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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BREANNA MARIE AUDETTE,

APPELLANT

APPELLATE CASE NO. 2023-001503

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The plea judge erred in accepting appellant's guilty pleas because the pleas were entered involuntarily as appellant was not told that the pleas waived her Sixth Amendment right to confront her accusers in the case.

STATEMENT OF THE CASE

Appellant Breanna Marie Audette pled guilty to thirty counts of unlawful conduct toward a child during the April 2023 term of the Lexington County General Sessions Court before Judge Dedra R. McCaslin. Appellant was sentenced to imprisonment for an aggregate sixteen-year term. Assistant Solicitor Ashley Wellman and Assistant Attorney General Megan Raymer prosecuted the case. Attorney Elnora J. Dean appeared on behalf of appellant in the case.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Nesbitt, 411 S.C. 194, 768 S.E.2d 67(2015) (quoting State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011)).

ARGUMENT

The plea judge erred in accepting appellant's guilty pleas because the pleas were entered involuntarily as appellant was not told that the pleas waived her Sixth Amendment right to confront her accusers in the case.

The state alleged that appellant placed children at unreasonable risk of harm on or around July 17, 2021, during her employment at Harvest Church Child Day Care facility in Lexington, South Carolina. The trial judge summarized the rights waived upon entering guilty pleas as follows:

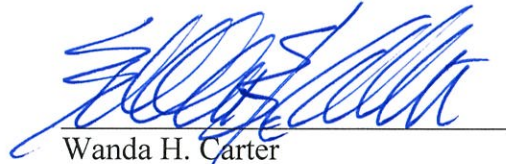
Court: Now you know that you have a right to a jury trial. You could call witness on your behalf. You could have your lawyers cross-examine any of the state's witnesses against you, and you could ...[choose] to testify or not to testify. I'd tell the jury they couldn't even consider that at all in their deliberations. Do you understand your jury trial rights?

Appellant: Yes Ma'am. R. 7, l.24 – p. 8, l. 11.

In Boykin v. Alabama, 395 U.S. 238 (1969), the Court held that before a defendant's plea can be deemed voluntarily given, he or she must have been advised that the plea would waive the privilege against self-incrimination (Fifth Amendment), and the right to a jury trial (Sixth Amendment), and the right to confront one's accusers (Sixth Amendment). In the case at bar, the plea judge failed to advise appellant that her guilty pleas would waive her right to confront her accusers. Therefore, appellant's guilty pleas were unconstitutionally and involuntarily given in the case. The plea judge erred in accepting appellant's guilty pleas because the pleas were entered involuntarily in the case.

CONCLUSION

Based on the foregoing argument, appellant's guilty pleas should be vacated and her case remanded to the lower court for a new proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of January, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Breanna Marie Audette 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 Debra R. McCaslin, which was held on April 13, 2023, 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 Breanna Marie Audette.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

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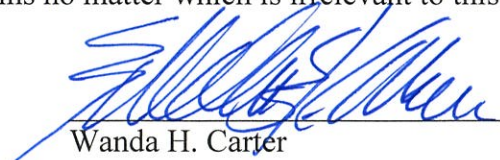
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Guilty Plea Transcript dated April 13, 2023
- (2) Indictments

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



Wanda H. Carter
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ATTORNEY FOR APPELLANT

This 2nd day of January, 2024.

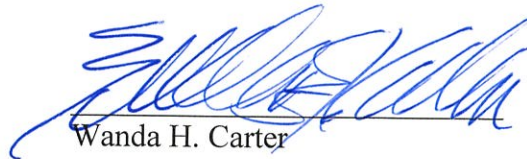
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CERTIFICATE OF COUNSEL

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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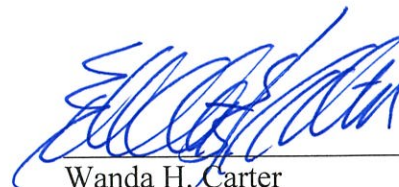
BREANNA MARIE AUDETTE,

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APPELLATE CASE NO. 2023-001503

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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Breanna Marie Audette, #390731, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 2nd day of January, 2024.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT