit Court Judge, assumed jurisdiction for the reconstruction hearing.

Rather than convene an in-person evidentiary hearing, the parties agreed to collect affidavits from the lawyers and witnesses who participated in the trial. Six affidavits were gathered. The State offered affidavits from Shannon Davis and Dayton Riddle, the prosecutors who tried the case. Both stated that no evidence was presented at the sentencing hearing. Appellant offered affidavits from herself, her son, trial counsel Amie Zmroczek, who all stated that they could not remember whether any evidence was presented at the hearing. An expert witness who testified at trial, Dr. William Tyson, gave contradictory information, stating he testified at Appellant's trial but giving the date of the sentencing hearing.

Judge McLeod convened a hearing on September 30, 2021, where these affidavits were offered as exhibits. Upon consideration of the affidavits and arguments of counsel, Judge McLeod issued an order on November 5, 2021, finding the affidavits insufficient to show what transpired at the sentencing hearing and concluding the record could not be reconstructed. Judge McLeod based his ruling in part on the fact that the record does not contain specific findings of fact regarding whether Appellant presented credible evidence of a history of abuse. Appellant filed a motion to vacate her sentence on November 15, 2021. This Return of Respondent follows.

II.

Based on Judge McLeod's finding that the record of the sentencing hearing cannot be reconstructed, the State does not object to another remand for the purpose of allowing Appellant to present evidence that she suffered a history of physical abuse. However, the State opposes vacation of her sentence. Such an order is unnecessary to determine the

issue raised: whether Appellant suffered physical abuse at the hands of her husband. Even if the lower court finds that Appellant was abused, such a finding would not invalidate her sentence. Rather, it would enable her to be considered for parole, as §16-25-90 provides. S.C. Code Ann. § 16-25-90 (providing "a household member is eligible for parole after serving one-fourth of his prison term when the inmate . . . presented credible evidence of a history of criminal domestic violence"). There is no indication that Appellant previously raised an objection to the validity of her thirty-year sentence.

Furthermore, vacation of Appellant's sentence would not be to her benefit. She received a thirty-year sentence, the minimum possible sentence for murder. Vacation of her sentence would only expose her to the possibility of a longer sentence. This Court should deny Appellant's motion to vacate her sentence.


IV.

WHEREFORE, Respondent prays that this Court will deny Appellant's Motion and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

By: 
Joshua A. Edwards
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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the Return to Motion to Vacate Sentence on Appellant by email to the email address listed in AIS for his attorney of record, Taylor Gilliam, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by rule to be served have been served.

This 23rd day of November, 2021.



CAROLINE COLLINS
Administrative Assistant
Office of Attorney General
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Columbia, SC 29211
(803) 734-3727

Caroline Collins

From: Caroline Collins
Sent: Tuesday, November 23, 2021 3:39 PM
To: Gilliam, Taylor
Cc: Warren, Kaylynn; William Blich; Josh Edwards
Subject: The State v. Shellie Lavette Davis (2018-000366)
Attachments: DAVIS Shellie - Return to Motion to Vacate Sentence - 2018-000366 (02830182xD2C78).PDF

Good Afternoon Mr. Gilliam,

Attached please find a copy of the Return to Motion to Vacate Sentence in The State v. Shellie Lavette Davis (2018-000366). This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

CAROLINE COLLINS, Administrative Coordinator
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