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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2021-000688

The State of South Carolina,

Respondent,

v.

Haneef A. Childs,

Appellant.

INITIAL BRIEF OF APPELLANT

January 4, 2023

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2. Whether the Court erred in accepting appellant's guilty plea without inquiring in any depth as to nature and effect of medications defendant had been taking at or before his plea, where court was aware that appellant was mentally ill and medications could have effect on his ability to make knowing and intelligent waiver of his constitutional rights?

3. Whether the Court erred in accepting appellant's guilty plea without finding upon the record the specific factual basis and other terms of the plea agreement with the state?

4. Whether the Court erred in accepting appellant's guilty plea without first making a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime, he was mentally ill as provided in section 17-24-20(a).

5. Whether the Court erred in accepting appellant's guilty plea because he was insane at the time of the crime and he did not have the mental capacity to distinguish between right and wrong; also, that appellant was unable to conform his conduct to the requirements of the law which would make the client not guilty?

6. Whether the Court erred when it refused to swear Appellant and make a proper inquiry when hearing the post-trial motions regarding Appellant asking to withdraw his guilty plea or reconsider the sentence and where the limited colloquy was unclear on Appellant's requests?

STATEMENT OF THE CASE

The Appellant, Hanif Aquilo Childs, was arrested in connection to an incident on December 3, 2017. Appellant was indicted for murder and possession of a weapon during the commission of a violent crime on March 7, 2017. He pled guilty but mentally ill on May 19, 2021, and on May 28, 2021, filed a timely motion to withdraw his plea or in the alternative reconsider his sentence. the state responded to this motion on June 8, 2021, and it was heard June 18, 2021, and denied. This appeal follows.

The trial judge's determination of competency must have evidentiary support and not be against the preponderance of the evidence. State v. Nance, 320 S.C. 501, 466 S.E.2d 349 (1966). In a criminal case, it is axiomatic that prior to a judge's acceptance of a guilty plea, the judge must determine that the plea is being made voluntarily, knowingly, and intelligently. See Page v. State, 364 S.C. 632, 615 S.E.2d 740 (2005), Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006), Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). "'The withdrawal of a guilty plea is generally within the sound discretion of the trial judge.'" State v. Rikard, 371 S.C. 295, 301, 638 S.E.2d 72, 75 (Ct. App. 2006) (quoting State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982)). "An abuse of discretion occurs when a trial judge's decision is unsupported by the evidence or controlled by an error of law." Id. (citing State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct. App. 2002)). "A determination the plea was voluntarily entered 'will normally show the trial judge did not abuse his discretion.'" Id. (quoting Riddle, 278 S.C. at 150, 292 S.E.2d at 796). See also State v. Cantrell, 250 S.C. 376, 378, 158 S.E.2d 189, 191 (1967) ("A motion to withdraw a plea of guilty, and to be allowed to enter a plea of not guilty, addresses itself to the discretion of the trial judge before whom the plea is entered, and, in the absence of a clear abuse of discretion, this court will not interfere.").

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN ACCEPTING APPELLANT'S GUILTY PLEA WITHOUT FIRST DETERMINING THAT HE WAS MENTALLY COMPETENT TO ENTER A KNOWING AND VOLUNTARY GUILTY PLEA

Relevant Facts:

At the beginning of the plea hearing, during the initial colloquy with the Appellant's attorney, the Court was advised that the Appellant wished to plead guilty, but mentally ill to voluntary manslaughter

which was a lesser included charge of murder for which he was indicted. The Court goes on to inquire if the appellant received a competency evaluation. Plea counsel informed the Court a competency evaluation was completed on March 7, 2017, by Dr. Matthew Gaskins who determined Appellant competent to stand trial. The Court inquired if in addition to understanding the charges against him and if he had been able to assist plea counsel in the preparation of his defense. The Court never made a finding of competence on the record.

Law

Before a defendant may plead guilty, it must be established that the defendant is competent and that the defendant's decision to plead guilty is a knowing and voluntary one. Sims v. State, 313 S.C. 420, 423–24, 438 S.E.2d 253, 254–55 (1993) (citing Godinez v. Moran, 509 U.S. 389, 398–401, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993)). The test for competency is the same whether a defendant pleads guilty or goes to trial namely, "whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding" and the requirement that the defendant "have a rational as well as a factual understanding of the proceedings against him." Id. at 422–23, 438 S.E.2d at 254. "The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the ability to understand the proceedings." Godinez, 509 U.S. at 401 n.12, 113 S.Ct. 2680 (citing Drope v. Missouri, 420 U.S. 162, 171, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975) (observing that a defendant is incompetent if he "lacks the capacity to understand the nature and object of the proceedings against him"). "The purpose of the 'knowing and voluntary' inquiry, by contrast, is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced." Id. (citing Faretta v. California, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)). "That the plea be voluntary is not only a requirement of due process, but a premise of the defendant's meaningful participation in the plea process." United States v. Savinon-Acosta, 232 F.3d 265, 268 (1st Cir. 2000) (citing McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969)). S.C. Code Ann. § 44-23-410(A) (2018) ("Whenever a [trial court] has reason to believe that a person on trial

before him, charged with the commission of a criminal offense ..., is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the [court] shall ... order [an evaluation] ...."); State v. Burgess, 356 S.C. at 575, 590 S.E.2d at 44 ("Factors to be considered in determining whether further inquiry into a defendant's fitness to stand trial is warranted include evidence of his or her irrational behavior, his or her demeanor at trial, and any prior medical opinion on his or her competence to stand trial."); Id. at 575-76, 590 S.E.2d at 44 (finding the defendant was not entitled to a mental health evaluation when she only presented prior records of mental health treatment but failed to establish how the records addressed her competence to stand trial and when her counsel primarily relied on personal assertions).

Discussion:

Here, there is evidence in the record to support the Court's need to make a finding that further inquiry into Appellant's fitness to stand trial was needed. See State v. Wilson, 345 S.C. at 6, 545 S.E.2d at 829 ("[The appellate court] does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the [circuit court]'s ruling is supported by any evidence.").

II. THE COURT ERRED IN ACCEPTING APPELLANT'S GUILTY PLEA WITHOUT INQUIRING IN ANY DEPTH AS TO NATURE AND EFFECT OF MEDICATIONS DEFENDANT HAD BEEN TAKING AT HIS PLEA, WHERE COURT WAS AWARE THAT APPELLANT WAS MENTALLY ILL AND MEDICATIONS COULD HAVE EFFECT ON HIS ABILITY TO MAKE KNOWING AND INTELLIGENT WAIVER OF HIS CONSTITUTIONAL RIGHTS.

Relevant Facts:

As discussed above, Appellant's plea counsel advised the Court Appellant was going to plead guilty, but mentally ill to a lesser included offense. The Court made a limited inquiry during the plea colloquy with Appellant whether, within the past seventy-two hours he had taken any medication, consumed any alcohol or drugs or been under any influence that would affect his ability to know why he was in court.

That was answered in the negative. During the hearing, the Court heard from two experts and received medical records which reflected that Appellant had been provided medication for his mental illness of paranoid schizophrenia which was untreated at the time of the offense. Additionally, the Court received medical records which included treatment prior to and during his incarceration for the pending charges from the following: Community Council Health Systems Records- Nov. 15, 2010- Sept. 3, 201; Mercy Philadelphia Hospital Records-Nov. 2, 2015- Nov. 13, 2015; CareSouth Carolina Records - Aug. 25,2016-Sept. 26, 2016; and South Carolina Department of Mental Health Records (transferred to Tri-County Mental Health)-Dec. 16, 2016- March 2, 2021. The last record indicated that Appellant, while incarcerated, was receiving treatment and medication for his mental illness which included having auditory hallucinations. He was taking the following medications: Cogentin-1mg; Haldol-10 mg; and Trazodone-150 mg.

Law:

Common sense, backed by ample case law, suggests that medication can in some circumstances affect a defendant's mental state to a degree that undermines the defendant's ability to enter a voluntary plea. The critical question is whether the drugs have a capacity to impair the defendant's ability to plead. Garren v. State, 423 S.C. 1, 14–15, 813 S.E.2d 704, 711–12 (2018).

Discussion:

Indeed, the record is utterly devoid of any evidence that Appellant had taken any medication on the day he pled guilty or that he was under the influence of medication which affected his ability to understand what he was doing on the day of his plea. There is no evidence to determine Appellant's ability to understand the guilty plea proceeding and whether he was affected by the mind-altering effects of one or more specific medications. District Court erred in accepting defendant's change of plea without inquiring in sufficient depth as to nature and effect of medications defendant said he had been taking at or around time of changing his plea, where court was aware from its limited inquiry that medications could have effect on defendant's ability to make knowing and intelligent waiver of his constitutional rights. United States v

Parra-Ibanez (1991, CA1 Puerto Rico) 936 F2d 588, remand (CA1 Puerto Rico) 951 F2d 21.

III. Whether the Court erred in accepting appellant's guilty plea without finding upon the record the specific factual basis and other terms of the plea agreement with the state?

Relevant Facts:

As discussed above, Appellant's plea counsel advised the Court Appellant was going to plead guilty, but mentally ill to a lesser included offense. The solicitor provided some bare facts about the shooting itself only that it occurred, not how or why. Additionally, May 28, 202 in the timely filed motion to withdraw his plea or in the alternative reconsider his sentence plea counsel included facts leading up to the Appellant's plea. Plea counsel begin engaging in negotiations, and an agreement was made the defendant waived his right to jury trial and waved his right to assert his affirmative defense of not guilty by reason of insanity contingent upon a reduction of charges, and a cap of twenty years and a dismissal of the weapons charge. The only negotiations placed on the record was the reduction of the murder charge and a dismissal of the weapons charge.

Law:

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving. Id. For a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Id. at 434-

435, 405 S.E.2d at 392. Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). See, e.g., Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. Id. In addition to the requirements of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Id.

Our supreme court has recognized a plea agreement rests on contractual principles. State v. Gates, 299 S.C. 92, 94-95, 382 S.E.2d 886-87 (1989); see also Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) ("[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor ... such promise must be fulfilled."); Alston v. State, 38 Md.App. 611, 379 A.2d 754, 757 (Md.1978) ("When the State's Attorney has given his word in the form of a plea bargain and that bargain is accepted by the trial court, it behooves the State's Attorney to make every reasonable effort to correct any deviation from the bargain when the deviation is called to his attention.").

Discussion:

In this case, there was no written plea agreement in the record, and neither party identified an oral plea agreement meeting the requirements to the circuit court's acceptance of Appellant's plea. The court accepted the pleas and undertook its duty to examine all the pertinent facts necessary to fashion an appropriate sentence even though they were not presented. The Appellant believed that there was a cap of twenty (20) years. He relied on this when entering the negotiations.

IV. THE COURT ERRED IN ACCEPTING APPELLANT'S GUILTY PLEA WITHOUT FIRST MAKING A FINDING UPON THE RECORD THAT THE DEFENDANT PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT WHEN HE COMMITTED THE CRIME, HE WAS MENTALLY ILL AS PROVIDED IN SECTION 17-24-20(A).

Relevant Facts:

Appellant's attorney and the state indicated that Appellant was pleading guilty but mentally ill. The court accepted Appellant's plea as a free, knowing, voluntary, and intelligent decision. That was an error and that error prejudiced Appellant.

Law:

A plea of "guilty but mentally ill" is proper if, "at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law." S.C. Code Ann. § 17-24-20(A). The burden of proof is on the state to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is on the defendant to prove by a preponderance of the evidence that when he committed the crime, he was mentally ill." S.C.

Code Ann. § 17-24-20(B). See Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding a guilty plea voluntary where Respondent admitted committing the crimes, acknowledged the potential sentences, and stated that his plea had not been induced by promises). A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

Where defendant had history of mental disorders and past admissions to state hospital in addition to past adjudication of incompetence to stand trial in homicide prosecution, and statute regarding competency hearing used mandatory wording in providing that "the court shall" set date for such hearing upon receiving report of designated examiners, hearing to determine defendant's competency to stand trial should have been held after defendant was recommitted to Department of Mental Health for purpose of determining his competency and staff of Department concluded he was suffering from "schizophrenia, paranoid type, not psychotic now," but was capable of standing trial. Code 1976, §§ 43–23–410, 44–23–430. State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981)

Discussion:

The Court accepted the guilty plea and the parties had to reopen the record to make a finding of guilty but mentally ill. There was no finding or discussion by the Court of the reasons and basis for the finding in accordance with the law. Additionally, the Court never filled out an "initial commitment from finding the defendant guilty but mentally ill" form as provided by the statute listed in the court forms identified as SCCA 222(a). This prejudiced the Appellant.

V. THE COURT ERRED IN ACCEPTING APPELLANT'S GUILTY PLEA BECAUSE HE

WAS INSANE AT THE TIME OF THE CRIME AND HE DID NOT HAVE THE MENTAL CAPACITY TO DISTINGUISH BETWEEN RIGHT AND WRONG; ALSO, THAT APPELLANT WAS UNABLE TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW.

Relevant Facts:

Evidence was presented that Appellant suffered from paranoid schizophrenia. Additionally, hundreds of pages of medical records were introduced about his subsequent medication and treatment.

Law:

In South Carolina, an accused is presumed to be sane, relieving the State from having to prove sanity in every case. However, once the accused presents evidence that suggests insanity, "the presumption (of sanity) disappears, and it is incumbent on the State to present evidence from which a jury could find the defendant sane." The State may present this evidence through either lay testimony or expert testimony, regardless of whether the accused produces experts.

In addition to the finding the statute states:

(D) A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in Section 17-24-20(A). (Emphasis added)

State v. Milian-Hernandez is the leading case in South Carolina regarding burdens of proof in insanity defense cases. In Milian-Hernandez the State provided testimony that would normally be evidence of rational thought, but because it could be explained by the surrounding circumstances, it was insufficient to survive a directed verdict. Specifically, the State offered two pieces of evidence to rebut the testimony of insanity offered by the accused: (1) the presumption that a defendant is sane, and (2) the fact that the accused fled the scene. The court first noted that

the presumption of sanity disappears once the accused offers evidence of insanity. The court then held that while flight is normally evidence of rational thought, the paranoid delusions of pursuit surrounding the accused's actions were "such as to negate that permissible inference" normally associated with flight. Hence, although the state provided testimony of rational thought, because it could be explained by the surrounding circumstances, it was insufficient to survive a motion for directed verdict.

State v. Smith, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989) (provides that "[a] criminal defendant is presumed to be sane; the State does not have to prove sanity."). A defendant is insane if, "at the time of the commission of the act constituting the offense, [he], as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." S.C. Code Ann. § 17-24-10(A) (2003). Furthermore, "the key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself- to recognize the act complained of is either morally or legally wrong." State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997) (quoting State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992)).

The State must present direct or substantial circumstantial evidence of sanity. Because this Court found that Appellant met his burden of presenting evidence of Appellant's insanity, the burden then shifted to the State to present direct or substantial circumstantial evidence from which, the jury, could find Appellant sane. See State v. Milian Hernandez, 287 S.C. 183, 185, 336 S.E.2d 476, 477 (1985) (provides that "when the defendant offers evidence of insanity, the presumption disappears, and it is incumbent on the State to present evidence from which a jury could find the defendant sane . . . Any evidence of sanity is sufficient to present a jury issue when the defendant

relies on the affirmative defense of insanity."). However, "[e]ven though a defendant presents expert testimony, the State is not required to also produce expert testimony; lay testimony may be sufficient." Smith, 298 S.C. at 208, 379 SE.2d at 288. South Carolina has adopted the M'Naghten test to determine insanity. "[T]he key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself, to recognize the act complained of is either morally or legally wrong'." State v. Wilson 306 S.C. 498, 506, 413 S.E.2d 19, 23, cert. denied, 506 U.S. 846 (1992), quoting State v. McIntosh, 39 S.C. 97, 17 S.E. 446 (1893). A defendant may rely on lay testimony to establish insanity. State v. Hinson, 253 S.C. 607, 172 S.E.2d 548 (1970); see also, State v. Rimert, 315 S.C. 527, 446 S.E.2d 400, cert. denied, 513 U.S. 1080 (1994)(State relied on lay testimony to establish sanity); State v. Smith, 298 S.C. 205, 379 S.E.2d 287 (1989)(where defendant presents expert testimony on his insanity, State is not required to present expert testimony on sanity; lay testimony may be sufficient). In fact, a jury may disregard expert testimony. Milian-Hernandez, supra.

Accordingly, there is overwhelming evidence in the record that Appellant was insane at the time of the shooting.

Discussion:

The testimony of the experts and the testimony of lay witnesses established Appellant could not distinguish between right and wrong or recognize his acts as wrong at the time of the shooting. This case is similar to State v. Milian-Hernandez. Appellant offered overwhelming evidence of insanity. This Court should have found that Appellant had met his burden of presenting evidence of insanity. The psychiatrist with the South Carolina Department of

Mental Health, the psychologist, Appellant's family members all provided information about the

Appellant's behavior before and during the crime. State v. Milian-Hernandez is controlling

In State v. Milian-Hernandez, 287 S.C. 183, 184, 336 S.E.2d 476, 476 (1985), Hernandez was assaulted by a fellow Cuban, and the police were summoned. Id. The police subsequently killed the man who assaulted Hernandez. Id. After the dead man's brother threatened to kill him, Hernandez purchased a gun. Id. Fearing for his safety, Hernandez fled California. Id. While traveling on a bus, Hernandez's "fears and suspicions that he was being followed by the dead man's brother were fueled by the presence of a Spanish speaking male on the bus .. . ." Id. "When the bus stopped in Charlotte[, North Carolina] for a brief layover, [Hernandez] left the bus . . . [and] was approached by the Spanish speaking driver of a station wagon who asked [Hernandez] his destination." Id. "This incident increased [Hernandez's] agitation." Id. "A Spanish speaking male, who rode beside [Hernandez on the bus] . . . prepared a statement which was introduced by stipulation at trial." Id. at 184, 336 S.E.2d at 477. "The affiant stated that Hernandez appeared normal until he reboarded the bus in Charlotte, [when he began] acting mad and looking nervous" because he thought he was being followed by the [Spanish man in the] station wagon. Id. Hernandez then asked the affiant to check whether the station wagon was following the bus, and he told Hernandez that it was not. Id. "Shortly after the bus entered South Carolina, [Hernandez] shot and seriously wounded two men who had boarded the bus in Charlotte." Id. Hernandez had no actual motive to shoot the two men, who were not acquainted and had not spoken with each other during the trip. Id. at 184 -85, 336 S.E.2d at 477. Hernandez subsequently fled from the bus after remaining on the bus for twenty minutes. Id. Hernandez "surrendered to police officers the next morning." Id.

The State argued that there were two pieces of evidence from which a jury could find

Hernandez's sane: (1) evidence of flight from the crime scene and (2) the presumption of sanity. Id. at 186, 336 S.E.2d at 477. The South Carolina Supreme Court noted that it had long held "evidence of flight is evidence of guilty knowledge from which a jury may infer sanity." Id. (citing State v. Thompson, 278 S.C. 1, 292 S.E.2d 581, cert. denied, 456 U.S. 938 (1982)). Despite the circumstantial evidence of Hernandez's flight from the crime scene, the South Carolina Supreme Court held that "the circumstances of [Hernandez's] flight are such as to negate that permissible inference." Id. (emphasis added). The Supreme Court further held that the presumption of sanity is not sufficient in itself to create a jury issue. Id. Accordingly, the Supreme Court held that the trial court erred in refusing to direct a verdict of not guilty by reason of insanity, and Hernandez was transferred to the South Carolina Department of Mental Health. Id. at 186, 336 S.E.2d at 478.

In his dissenting opinion, Judge Ness stated, "While I conceded the majority has not established aper se rule, it has achieved the same result when it infers that lay testimony of a defendant's sanity, similar to that introduced here, is no evidence of sanity" Id. at 187, 336 S.E.2d at 478. (emphasis added). Additionally, the Supreme Court has rejected the "irresistible impulse" test as an insanity defense. State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992).

Therefore, the Court should have not accepted this plea under the presiding law.

VI. THE COURT ERRED IN NOT GRANTING APPELLANT'S POST-TRIAL MOTION TO WITHDRAW HIS PLEA OR IN THE ALTERNATIVE RECONSIDER THE SENTENCE

Relevant Facts:

Appellant's counsel filed a timely motion to withdraw the plea or in the alternative reconsider the sentence. There was a hearing in which the Court questioned Appellant without being placed under oath nor inquiring into his medication or mental health status. Findings were

made holding Appellant did not want to proceed with the withdrawal, although the record was very unclear as to Appellant's understanding.

Law:

In general, a defendant's guilty plea is more than an admission of conduct; rather, it is a conviction that can deprive him of his liberty or other constitutionally protected interests." State v. Nesbitt, 411 S.C. 194, 200, 768 S.E.2d 67, 70 (2015) (citing Mabry v. Johnson, 467 U.S. 504, 507 (1984) and Boykin v. Alabama, 395 U.S. 238, 242 (1969)). "Therefore, the entry of a guilty plea implicates the protections of the Due Process Clause of the federal and state constitutions." Id. (citing U.S. Const. amend. XIV and S.C. Const. art. I, § 3). "Among these protections, the Due Process Clause requires that a defendant enter his guilty plea voluntarily, knowingly, and intelligently." Id. (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000)). "Thus, prior to receiving a defendant's guilty plea, the court must advise the defendant of 'the nature and crucial elements of the charges, the consequences of the plea [including any maximum and minimum penalties for the crimes], and the constitutional rights he is waiving' by pleading guilty." Id. (quoting Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001)); See Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (stating that a defendant knowingly and voluntarily pleads guilty when he fully understands the consequences of his plea and the charges against him).

Upholding the trial court's decision to deny the motion to withdraw the pleas, the supreme court noted a guilty plea "is a confession of guilt made in a formal manner and is equivalent to and as binding as a conviction after a trial on the merits. It has the same effect in law as a verdict of guilt and authorizes the imposition of the punishment prescribed by law." Cantrell, 250 S.C. at 379, 158 S.E.2d at 191. Furthermore, "[a]n accused is not permitted to speculate on the supposed clemency of the judge and enter a plea of guilty with the right to retract it if he finds that his

expectation was not realized." Id. at 380, 158 S.E.2d at 191-92. Thus, under those circumstances, our supreme court ruled the decision to deny withdrawal of the plea rested within the sound discretion of the circuit court.

Discussion:

Appellant argues the did not present the required the factual presentation nor did the Court honor or inquire as to the agreement. However, no such plea agreement was divulged to the court prior to the acceptance of the guilty pleas.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and allow Applicant to withdraw his guilty plea and proceed with a trial.

Respectfully submitted,

January 4, 2022

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