

NOTICE OF APPEAL IN A CRIMINAL CASE
The State of South Carolina

Appeal from Dorchester County
Court of General Session

Luke N Broun Jr., Circuit Court Judge

Case No. 98-GS-649-652

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JUN 03 2013

S.C. SUPREME COURT

Robert Lee Medley

Appellant

Vs.

State of South Carolina

Respondent

NOTICE OF APPEAL

Robert Lee Medley, appeals the order of the Honorable Luke Broun Jr. dated July 23rd, 1998. Appellant is filing Pro Se, and on the bases of legal and constitutional grounds and based on ineffective counsel during the process of his case and sentence.

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S.C. SUPREME COURT

Case No.: 98-GS-649-652

In The court of Appeals of the State of South Carolina

Robert Lee Medley
Appellant, Pro Se

V.

State of South Carolina
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S.C. SUPREME COURT

On appeal from the Superior Court of the
State of South Carolina Dorchester County

The Honorable Luke N. Broun Jr., Judge

Brief of Appellant

Robert Lee Medley
Appellant, Pro Se

Robert Lee Medley

2113 Gayley Street
Columbia, SC 29209
803-743-8349

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A. Assignment of Error

The court failed to inquire as to whether the appellant understood all of the constitutional rights by his pleading guilty thus making it impossible to determine that his plea was knowing, voluntary, and intelligent.

Appellant was not afforded effective counsel as constitutionally afforded to his defense.

B. Statement of the Case

I. Procedural Facts

Appellant was indicted at the May 1998 term of the Dorchester County Grand Jury for Criminal Conduct with a minor- second degree (1998-gs-18-0649), lewd act upon a child (1998-gs-18-0652), unlawful conduct towards a child (1998-gs-18-0651), unlawful conduct towards a child (1998-gs-18-0650). He was represented by Marva S. Hardee-Thomas, Esquire, on July 23, 1998, Appellant pled guilty as indicted. He was sentenced by the Honorable Luke N. Broun to confinement for concurrent periods of twelve (12) years for criminal conduct with a minor, ten (10) years for lewd act upon a child, three (3) years for unlawful conduct towards a child, and three (3) years for unlawful conduct towards a child. Appellant was unable to appeal his conviction on sentence.

Appellant subsequently filed an application for PCR on November 10, 1998. The state filed its return on March 29, 1999. On August 23, 2000, an evidentiary hearing was held before Honorable Deane S. Goodstein, at which the appellant was present and represented by Richard N. Buchanan Esquire. At the hearing, appellant informed the PCR court that he wished to withdraw his application with prejudice. In his application for PCR, appellant alleged that he is being held in custody unlawfully for the following reasons:

1. Subject matter jurisdiction
2. Involuntary guilty plea

II. Substantive Facts

Counsel for Mr. Medley indicated that Mr. Medley was pleading guilty "with great reluctance". The court engaged in a very limited colloquy of questioning with Mr. Medley, court advised Mr. Medley of the maximum penalties and that he had to accept the plea deal that was being presented.

C. Argument

1. Appellant's plea was not knowing, voluntary, and intelligent where the judge failed to explain the full nature of each constitutional right afforded to the appellant. A plea maybe withdrawn "whenever it appears that withdrawal is necessary to correct a manifest injustice. A plea is not knowing, voluntary and intelligent. **State v. Ross, 129 Wn.2d 279 283-84. 916 P.2d 405 (1996).**

Withdrawal of a plea under these circumstances is required under the Due Process Clause of the State and Federal Constitution. **US Const. Amend IV Due Process, SC Const Sect III. Boykin v Alabama 395 U.S. 238, 243. N.S.89 S.Ct. 1709. 23 L.Ed2d 274 (1969).** Due Process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily. **State v. Ross 129 Wn.2d at 284.**

A plea is not knowing, voluntary and intelligent if the defendant does not understand all of the direct consequences of his plea including the constitutional rights pleading guilty. **ID; In Re Personal Restraint Petition of Isadore 151 Wn.2d 294, 302, 82 P.3d 390 (2004).** The prosecutor bears the burden of proving the validity of a guilty plea. The sole purpose of a judge questioning a defendant at the time of the plea is to establish that the waiver of rights is constitutionally sufficient. **In Re Woods v. Rhay, 68 Wn.2d, 601,605,414 P.2d 601 (1966).** In the instant case because the judge failed to do this, the plea was not valid. The court in **Re Woods v. Rhay** explained that: "[t]o be voluntary, a plea of guilt must be freely, unequivocally, intelligently and understandingly made in open court by the accused person with full knowledge of his legal and constitutional rights and of the consequences of his act].

The court did not afford the appellant, his rights in accordance to law, at which made his plea invalid for it was not made intelligently with understanding of his legal and constitutional rights.

2. Appellant was not processed according to law for there was no validity to any evidence to warrant a conviction. DNA in this type of case is essential to the conviction. The state has the burden to prove the guilt of the accused beyond a reasonable doubt. The state failed to warrant a conviction beyond a reasonable doubt due to ineffective process of evidence where as the victim was not examined by a doctor for thirty (30) days after the accused was processed. The evidence can only be collected within a 72 hours of the assault, by way of hair, nail, and oral swab from victim and accused. However this process of evidence was not conducted which does not warrant circumstantial evidence to gain a conviction beyond a reasonable doubt of the accused.

The appellant has made several attempts to obtain copy(s) of such evidence to prepare a proper defense, but was not afforded the right of due process of the law according to the **US Constitution amend V** also supported by **SC Constitution Sec XIII.** Constitutionally the appellant has had his rights violated for his rights to due process was not afforded to him according to law.

The courts did not constitutionally afford the appellant this right at which gained a conviction falsely without presentment of evidential facts or proper indictment. At time of arrest appellant was not in his proper state of mind during questioning, and should not have been interrogated by authorities. Appellant stated that he just wanted to lie down for he had been drinking. Any statement that was obtained during that interrogation would be invalid for his state of mind was altered under the influence of alcohol during his arrest and questioning.

3. Appellant was afforded proper counsel as is constitutionally afforded to him by law (US Constitution Amendment VI) for counsel to properly defend and prepare a fair and just defense. There was no investigation means afforded to the appellant to grant him a proper defense. The defendant did not enjoy the right of the sixth amendment to be properly represented by counsel, during every phase of litigation that followed the initiation of formal adversarial proceeding by the state. Instead was only to assert what rights he had during this critical stage, to which his knowledge of law is oblivious for he is not an attorney. **Maine v. Moulton, 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed. 2d 481 (1985)**. A critical stage of prosecution includes every instance in which the advice of counsel is necessary to ensure a defendant's rights to a fair trial or in which the absence of counsel might impair the preparation or presentation of a proper defense. **United States v. Hidalgo, 7 F3d 1566 (11th cir 1993)**. **US Constitution Amend XIII** affords the appellant due process and equal protection of the law. Without the court's ability to afford the appellant his constitutional rights to any form of law is justifying that the ends and means of justice is just for the constitution also states: [the constitution is the law of the land and state and federal courts are to adhere to this by way of oath]. In this case the constitution is not adhered to in any way. Appellant was not in full knowledge and understanding to know he was getting a proper and effective counsel for court transcripts show appellant was not sure and the presiding judge allowed the plea to be accepted, when appellant stated he had something to say on record and again was nor able to speak on his own behalf to which legally violates the appellant's constitutional rights.

D. Conclusion

Mr. Medley respectfully request this court to find and consider his plea was in fact not guilty, for the evidential findings did not warrant a conviction or a true bill to prosecute, and this matter be brought back before the court to be dismissed with prejudice as afforded to Mr. Medley in the US Constitution Amend V, and be removed from the sex offenders registry, also to be granted permission to proceed with any and all further legal proceedings afforded to him under law.

Respectfully Submitted,

Robert Lee Medley

Robert Lee Medley
Appellant, Pro Se

THE STATE OF SOUTH CAROLINA
Notice of Appeal

APPEAL FROM DORCHESTER COUNTY
Court of General Session

Luke N Brown Jr.; Circuit Court Judge

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S.C. SUPREME COURT

Case No. 98-GS-18-0649
Case No. 98-GS-18-0652
Case No. 98-GS-18-0651
Case No. 98-GS-18-0650

Robert Medley..... Appellant

v.

State of South Carolina..... Respondents

PROOF OF SERVICE

I, Robert Medley, certify that I have served the Notice of Appeal on respondents by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2013, addressed to Attorney General, Rembert C. Dennis Building, P.O. Box 11549, Columbia, SC 29211

Dated: May 31, 2013

Robert Lee Medley

Robert Lee Medley
Appellant, Pro Se
2113 Gayley Street
Columbia, SC 29209
PHONE (803) 743-8349
FAX (803) 776-4541