

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Jul 07 2023**

**SC Court of Appeals**

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY FRANKLIN CRIMINGER,

APPELLANT

APPELLATE CASE NO. 2022-001648

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge erred in considering improper and prejudicial criminal matters at appellant's sentencing hearing.

## **STATEMENT OF THE CASE**

Appellant Billy Criminger was tried by jury on drug charges during the November 2022 term of the Lancaster County General Session Court before Judge Brian M. Gibbons. Appellant was convicted of possession with intent to distribute a schedule 1 or 2 narcotic controlled substance, possession of methamphetamine, and possession of crack cocaine. Judge Gibbons sentenced appellant to imprisonment for an aggregate period of twelve years. Attorney William Frick represented appellant at trial, and Assistant Solicitors Nicole Wine and Jason Allen prosecuted the case.

Appellant appealed his convictions and sentences. This brief follows.

## STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only. State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct.App. 2009) (quoting State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous” Id (quoting Wilson, supra). The reviewing court “does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court’s ruling is supported by any evidence. State v. Shocumb, 412 SC 88, 770 S.E.2d 436 (Ct. App. 2015) “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” In re M.B.H., 387 SC 323, 326, 692 S.E.2d 541, 542 (2010).

## ARGUMENT

The trial judge erred in considering improper and prejudicial criminal matters at appellant's sentencing hearing.

On March 15, 2019, Police Officers Kierra Fayall and Ed Lockhart executed a search warrant at a residence where appellant lived and recovered narcotics from therein. R. 64, l. 18 – p. 94, l. 9; R. 104, l. 23 – p. 132, l. 7. This led to the filing of numerous drug charges against appellant.

At the sentencing hearing, appellant's prior criminal record was relayed to the trial judge as follows:

Solicitor: Yes, sir. Your Honor, Mr. Crimminger's record goes back to 1987. [He] has three counts of fraudulent check[s], and he also has an additional five counts from that same year. 1988, two counts of fraud check[s]. 1991, two counts of obtaining false – obtaining finances under false pretenses, and one count of fraud check. In 2003, he had probation for nine counts of forgery. In 2004, he had possession of crack cocaine base first offense. [In] 2005, he had a probation revocation for that charge because of a new forgery conviction. In 2016, he pled guilty to six counts of manufacturing, distribution, or possession with intent to distribute a controlled substance, cocaine base or other narcotics, and scheduled 1 or 2 first offense, so all six of those were first offense. He was sentenced to 15 years suspended to 40 months of service and two years of probation. And those are all South Carolina charges as well. [In] 1995, he ha[d] a possession of cocaine in Florida, as well as a probation violation in 1988 in Florida. He had a petty theft conviction in 2003 in Florida, a possession of a firearm by a felon as well as driving under suspension. And the convictions today do qualify as enhancements, and they were indicted as second offense for the charges that he was convicted on today. R. 241, l.22-p. 242, l.19.

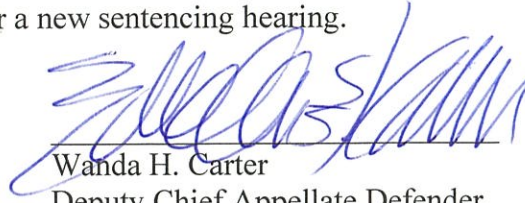
Clearly, it was improper for the trial judge to entertain at sentencing appellant's convictions (cocaine, theft, firearm offense, DUI, and probation matter) from another jurisdiction, i.e., the state of Florida, without any presentation of the details and/or circumstances

about the Florida priors, or sans a review of the Florida statutes to discern whether they were relevant or similar in content to our South Carolina state statutes as the Florida offenses were deemed qualified to be sentencing enhancers. In addition, there was no report on the background information regarding the probation matter brought against appellant that arose in Florida. Undoubtedly, appellant was prejudiced when the list of previous Florida convictions was presented at his sentencing hearing, particularly since these priors were published without clarification or explanation of the same. Clearly, the damaging result was the portrayal of appellant as a larger than life multi-state career criminal, which could not have been helpful to him at sentencing.

In State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976), the Court held that a sentencing judge must not act on surmise or suspicion, but rather give serious consideration to any informative material to punishment, including a defendant's record, and impose sentences with insight and understanding in order to achieve the fair administration of justice. Here, the trial judge did not question appellant regarding the particulars of his Florida criminal record, which presumably negatively influenced the judge at sentencing. The inescapable conclusion is that the trial judge's sentences handed down in appellant's case were issued sans proper insight into appellant's Florida criminal record. The trial judge erred in considering improper and prejudicial criminal matters at appellant's sentencing hearing.

**CONCLUSION**

Based on the foregoing argument, counsel for appellant would request that appellant's sentences be vacated and his case remanded for a new sentencing hearing.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7<sup>th</sup> day of July, 2023.

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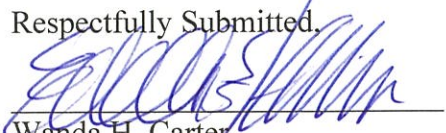
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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Billy Franklin Criminger states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Brian M. Gibbons, which was held on November 7 - 9, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Billy Franklin Criminger.

Respectfully Submitted,  
  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2023.

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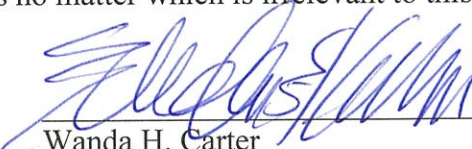
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire Trial Transcript dated November 7-9, 2022
- (2) Indictments

I certify that this designation contains no matter which is irrelevant to this appeal.



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ATTORNEY FOR APPELLANT

This 7th day of July, 2023.

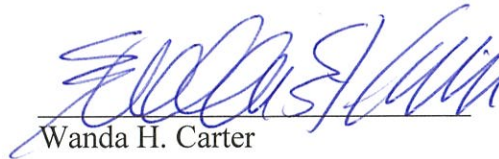
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**CERTIFICATE OF COUNSEL**

**SC Court of Appeals**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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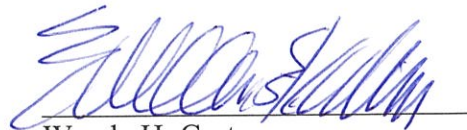
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Billy Franklin Criminger, #141556, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 7th day of July, 2023.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT