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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2014-2015

CR-10-1606

Bart Wayne Johnson

v.

State of Alabama

**Appeal from Shelby Circuit Court
(CC-09-1450; CC-09-1451)**

On Return to Remand

BURKE, Judge.

Bart Wayne Johnson was convicted of two counts of murder made capital because the victim was a police officer who was on duty, see § 13A-5-40(a)(5), Ala. Code 1975, and because the murder was committed by or through the use of a deadly weapon

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fired within or from a vehicle, see § 13A-5-40(a)(18), Ala. Code 1975. The jury, by a vote of 10 to 2, recommended that Johnson be sentenced to death. The trial court followed the jury's recommendation.

On May 20, 2014, this Court affirmed Johnson's convictions but remanded the case for the trial court to amend its sentencing orders because the trial court's sentencing orders did not comply with the requirements of § 13A-5-47(d), Ala. Code 1975. Johnson v. State, [Ms. CR-10-1606, May 20, 2014] ___ So. 3d ___, ___ (Ala. Crim. App. 2014). Specifically, the trial court did not "enter specific written findings concerning the existence or nonexistence of each aggravating circumstance enumerated in Section 13A-5-49, [Ala. Code 1975,] each mitigating circumstance enumerated in Section 13A-5-51, [Ala. Code 1975,] and any additional mitigating circumstances offered pursuant to Section 13A-5-52[, Ala. Code 1975]." ___ So. 3d at ___ (quoting § 13A-5-47(d), Ala. Code 1975).

On return to remand, the trial court has filed an amended sentencing order in which it found the existence of two aggravating circumstances, i.e., that the capital offense was

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committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody, see § 13A-5-49(5), Ala. Code 1975, and that the capital offense was committed to disrupt or hinder the enforcement of laws, see § 13A-5-49(7), Ala. Code 1975. The trial court specifically found that none of the other aggravating circumstances enumerated in § 13A-5-49, Ala. Code 1975, existed. The trial court also found the existence of one statutory mitigating circumstance, i.e., that Johnson has no significant history of prior criminal activity, see § 13A-5-51(1), Ala. Code 1975. The trial court specifically found that none of the other statutory mitigating circumstances enumerated in § 13A-5-51, Ala. Code 1975, existed. Furthermore, the trial court found that four additional mitigating circumstances offered pursuant to § 13A-5-52, Ala. Code 1975, existed: (1) Johnson's lack of violence before this incident, (2) Johnson's difficult childhood and family background and his success in life despite those difficulties, (3) Johnson's exemplary character before this incident, including the help he had given to other people, and (4) that Johnson was a good husband and a good father to his two children. The trial court specifically gave

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"great weight" to all the mitigating circumstances. Nevertheless, the trial court found that the aggravating circumstances outweighed the mitigating circumstances. Accordingly, the trial court followed the jury's recommendation and sentenced Johnson to death.

Pursuant to § 13A-5-53, Ala. Code 1975, this Court is required to address the propriety of Johnson's sentence of death. Johnson was convicted of two counts of murder made capital because the victim was a police officer who was on duty, see § 13A-5-40(a)(5), Ala. Code 1975, and because the murder was committed by or through the use of a deadly weapon fired within or from a vehicle, see § 13A-5-40(a)(18), Ala. Code 1975.

The record does not reflect that Johnson's sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor. See § 13A-5-53(b)(1), Ala. Code 1975.

The trial court correctly found that the aggravating circumstances outweighed the mitigating circumstances. In its sentencing order, the trial court stated that it found two aggravating circumstances. The trial court then considered

each of the statutory mitigating circumstances and found that one statutory mitigating circumstances was applicable. The trial court also found and considered four nonstatutory mitigating circumstances. As described above, the trial court found that each of the mitigating circumstances was entitled to "great weight." The trial court's sentencing order shows that it properly weighed the aggravating and mitigating circumstances and correctly sentenced Johnson to death. The record supports the trial court's findings.

Section 13A-5-53(b)(2), Ala. Code 1975, requires this Court to independently weigh the aggravating and mitigating circumstances in order to determine whether Johnson's death sentence is proper. After independently weighing the aggravating and mitigating circumstances, this Court finds that Johnson's sentence of death is appropriate.

As required by § 13A-5-53(b)(3), Ala. Code 1975, this Court must now determine whether Johnson's sentence is excessive or disproportionate when compared to the penalty imposed in similar cases. In this case, Johnson was convicted of two counts of murder made capital because the victim was a police officer who was on duty and because the murder was

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committed by or through the use of a deadly weapon fired within or from a vehicle. Sentences of death have been imposed for similar crimes in this State. See, e.g., Woodward v. State, 123 So. 3d 989 (Ala. Crim. App. 2011) (imposing death sentence for murdering a police officer who was on duty and for murdering the officer by firing a deadly weapon from a vehicle). Therefore, considering both the crime and the defendant, this Court finds that Johnson's death sentence is neither excessive nor disproportionate.

Finally, this Court has searched the entire record for any error that may have adversely affected Johnson's substantial rights and has found none. See Rule 45A, Ala. R. App. P.

Accordingly, Johnson's sentence of death is affirmed.

AFFIRMED.

Windom, P.J., and Welch and Kellum, JJ., concur. Joiner, J., recuses.