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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-470

Filed 19 March 2024

Columbus County, Nos. 16 CRS 1248-49

STATE OF NORTH CAROLINA

v.

RILEY DAWSON CONNER

Appeal by Defendant from judgment entered 1 November 2022 by Judge Michael A. Stone in Columbus County Superior Court. Heard in the Court of Appeals 24 January 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Michael T. Henry, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for the Defendant.*

WOOD, Judge.

Riley Dawson Conner (“Defendant”) appeals from a judgment resentencing him for the offenses of first-degree forcible rape and first-degree murder. For the reasons stated below, we affirm the trial court’s judgment.

**I. Factual and Procedural Background**

The pertinent facts of this case are found in *State v. Conner*, 381 N.C. 643, 873

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S.E.2d 339 (2022) (“*Conner II*”) and are cited below.

From the time of his birth on 23 August 2000 through the date of 11 March 2016 when, at the age of fifteen years, defendant committed the crimes which led to the convictions underlying this appeal, the juvenile defendant’s life was challenging, chaotic, and marked by tremendous instability. At the time that defendant was born, his father was twenty years of age, his mother was eighteen years of age, and both parents were addicted to cocaine. Defendant’s mother testified at defendant’s trial that he began to experience severe sleep disruptions at one or two years of age which she later realized may have been signs of the epilepsy with which defendant was diagnosed as a teenager. Defendant initially lived with his parents on Miller Road in or near Tabor City in Columbus County. When defendant was around five years old, he moved into the home of his maternal grandparents on Savannah Road along with his mother and his younger sister. Defendant’s mother testified that during this time, because she was “strung out” on crack cocaine and “running the roads,” her parents provided much of the care for her children. Defendant’s father was incarcerated during this time period. Numerous members of defendant’s extended family lived on Savannah Road and in the neighboring area, including defendant’s grandparents, his great-grandmother, and several aunts and uncles. Despite the strong presence of his family members, the area in which defendant was raised was described by defendant’s maternal aunt, Kimberly Gore, as “the pits of hell,” and by defendant’s mother as “nowhere for a child to be” because it was the location of illegal drug use and prostitution.

*Conner II*, 381 N.C. at 645-46, 873 S.E.2d at 341-42.

On the morning of 2 March 2016, Defendant broke into a grocery store in Tabor City, North Carolina and stole a large quantity of cigarettes. Later that morning, Defendant’s mother reported to police that Defendant had taken a van belonging to

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her. Officers quickly identified Defendant as the perpetrator of the break-in based upon security camera footage taken from the store. *Conner II*, 381 N.C. at 649, 873 S.E.2d at 343. At about 8:00 a.m., Defendant’s mother notified police that he had returned her vehicle; shortly after, officers located the van and discovered that Defendant’s mother was driving the vehicle, with Defendant riding in the passenger seat. The officers also recovered the stolen cigarettes from the van. *Conner II*, 381 N.C. at 649, 873 S.E.2d at 343-44. Juvenile petitions charging him with crimes related to the grocery store and the vehicle were filed in District Court.

Later on the day of 2 March 2016, defendant’s aunt Felicia Porter called the emergency number 911 to report that defendant was involved in a scuffle inside the Savannah Road home of defendant’s great-grandmother. Porter informed the 911 operator of defendant's juvenile petitions and expressed her belief that defendant “needs to get locked up.” The audio recording of the 911 call captures an argument which occurred between defendant and Porter during that time.

According to the transcript of defendant’s pleas of guilty which the trial court accepted in the underlying case, on the morning of 11 March 2016—the same date on which defendant had a scheduled 1:00 p.m. appointment with a juvenile court counselor in connection with his pending juvenile petition—defendant’s aunt Felicia Porter awakened at about 6:00 a.m. and drove her husband to a nearby location where he was to be provided transportation to a construction job. Porter’s social media posts on Facebook show that she was back at her home on Savannah Road and was active online by approximately 9:00 a.m. At about 9:30 a.m., defendant was observed by John Cunningham, his step-grandfather, walking toward the end of the road where Porter’s home was located.

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Defendant knocked on Porter's door and convinced her to exit the residence. Subsequently, defendant raped Porter and then killed her with blows from a shovel. Defendant placed Porter's body in a wooded area about one hundred yards from her home and then burned a piece of Porter's clothing in her yard. Around 10:30 a.m. to 10:45 a.m., defendant left Porter's residence and walked by the side of the road, stopping to speak to Cunningham along the way. Cunningham noted that defendant was sweating profusely. Defendant attended his scheduled meeting with the juvenile court counselor later that day.

Meanwhile, defendant's great-grandmother, with whom defendant was dwelling at the time, became concerned when Porter did not answer repeated telephone calls. At approximately 12:00 p.m., Cunningham and Adams went to Porter's home to check on her and found the door to the residence ajar, Porter's dog secured inside the house, and Porter absent. After Cunningham contacted Porter's husband, a missing person's report was filed with authorities that afternoon. Porter's badly beaten body was found the next day about one hundred yards from her trailer. An autopsy revealed that Porter died as a result of blunt force trauma to the head which was later determined to have been caused by being repeatedly struck with a shovel.

Defendant was interviewed by law enforcement officers a total of four times in connection with Porter's death. . . . Just after midnight on the early morning of 30 March 2016, defendant was arrested and charged with the rape and murder of his aunt Felicia Porter.

*Conner II*, 381 N.C. at 650, 873 S.E.2d at 344-45. Defendant ultimately admitted in his plea colloquy that he had raped and murdered his aunt. *Conner II*, 381 N.C. at 650-51, 652 n.5, 873 S.E.2d at 344, 345 n.5. Following the transfer of his charges from District Court, Defendant pleaded guilty to first-degree murder and first-degree

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rape in Superior Court. During sentencing, the trial court conducted the steps pursuant to N.C. Gen. Stat. § 15A-1340.19B(a)(2) to determine whether defendant should receive a life sentence with the possibility of parole or a life sentence without parole for his first-degree murder conviction. At the sentencing hearing, Defendant presented evidence of mitigating factors pertaining to his youth, upbringing, poor academics, medical problems, drug abuse, and behavior since incarceration.

Following the completion of defendant's sentencing hearing on 21 February 2019, the trial court found the existence of nineteen statutory and non-statutory mitigating factors in defendant's case. Specifically, the trial court found that at the time of the offenses:

- defendant was fifteen years and six months old;
- defendant “exhibited numerous signs of developmental immaturity. . . . exacerbated by low levels of structure, supervision, and discipline”;
- defendant's father was incarcerated for most of defendant's life and his mother struggled with substance abuse and incarceration and “has not been present for the vast majority of defendant's life”;
- defendant “has been passed to one family member to another for basic living and custodial purposes and never received any parental leadership, guidance, or structure”;
- defendant “suffers from chronic frontal lobe epilepsy which went untreated for years causing daily seizures” which then caused “brain injury” and “chronic sleep deprivation”;
- defendant was subjected “in his transient living conditions to criminal activity, violence, and rampant substance abuse,” with his own substance abuse starting “at approximately age nine”;

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- defendant's “only role model was a negative role model, Brad Adams, an individual with a horrible criminal history and habitual felon. . . . defendant looked up to Brad Adams, who was ten years senior to [ ] defendant in age”;
- defendant “had a limited ability to fully appreciate the risks and consequences of his conduct based upon the totality of his poor upbringing”;
- defendant’s “I.Q. and educational levels appear at the low range of average to below average”;
- defendant “is a record level I for sentencing purposes”;
- defendant “was subjected to an overall environment of drugs and other criminal activity”;
- defendant, “[b]ased upon testing and other professional evaluations, . . . would benefit from education, counseling, and substance abuse treatment while in confinement and incarceration”;
- defendant at age four years “witnessed a drug raid at his home resulting in the arrest of his father and his uncle,” after which he “started to experience night terrors”;
- defendant at age six years “was removed from his parents' home due to the drug abuse in the home”;
- defendant's grandmother reported he “had always been affected by such nightmares and night terrors and that he would awaken three or four times a night with what is now purported to be seizures”; and
- defendant “has recently demonstrated some increased maturity while being incarcerated, and [ ] he did agree to enter this plea [on 18 February 2019].”

*Conner II*, 381 N.C. at 653-654, 873 S.E.2d at 346. The trial court did not determine Defendant to be permanently incorrigible or irreparably corrupt. Thereafter, the trial

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court sentenced Defendant at the top of the presumptive range to 240-348 months' imprisonment for first-degree forcible rape and a consecutive term of life with the possibility of parole for first-degree murder.

Defendant gave oral notice of appeal at sentencing and filed written notice of appeal on 14 March 2018. During his first appeal, Defendant argued:

- (1) N.C.G.S. §§ 15A-1340.19A to -1340.19D (commonly known as North Carolina's "Miller-fix statutes") prohibit the consecutive sentences imposed by the trial court here;
- (2) the two consecutive sentences imposed on defendant are the functional equivalent of a sentence of life without parole and are therefore unconstitutional under the Eighth Amendment to the United States Constitution and article I, section 27 of the North Carolina Constitution when imposed on a juvenile who is not determined by the trial court to be incorrigible or irredeemable; and
- (3) the trial court's imposition of lifetime satellite-based monitoring without a hearing was error.

*State v. Conner*, 275 N.C. App. 758, 759, 853 S.E.2d 824 (2020) (*Conner I*).

In a divided opinion, the majority in *Conner I* held that regarding Defendant's second issue, life with the possibility of parole itself was not unconstitutional, and, even if adding consecutive terms could transform life with the possibility of parole into *de facto* life without parole, the consecutive term here did not do so because Defendant would be eligible for parole at sixty years old. *Conner I*, 275 N.C. App. at 759, 853 S.E.2d at 825. The dissenting judge held the defendant's sentences unconstitutional as *de facto* life without parole. *Id.* (McGee, C.J., dissenting).

On 4 February 2021, Defendant filed a notice of appeal based upon the

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dissenting opinion to our Supreme Court. By a divided opinion, the Court reversed and held that under both the United States and North Carolina Constitutions, “juvenile offenders who have received sentences of life with the possibility of parole, while not guaranteed parole at any point during their respective terms of incarceration, nonetheless must have the opportunity to seek an early release afforded by the prospect of parole after serving no more than forty years of incarceration.” *Conner II*, 381 N.C. at 645, 873 S.E.2d at 341. In the majority’s view, requiring Defendant “to serve a term of incarceration in excess of forty years upon the trial court’s determination that defendant, in light of his status as a juvenile, is neither incorrigible nor irredeemable, would unconstitutionally constitute a de facto life without parole sentence.” *Id.* at 680-81, 873 S.E.2d at 363. Defendant’s case was remanded to this Court for further remand to the trial court for additional proceedings consistent with the Supreme Court’s opinion.

Defendant’s resentencing came on for hearing on 1 November 2022. At the hearing, Defendant referred to his prior evidence of mitigating factors and requested his sentences for murder and rape to run concurrently.

The trial court acknowledged it was “bound” by *Conner II* and stated its intent to follow the “40-year bright-line rule.” Again, the trial court readopted its findings on mitigating factors and imposed a sentence of life with the possibility of parole for first-degree murder but also imposed a consecutive sentence at the bottom of the mitigated range of 144 to 233 months’ imprisonment for first-degree forcible rape.



The trial court observed because life with the possibility of parole required Defendant to serve 25 years prior to parole review eligibility pursuant to N.C. Gen. Stat. § 15A-1340.19A, and because the final sixty months of his consecutive sentence must be spent on post-release supervision under N.C. Gen. Stat. §§ 15A-1354(b)(1) & 15A-1368(a)(1), the sentences would require Defendant to serve at maximum 39.4 years before becoming eligible for parole review. Defendant gave oral notice of appeal at the re-sentencing hearing.

## **II. Analysis**

### **A. Did the trial court violate the Eighth Amendment to the United States Constitution and Article I, 27 of the North Carolina Constitution as applied to Defendant?**

On appeal, Defendant argues his case should again “be remanded for resentencing because the trial court imposed consecutive sentences that violate the Eighth Amendment and Article I, § 27 of the North Carolina Constitution as applied to [himself]” as “the combined sentences deprive [him] of parole eligibility for a minimum of 37 years.” Defendant further contends that the sentences are unconstitutional “because the trial court found nineteen separate mitigating factors demonstrating that [he] was very young on the offense date, that he was neglected as a child and suffered significant damage to his frontal lobe, and that he admitted his guilt and accepted responsibility for his actions.” Defendant also raises a policy argument, contending the sentences “exceed national trends in court decisions and legislative enactments involving sentences for juveniles convicted of multiple

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offenses, including convictions for first-degree murder. Those trends involve granting parole eligibility to juvenile defendants convicted of multiple offenses after a range of fifteen to thirty years of imprisonment.”

Constitutional arguments are reviewed *de novo*. *Conner II*, 381 N.C. at 658, 873 S.E.2d at 349. Challenges to a trial court’s weighing of mitigating factors or imposition of consecutive sentences are reviewed for an abuse of discretion. *State v. Oglesby*, 382 N.C. 235, 246, 876 S.E.2d 249, 258 (2022). An abuse of discretion occurs when the trial court’s decision is “manifestly unsupported by reason.” *Canty*, 321 N.C. 520, 527, 364 S.E.2d 410, 415 (1988).

In *Conner II*, our Supreme Court expressly held that it was

“permissible and necessary to establish a specific maximum duration of time for the incarceration of a juvenile offender to serve who was not determined to be incorrigible or irredeemable, and who was sentenced to life with the possibility of parole, before the defendant is eligible to be considered for parole.”

381 N.C. at 672, 873 S.E.2d at 358. In reaching this determination, the Court considered Defendant’s own mitigating factors, reviewed relevant United States Supreme Court jurisprudence, considered jurisprudence from other jurisdictions, and reviewed the Court’s own jurisprudence. 381 N.C. at 653-54, 873 S.E.2d at 346.

Based on these considerations, including Defendant’s unique, personal circumstances, our Supreme Court held that under both the United States and North Carolina Constitutions, juveniles are constitutionally entitled to be considered for

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parole after “no more than forty years.” *Id.* at 645, 873 S.E.2d at 341. The Supreme Court specifically stated:

By virtue of the trial court’s judgment in the juvenile’s case, defendant here was expressly determined to be included in the category of juvenile offenders who should retain the opportunity to seek parole, despite his convictions for the offenses of first-degree murder and first-degree rape. After serving forty years of incarceration for these crimes pursuant to the implementation of consecutive sentences, defendant possesses the opportunity to be considered for parole.

*Id.* at 680, 873 S.E.2d at 363. Thus, Defendant’s constitutional arguments were previously resolved as law of the case in *Conner II*.

At resentencing, the trial court acknowledged its intent to comply with this “40-year bright-line rule,” readopted its findings in mitigation, and imposed a sentence that met this requirement. The trial court followed the instructions outlined within the Supreme Court’s opinion. Based upon the analysis of *Conner II* and the trial court’s compliance with the opinion, the trial court did not err in its resentencing of Defendant.

Even if we were to construe Defendant’s arguments in non-constitutional terms, the trial court did not abuse its discretion in imposing consecutive terms for sentencing, and Defendant “received the most mitigated sentence available.” We further note the extent to which mitigating factors justify “departing from the presumptive range” rests within the trial court’s discretion. N.C. Gen. Stat. § 15A-1340.16(a). Pursuant to § 15A-1340.19B(a)(2), the offense of first-degree murder

requires a sentence of either life with the possibility of parole or life without parole. Here, the trial court found nineteen mitigating factors and imposed the lowest available mitigated sentence, life with the possibility of parole. Additionally, the trial court sentenced Defendant to 144-233 months' imprisonment for the offense of first-degree forcible rape, the lowest sentence available within the mitigated range for that offense. N.C. Gen. Stat. § 15A-1340.17(c) & (f) (2023).

Similarly, “[w]hen multiple sentences of imprisonment are imposed on a person at the same time . . . the sentences may run either concurrently or consecutively, as determined by the court.” N.C. Gen. Stat. § 15A-1354(a) (2023). Therefore, the determination rested within the trial court’s discretion to continue to impose consecutive terms on Defendant’s sentences.

### **III. Conclusion**

For the foregoing reasons, we affirm the trial court’s judgments.

**AFFIRMED.**

Judges TYSON and STADING concur.

Report per Rule 30(e).