NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
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STATE OF NORTH CAROLINA	)	
	)	BUNCOMBE COUNTY
versus	)	
	)	18 CRS 92442
KAGAN FRANSWARD WILLIAMS	)	21 CRS 331

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Pages 450 - 464
October 25, 2021, Session

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Monday, November 1, 2021

Honorable Jacqueline D. Grant, Judge Presiding

Sentencing

A P P E A R A N C E S:

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I N D E X

(Continued from Volume V.)

THE COURT: All right. Are we ready for -- the first matter we need to take up is the sentencing in the State of North Carolina versus Kagan Williams. Are we ready for that?

MR. EDNEY: Your Honor, please, before we get into that, I have one more motion I did over the weekend. If I could approach.

THE COURT: Okay.

And does the defendant wish to be heard on its motion for appropriate relief?

MR. EDNEY: I think we were all here for -- all week. I think maybe one of the most obvious things is the fact that the Jury was out -- was far more concerned about going home for the weekend than doing their job. I just would ask Your Honor to give us -- help instill confidence in the system by setting aside the verdict in the 21-case and allow us to retry that case.

THE COURT: Okay.

Any arguments from the State with regard to the defendant's motion for appropriate relief?

MS. BROUGHTON: No, Your Honor. The State would rest on all of the cases handed up, prior arguments made, and would certainly suggest that the Jury reached its verdict as quickly as they did base on the strength of the

evidence.

THE COURT: The Court will deny the defendant's motion for appropriate relief.

With regard to sentencing, does the State wish to offer any information with regards to sentencing?

MS. BROUGHTON: Your Honor, the victim is on her way up now. I know that she wishes to address the Court. But getting into that, this defendant for the -- assault of strangulation is a Class H. The attempted second-degree rape is a Class D. Within the presumptive range, that is a low of 67 months. 67 is low all the way up to 93 with a high of 84 to 113.

I believe that defense counsel intends on offering some evidence of mitigating factors, such as the defendant is supporting his family, good support system. The State would ask the Court to find, however, that the mitigated factors do not, in fact, outweigh the severity of the crime in this particular case.

Certainly, the State, of course, concedes that the defendant does, in fact, have a daughter. She's fairly young. But the victim in this case, although her worth is not predicated on the fact that she is somebody's daughter, is, in fact, somebody's daughter. And I believe that she -- you know, her -- the defendant would not want a person in his position sentenced to anything less than at least the

presumptive range in this case for what he did to the victim in this case.

He could have killed her all because he couldn't have sex with her. Putting your hands around somebody's throat is the ultimate act of control because it takes away both oxygen and blood to her brain. The doctors were worried she could have had a stroke.

Now, this case is not about the good things in the defendant's life because like any human being, I'm sure there are. What this case is about is what he actually did to the victim in this case. And the pictures tell that story better than anything else I could possibly say.

Madam Clerk, could you have defense PC?

This is what this case is about. All between 2:24 a.m. and 3:49 a.m., this is what the defendant did to the victim. We're lucky we're not here on a manslaughter charge, or even worse, all because he could not have sex with her.

And I would ask the Court to -- I understand that the Court is likely to consolidate. And I'm actually comfortable with that because, as I argued to the Court, the strangulation was in service of the second-degree rape. But because the Court -- shaking your head -- clearly seems to be in a position to consolidate those matters, I think going any lower than the presumptive range would do a disservice

to the acts of this case, and the fact that the defendant has a history of assaultive conduct. He's got an assault on a female conviction of 2015, and this is simply an escalation of that type of conduct.

So we have misdemeanor assault, and now we're to the point which he's convicting (sic) assault by strangulations, which could have killed her, all in service of a sexual act.

I will, while the Court is looking at this, see if Ms. Pendragon is ready to make a statement.

THE COURT: Does Ms. Pendragon wish to be heard?

MS. BROUGHTON: She does not. I would just ask the Court to remember her testimony wherein she was asked how she is affected by this. And she said she is still traumatized by this incident. And when I went back there to speak with her, she's still tearful, despite the conviction.

This has affected her in a way that she's going to carry with her, for the rest her life. I believe she's intending on moving out of the area to get away from what happened. And I would ask the Court to, at a minimum, sentence the defendant in the presumptive range for the Class D.

Thank you, Your Honor.

THE COURT: I will now hear from the defendant. Anything you'd like to offer before the Court enters

sentence?

MR. EDNEY: If Your Honor, please. As to mitigating factors, are my words enough or do you want sworn testimony?

THE COURT: I'm sorry?

MR. EDNEY: As to the mitigating factors, do you want sworn testimony?

THE COURT: I will hear from you first, and then if there's something that we need to get sworn testimony, we can. It's completely up to you. If you just want to offer arguments of mitigating factors or if you want to offer sworn statement or if you want me to hear from the -- Mr. Williams or his family, it's completely up to you.

MR. EDNEY: Most of the time, I can just say, he has a job making $20 an hour and that's enough. But sometimes, some judges say, well, I need something to base that on. I just want to be a little careful on that one, Judge.

So going into the case, the State was satisfied with a 10-to-21-month active sentence. Because of their trial strategies, we are where we are. I don't think the State or the Court would want to punish my client for exercising his constitutional rights, so I think that needs to be in the Court's consideration.

As far as the mitigating factors, we have a job,

$20 an hour. We have a two-year-old child and we support that child. The evidence by -- during the trial, his family has been in the courtroom every day. He's got a strong support system in the community.

I was looking to see if we could fit into the extraordinary mitigation, but we have more than five points, so we can't do that.

So I think Your Honor -- where we are right now, your hands are tied. You're going to have to give an active sentence.

I'm not going to beat a dead horse, Judge. I just want you to consider the mitigating factors, give us the mitigation and sentence us in the lowest possible, the 51 to 74.

We have no pretrial credits. Your Honor knows from the case, I'm the fourth lawyer in it, but I'm privately retained, so he will have fees on the other ones. And my client would like to address the Court, if he may.

THE COURT: I'll hear from him at this time.

THE DEFENDANT: Thank you, Your Honor.

I just appreciate what everybody's done this week, taking the time. I apologize that we even had to be here. I definitely didn't want to be here.

I do have a two-year-old daughter. I do have a two-year-old daughter. I support substantially her and her

mother without any court orders in place. I'm the only person that works in my section at work, so they're going to take a huge hit. Obviously, I have to, but they have allowed me, if I'm not away too, too long, I can come back upon release, so I have immediate employment other than this.

I don't live the lifestyle I used to. I don't have a plan to. I just want to be able to come home at a reasonable time and continue to make good choices and become a better man.

THE COURT: All right. Thank you.

MR. EDNEY: Do you want to speak? You do?

It's my client's father, Your Honor.

THE COURT: Okay.

MR. EDNEY: Come up to the microphone.

THE COURT: Please swear him in.

MR. EDNEY: Start by telling your name for the record, sir.

MR. WILLIAMS: My name is Derrick Williams, and I am Kagan's father. And it's been real hard to sit here and watch this, but I believe -- or I know that my son is a good person. And he's had some challenges growing up, but he's really done a good job getting his life together.

In these last three years, this is the only thing I know of is this thing right here. And I was really

surprised on the attempted. But I would hope that the Court would see fit that he still has time to become a better person and that prison does not ruin him. I would hope that Your Honor would show some mercy and listen to the 51 to 74.

THE COURT: Thank you.

MR. EDNEY: And I would ask Your Honor to recommend to the Department of Corrections that he be provided whatever -- he doesn't have a drug problem, but obviously he's got a DWI on his record, and the alcohol is 99 percent of why we're here. So whatever treatment he can get in that regard. Work release, as soon as he's eligible, and any other educational opportunities within the system.

THE COURT: Okay.

The Court enters the following sentence in this matter based on the Jury's verdict and based on the defendant's prior record level:

The Court does find as mitigating factors, number 17, number 18 and number 19. The Court is also taking into consideration the -- in looking at the defendant's prior convictions, that there has not been issues since 2017, and that one involved a DWI. Before that, the last one was in 2015. So it does appear, in the interval, the defendant has made some changes, and also recognizing, taking into consideration the seriousness of the charges for which the defendant has been guilty.

In File Number 21-CRS-331, the attempted second-degree forcible rape, the Court will enter a sentence in the mitigating range of 65 to 90 months.

And in File Number 18-CRS-92442, assault by strangulation, the Court will enter a sentence to run concurrently with the attempted second-degree forcible rape of 7 to 18 months. And that will run concurrently with the attempted second-degree rape.

The Court also understands that there is a $600 attorney fee for Dustin Dow that will be entered as a civil judgment.

The Court will also recommend that while in prison, that the defendant receive an alcohol and substance abuse assessment and any treatment. The Court will also recommend work release, when appropriate.

Is there anything further from the defendant?

MR. EDNEY: Not as to this judgment.

We would give Notice of Appeal in open court to the Court of Appeals and ask that the Court appoint him or appoint an appellate defender to represent him.

THE COURT: Anything further from the State?

MS. BROUGHTON: I believe he has to register as a sex offender, Your Honor, because of the attempted second-degree rape.

THE COURT: To the extent the defendant has to

register as a sex offender based on the conviction of the attempted second-degree rape, that is so ordered.

Also, an order of no contact when the defendant is released from having any contact with Ms. Pendragon.

THE CLERK: How many prior points?

THE COURT: The prior points were seven.

THE CLERK: Thank you.

THE COURT: Anything further?

MS. BROUGHTON: I think you just need to go through the judicial findings and order for sex offenders active punishment. And Madam Clerk is kindly printing that out for us.

THE CLERK: It is asking me a billion questions.

THE COURT: Give us a few minutes.

MS. BROUGHTON: I can actually go to my office and print one, if that would be quicker?

THE CLERK: I've got one right here.

I have a gray screen. It won't bring the form up.

MS. BROUGHTON: If I could be excused for just a moment.

THE COURT: Yes, please. Thank you.

(Ms. Broughton steps out.)

MS. BROUGHTON: Your Honor, I'm sorry. Under order, sentencing hearing number 2, I believe Box A should be checked. The defendant is not required to enroll in

satellite-based monitoring. Just pulling off of an old form.

THE COURT: So with regards to the judicial findings and order for the sex offenders active punishment, the Court, having entered judgment in the above-captioned action, which is incorporated by reference herein, finds in addition that the defendant has been convicted of a reportable conviction under General Statute 14-208.6 for a sexually violent offense or an attempt to commit such an offense. That the defendant has not been classified as a sexually violent predator under the procedures set out in General Statute 14-208.20. That the defendant is not a recidivist. That the offense or the conviction is not an aggravated offense under 14-208.61(a). And that the offense did not involve the physical, mental or sexual abuse of a minor. Therefore, the Court finds that the defendant will be required to register upon release from prison for a period of 30 years. The defendant is not required to enroll in satellite-based monitoring, and that the DACJJ shall perform a risk assessment of the defendant and report the results to the Court.

And, if necessary, the defendant will be returned for -- well, I'm already made the determination that he does not require satellite-based monitoring.

MS. BROUGHTON: The other document that I handed

up was the current no contact order. The State is asking that that be entered. And I believe that the defendant had a right to respond to that at this time.

THE COURT: Okay.

Mr. Edney, have you had an opportunity to look at the convicted sex offender permanent no contact order?

MR. EDNEY: We would have no comment about that, Your Honor.

As far as the registration, I thought the statute said upon a final conviction, what I would assume to mean at the appellate process. Maybe I'm wrong about that.

THE COURT: You enter it now. And it, of course, goes through the appellate process. If the conviction was overturned, then obviously all the findings that I'm making would be overturned because it would get kicked back down for remand.

MS. BROUGHTON: After that, Your Honor, the State has nothing further.

THE COURT: Okay. I'm not -- since I don't believe the -- or I've not heard any basis for which the defendant would need to have contact with Ms. Pendragon, the Court will enter the permanent no contact order.

I get the impression there's no desire for either one to be around each other, so the Court will enter that, as well.

Anything else from the State or the defendant?

MS. BROUGHTON: Not from the State.

MR. EDNEY: Would Your Honor consider an appeal bond?

MS. BROUGHTON: The State would absolutely object to that. He's been duly convicted by a jury.

THE COURT: The Court's going to deny the appeal bond at this time.

(Proceedings concluded at 10:35 a.m.)

CERTIFICATE

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Eve J. Barrett, the officer before whom the foregoing proceeding was taken, do hereby certify that said hearing, pages 450 through 464 inclusive, is a true, correct, and verbatim transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

This 11th of January, 2022.

Eve J. Barrett
Eve J. Barrett, RPR, RVR-S, CLR
Official Court Reporter
Notary Public #202031700107
State of North Carolina