RECEIVED
Jan 25 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2021-000688

THE STATE, Respondent,

v.

HANEEF AQUIL CHILDS, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

105 Main St
Bennettsville, SC 29512
(843) 479-6516

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. The court erred in accepting Appellant's guilty plea without first determining that he was mentally competent to enter a knowing and voluntary guilty plea.

II. The court erred in accepting Appellant's guilty plea without inquiring in any depth as to nature and effect of medications Appellant 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.

III. 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.

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).

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 conformed his conduct to the requirements of the law.

VI. The court erred in not granting Appellant's post-trial motion to withdraw his plea or in the alternative reconsider his sentence.

COUNTERSTATEMENT OF ISSUES ON APPEAL

I. None of the issues Appellant has raised on appeal are properly preserved for appellate review because the issues were neither raised to nor ruled upon by the plea judge.

II. The circuit court did not err in accepting Appellant's guilty plea based on his competence because Appellant was competent at the time of the plea. (Response to Appellants Issues I and II.)

III. The trial judge did not err in accepting Appellant's guilty plea because a factual basis finding and the terms of the plea agreement were put on the record.

IV. The trial judge properly accepted Appellant's guilty but mentally ill plea because Appellant was mentally ill at the time he committed the crime.

V. The trial judge properly accepted Appellant's guilty but mentally ill plea rather than finding that Appellant was insane.

VI. The trial judge properly denied Appellant's post-trial motion to reconsider his sentence.

STATEMENT OF THE CASE

Appellant was indicted in March of 2017 for murder and possession of a weapon during the commission of a violent crime. Appellant pled guilty but mentally ill to voluntary manslaughter on May 19, 2021, before the Honorable Benjamin H. Culbertson. The weapons charge was dismissed as a result of the plea. He was sentenced to twenty-five years' imprisonment. On May 28, 2021, Appellant filed a timely motion to withdraw his plea or in the alternative reconsider his sentence. The State responded to the motion on June 8, 2021, and it was heard June 18, 2021, before the Honorable Benjamin H. Culbertson. Appellant ultimately withdrew his motion to withdraw the plea but went forward on the motion to reconsider sentence. Appellant's motion was denied.

STATEMENT OF FACTS

On December 3, 2016, Haneef Childs (Appellant), went to the house of Jackie Purvis, Appellant's uncle. (R. 12). Marilyn Purvis, Appellant's Aunt, was cutting hair in a room attached to the back of the house when Appellant came through. (R. 12). Appellant spoke to his aunt and the two ladies that were in the room and then went into the house. (R. 12). The ladies heard gunshots and then Appellant ran out of the doorway and said "Shh. Everything is going to be okay," then got into his van and left. (R. 13). Appellant started a high-speed chase with police and was ultimately stopped a few miles into North Carolina. (R. 13). He jumped out of his vehicle with a handgun and attempted to flee on foot but ultimately was apprehended. (R. 14).

During the investigation it was learned that Appellant was acting abnormally for approximately twenty-four hours before the incident. (R. 14). Appellant had allegedly been hearing voices and had approached some teenagers at a country club party, making odd comments and allegations to them. (R. 14). Based on this information, the State and Appellant reached a plea agreement pursuant to which Appellant would plead guilty but mentally ill to voluntary manslaughter, the lesser-included offense to murder, and the State would dismiss the weapons charge.

At the beginning of the plea hearing, during the initial colloquy the court asked Appellant's attorney if Appellant understood the charge against him, his rights, and the consequences of being convicted. (R. 7). Appellant's trial counsel stated that Appellant did, and that trial counsel agreed with his decision to plead guilty, but mentally ill. (R. 7). The court asked if a competency evaluation had been completed. Appellant's trial counsel confirmed that a competency evaluation had been completed in March of 2017 by Dr. Matthew Gaskins, who was qualified as an expert in forensic psychology, and that Dr. Gaskins had determined that Appellant was competent to stand trial.

At that evaluation Appellant was diagnosed with schizophrenia, cannabis use disorder in a controlled setting, and anti-social personality disorder. He was evaluated again by Dr. Gaskins for the M'Naghten[1] evaluation on August 28, 2019. Dr. Gaskins testified at the plea hearing that "it was our opinion upon the evaluation and review of all the information that was available in the sources of information that he did have, that he did appreciate criminal or, excuse me, legal or moral right from legal moral wrong on December 3, 2016, which is what we were asked to evaluate." (R. 21). He further testified that based on the evaluation there was evidence that Appellant appreciated the wrongfulness of his actions. (R. 24). "This included stuff like fleeing the scene of the crime, returning home to change clothes, failed to stop for the police when they tried to stop him, and I think even pursuing brief foot chase afterwards. These are all seems attempts to avoid apprehension and – he appreciated the wrongness of his actions." (sic) (R. 24-25). Dr. Gaskins ultimately found that Appellant was criminally responsible on or about December 3, 2016, but lacked the capacity to conform. "So yes, he cognitively knew it was wrong. But, no, he could not control his actions due to his mental illness." (R. 30).

Appellant's mother testified at the plea hearing that Appellant had been hospitalized in 2015 because he believed people were trying to kill him. (R. 47). Appellant was admitted into Mercy Philadelphia Psychiatric Ward and was discharged approximately eight to ten days later. (R. 48). Appellant's aunt and Victim's wife testified at the plea hearing as well. She stated that Appellant was acting strange about ten days before the incident and that she told her husband that she hoped he was taking his medication. She further testified that she had learned he went to Tri-county to get some help for hearing voices, but that they did not treat him. (R. 58).

---

[1] An accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts. This is the M'Naghten insanity defense, codified as S.C. Code §17-24-10.

Dr. Lewis Waid, an expert in forensic psychology, also testified on Appellant's behalf. Waid testified that he did not meet with Appellant initially but reviewed his medical records and recommended Appellant's counsel seek further evaluation for Appellant's state of mind. (R. 66). Waid further testified that Appellant consistently suffered from schizophrenia and was not properly medicated to address the voices he was hearing and his other issues of paranoia. (R. 69-81). Waid testified that since placement in the detention center, Appellant was put on anti-psychotic medication and was able to consistently maintain his treatment while incarcerated. (R. 81-86).

Appellant also spoke at the plea hearing prior to the judge's ruling and sentencing. He expressed remorse and took responsibility that his sickness caused his actions that day. (R. 101). Judge Culbertson ultimately accepted Appellant's guilty plea finding that it was made knowingly, voluntarily, after he was fully advised of his rights as a defendant. (R. 107). Appellant was sentenced to twenty-five years' imprisonment. Judge Culbertson came back on the record to clarify "I did accept Mr. Child's guilty plea but it was a plea of guilty but mentally ill. And I don't know if I--I said I'll accept your guilty plea and I think everybody was on the same wavelength that it wasn't a straight up guilty plea, but it was a plea of guilty but mentally ill and that is the plea I accepted." (R. 108-109).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Meanwhile, the matter of whether a defendant is competent to stand trial constitutes a question of fact. United States v. Prigmore, 15 F.4th 768, 776 (6th Cir. 2021). Accordingly, when an issue regarding a competency determination is raised on appeal, "great deference" is afforded to the trial judge due to the fact the trial judge "sits in a better position to ascertain the defendant's faculties," and the trial judge's ruling will be reviewed solely for clear error. State v. Colden, 372 S.C. 428, 441, 641 S.E.2d 912, 920 (Ct. App. 2007). "The established test in South Carolina for determining a defendant's competency to stand trial is whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding." Sims v. State, 313 S.C. 420, 422, 438 S.E.2d 253, 254 (1993). The test for mental competency to plead guilty is no more stringent than the test for competency to stand trial. "It is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." Carnes v. State, 275 S.C. 353, 354-355, 271 S.E.2d 121, 122 (1980).

"A guilty plea must be an informed and intelligent decision." State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 213 (Ct. App. 2002). "A guilty plea is valid if it represents a voluntary and intelligent choice among alternatives available to defendant." Id. at 379, 574 S.E.2d at 213. "Before accepting a guilty plea, the trial court must give the defendant an adequate warning of the consequences of his plea, which should include an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities." State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985). Once a defendant enters a plea of guilty, the decision whether to allow withdrawal of the plea is left to the trial court's discretion. State v. Riddle, 278

S.C. 148, 292 S.E.2d 795 (1982). An abuse of discretion is unsupported by evidence or controlled by an error of law. State v. Hughes, 346 S.C. 339, 342, 552 S.E.2d 35, 36 (Ct. App. 2001).

ARGUMENT

I. None of the issues Appellant has raised on appeal are properly preserved for appellate review because those issues were neither raised to nor ruled upon by the plea judge.

On appeal, Appellant has identified six allegations of error on the part of the plea judge. More specifically, he contends: (1) The Court erred in accepting Appellant's guilty plea without first determining that he was mentally competent to enter a knowing and voluntary guilty plea. (2) 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. (3) 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) The court erred in accepting Appellant's guilty plea without first making a finding upon the record that 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) 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. (6) The Court erred in not granting Appellant's post-trial motion to withdraw his plea or in the alternative reconsider the sentence. Importantly though, none of those issues were raised or ruled upon and therefore not preserved for Appellate review.

In order for an issue to be preserved for appellate review, it must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d

910, 912-913 (Ct. App. 2004). "Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-694 (2003). Appellant or his counsel did not make any objections at the plea hearing regarding Appellant's competence that day or the medications that he was taking that day. At the end of the plea hearing Appellant or counsel for Appellant did not make any objections to the trial judge's findings on the record or the terms of the plea agreement, or any objection to anything at all. Therefore, the following issues were not raised, not ruled upon, and not preserved for appellate review.

II. The circuit court did not err in accepting Appellant's guilty plea based on his competence because Appellant was competent at the time of the plea.

Appellant claims that 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. Further, Appellant argues that the trial court erred in accepting his guilty plea without inquiring in any depth as to the nature and effect of any medications that the defendant had been taking at his plea. First, these issues are not preserved for appellate review because there was no objection at the time of the guilty plea that Appellant was not competent or that the medications he was taking affected him to an extent that he could not knowingly and intelligently enter into a plea. Second, even if preserved the plea judge did not err because there is evidence in the record to support the trial court's finding of Appellant's competence.

Fundamentally, a person must be mentally competent in order to be validly tried for and convicted of a criminal offense. State v. Bellardino, 429 S.C. 563, 567, 841 S.E.2d 621, 623 (2020); see Drope v. Missouri, 420 U.S. 162, 171 (1975) ("[A] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial."). A person is considered to be competent to stand trial if that person has: (1) a rational and factual understanding

of the proceedings; and (2) sufficient present *capacity or ability* to consult with and cooperate with defense counsel. Dusky v. United States, 362 U.S. 402, 402 (1960); see State v. Bell, 293 S.C. 391, 396, 360 S.E.2d 706, 708-709 (1987) ("[T]he test of mental competence does not focus on whether a defendant in fact cooperates with his counsel; the question is whether he has sufficient mental capacity to do so if he so chooses."). Generally speaking, all individuals are presumptively competent to stand trial, and, in South Carolina, the defendant bears the burden of establishing incompetency by a preponderance of the evidence in order to be deemed incompetent. State v. Reed, 332 S.C. 35, 39, 503 S.E.2d 747, 749 (1998); see also Medina v. California, 505 U.S. 437, 452-453 (1992) (recognizing it is constitutionally permissible to presume competency and place the burden of establishing incompetency on the defendant); Eaddy v. Dorn, 289 S.C. 356, 359, 345 S.E.2d 513, 515 (Ct. App. 1986) ("Our Supreme Court has held where a person has not been adjudicated incompetent and is not insane so as to warrant confinement in an institution, persons dealing with him have a right to rely on the presumption of mental competency unless they have actual notice otherwise."). In the case sub judice, the trial judge—when confronted with the issue of Appellant's competency—was presented with and considered evidence and testimony from an expert forensic psychiatrist, who conducted a court-ordered evaluation of Appellant and concluded Appellant met the requisite legal standard for being competent to stand trial. See United States v. Lebrón, 76 F.3d 29, 32 (1st Cir. 1996) ("If a psychiatrist has determined that a defendant is competent, a court is not required to hold a further evidentiary hearing absent extenuating circumstances.").

At the guilty plea the trial judge asked Appellant's counsel if he understood the charges against him, his rights as a defendant and the consequences of being convicted of the crime. (R. 7). Appellant's counsel confirmed that he did and stated that she agreed with this decision to plead

guilty but mentally ill. (R. 7). Appellant's counsel further informed the court that Appellant had been able to assist her in preparation of his defense. (R. 8). The trial judge was then informed that a competency hearing had been completed by Dr. Matthew Gaskins on March 7, 2017, and Appellant was determined to be competent to stand trial. (R. 8).

On cross-examination of Dr. Gaskins, Appellant's counsel asked if he had any information today that would alter or change the opinion of competency from 2017 to which Gaskins stated that "even though we already assess (sic) capacity formally in 2017, I always briefly go over, now, why are we here?--- we kind of screen for capacity. So full assessment in 2017, we felt he had capacity. And, then, the screening test that we did, basically, in 2019 we felt he had capacity still and I have no other information to change that opinion." (sic) (R. 31). Gaskins also testified that a person with schizophrenia, if properly diagnosed and medicated, could live a normal life without causing problems. (R. 40). Appellant's own forensic psychologist testified that since incarcerated he has been able to consistently maintain his treatment and was therefore properly medicated. (R. 86). Appellant's mom also testified that she spoke with Appellant on a regular basis since he has been in the detention center, and he appeared to be thinking clearly. (R. 54).

The trial judge also completed the colloquy with Appellant. (R. 8-12). In this colloquy the trial judge advised him of what he was charged with, all his rights, consequences of pleading, inquiring whether he was under the influence of drugs or alcohol that would affect the ability to know why he was there, whether he understood everything and if he had any questions. (R. 8-12). Appellant was able to properly follow along in the conversation and through his answers showed that he understood the questions. (R. 8-12). At the end of the plea hearing before the trial judge accepted his guilty plea, Appellant also spoke on his own behalf to the court. He articulately explained his remorse and responsibility. (R. 101). While the trial judge did not specifically find

Appellant competent on the record, the evidence in the record supports the trial judge's implicit finding that Appellant was competent by accepting his plea. Therefore, the court did not abuse his discretion in accepting the plea.

III. The trial judge did not err in accepting Appellant's guilty plea because a factual basis finding and the terms of the plea agreement were put on the record.

Appellant alleges that the trial judge 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. Appellant's argument lacks merit because both a factual basis finding, and the terms of the plea agreement were placed on the record.

At the very beginning of the plea hearing the State called the case.

> "We're here on indictment 2017-GS-34-54. That's an indictment for murder which we have been agreeable to accept a plea for voluntary manslaughter... He has an additional indictment, your honor, on indictment 2017-GS-34-55. That was an indictment for possession of a weapon during a violent crime. As part of this plea, we are dismissing that particular indictment, but the defendant is entering a plea on voluntary manslaughter on the initial indictment, your honor."

(R. 4). The State then gave a statement of the facts for the record, to which Appellant understood and agreed. (R. 12-15). Both the State and Appellant had a forensic psychologist testify about Appellant's mental state at the time of the crime and at the time of the hearing. (R. 17-44; 60-90). The trial judge heard from Appellant's mom and aunt in regard to the Appellant's mental capacity in the days leading up to the incident. (R. 45-59). Appellant's counsel also gave a description of Appellant's general history as well as his mental history. (R. 90-100). It was after hearing all of this that the trial judge then made the determination to accept Appellant's guilty plea. He stated "I will accept [his] guilty plea. I find it's made knowingly, voluntarily, fully advised of your rights as a defendant, and the nature of the charge against you and the consequences of your guilty plea. I also find that there is a factual basis to support the charge against you. (sic) (R. 107-108). While

the trial judge did not specifically go through each element and the fact that supported it, he did make a finding on the record and the record supports his decision.

Appellant also argues that Appellant allegedly agreed to waive his right to a jury trial, 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 a weapons charge. (Initial Brief of Appellant pg. 6). At the later motions hearing, there was some conversation that Appellant had believed there was an agreement to the twenty-year cap for the charges, however the judge determined that an agreement for the twenty-year cap did not exist. The State put on the record an email between the parties that stated "This will confirm that I have agreed to accept a plea of guilty but mentally ill to voluntary manslaughter in the above referenced matter, State v. Childs, with an exposure of 30 years. Please be advised that the siblings of Jackie Purvis will most assuredly be asking for a sentence at or near the higher end of the sentencing spectrum. Under the circumstances, I will not object to a sentence of 20 years and will explain this to the judge in chambers. However, we will not place on the record a cap. The sentence, as always, will be left up to the judge." (R. 527-528). The trial judge found that there was no agreement to a cap of twenty years, therefore all terms of the plea agreement were placed on the record.

IV. The trial judge properly accepted Appellant's guilty but mentally ill plea because Appellant was mentally ill at the time he committed the crime.

Appellant alleges that the trial judge erred in accepting Appellant's guilty plea because he did not make 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. 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. S.C. Code Ann. §17-24-20(A) (1989 Cum. Supp.). 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).

As a verdict, guilty but mentally ill exists to: (1) reduce the number of defendants being relieved of criminal responsibility due to mental health issues; and (2) ensure defendants who are mentally ill receive treatment while incarcerated for the benefit of both the defendant and society as a whole. State v. Wilson, 306 S.C. 498, 503-504, 413 S.E.2d 19, 22; see State v. Hornsby, 326 S.C. 121, 130, 484 S.E.2d 869, 874 (1997) ("The GBMI statute ensures the jury applies the legal definition of insanity correctly by underscoring that a person may be mentally ill, yet not legally insane."). Significantly, if a defendant is guilty but mentally ill in the sense he lacked sufficient capacity to conform his conduct to the requirements of the law because of mental disease or defect, the defendant *is* considered to be criminally responsible for his actions, is not considered to be less culpable as a matter of law, and is punished just as he would have been punished if he had simply been found guilty. See S.C. Code Ann. § 17-24-70 (explaining a defendant found to be guilty but mentally ill "must be sentenced by the trial judge as provided by law for a defendant found guilty" but, if sentenced to a term of incarceration, must first be taken to facility designated by the Department of Corrections for treatment); State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004) ("Guilty but mentally ill is still guilty. The difference between guilty and GBMI pertains only to post-sentencing medical treatment."); see also Wilson, 306 S.C. at 508, 413 S.E.2d at 24-25 ("South Carolina does not recognize that one acting under an irresistible impulse is somehow less culpable. Instead, the statutory scheme specifically provides that one acting under such an impulse is *guilty*, albeit guilty but mentally ill." (footnote and internal quotations omitted)).

Here, Gaskins, the State's forensic psychologist testified that "[Appellant] was criminal responsible on or about December 3, 2016, but that he lacked the capacity to conform on December 3, 2016. So, yes, he cognitively knew it was wrong. But, no, he could not control his actions due to his mental illness." (sic) (R. 30). This was a guilty plea where Appellant asserted that he was guilty but mentally ill and the State put up an expert that testified according to that plea. The fact that Appellant was guilty but mentally ill was uncontested and therefore there wasn't a need for the trial judge to specifically note on the record that he found by a preponderance of evidence that Appellant was guilty but mentally ill. The trial judge's acceptance of the guilty plea implicitly means that he agreed and found that Appellant was guilty but mentally ill. Therefore, the trial judge properly accepted the guilty but mentally ill plea.

V. The trial judge properly accepted Appellant's guilty but mentally ill plea rather than finding that Appellant was insane.

Appellant alleges that because he suffered from paranoid schizophrenia he was insane at the time of the crime and therefore the trial judge erred in accepting the plea of guilty but mentally ill. In South Carolina, the applicable standard for determining whether a defendant is insane is "the so-called M'Naughten test." State v. Law, 270 S.C. 664, 667, 244 S.E.2d 302, 304 (1978); see State v. Wilson, 306 S.C. 498, 505, 413 S.E.2d 19, 23 (1992) ("South Carolina has rejected the so-called 'irresistible impulse' test as an insanity defense. . . . This test essentially engages the court to determine whether the defendant was acting, at the time of his alleged criminal behavior, pursuant to an irresistible impulse, or was unable to control himself."). Pursuant to that test, "a defendant is considered legally insane if, at the time of the offense, he lacked the capacity to distinguish moral or legal right from wrong." State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); see S.C. Code Ann. § 17-24-10(A) ("It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, 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."). If a defendant is legally insane in that he lacked the capacity to distinguish right from wrong at the time of the crime or to recognize the charged act as wrongful, the defendant is considered to be not responsible for his actions under the law. Davenport v. State, 301 S.C. 39, 40, 389 S.E.2d 649, 649 (1990); see State v. Grimes, 292 S.C. 204, 205, 355 S.E.2d 538, 539 (1987) ("[A] person is insane if, due to a mental disease or defect, he lacks the capacity (1) to distinguish moral or legal right from moral or legal wrong, *or* (2) to recognize the particular act charged as morally or legally wrong.").

"In every criminal case, it is presumed the defendant is sane." State v. Lewis, 328 S.C. 273, 277, 494 S.E.2d 115, 117 (1997). "[A] defendant is considered legally insane if at the time of the offense, he lacked the capacity to distinguish moral or legal right from wrong." State v. South, 310 S.C. 504, 508, 427 S.E.2d 666, 669 (1993). As mentioned above 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. S.C. Code Ann. §17-24-20(A) (1989 Cum. Supp.).

First, as mentioned above it was uncontested that Appellant was guilty but mentally ill at the time of the crime. Next if it had been contested, the testimony by the State's expert Gaskins that "It was our opinion upon the evaluation and review of all the information that was available in the sources of information that he did have, that he did appreciate criminal or, excuse me, legal or moral right from legal moral wrong on December 3, 2016." (R. 21). When Gaskins was further

questioned as to that opinion, he gave examples of Appellant's behavior that showed he appreciated the wrongfulness of his actions. "These included stuff like fleeing the scene of the crime, returning home to change clothes, failed to stop for the police when they tried to stop him, and I think even pursuing a brief foot chase afterwards. These are all seems attempts to avoid apprehension and he appreciated the wrongness of his actions." (sic) (R. 24-25). Appellant did not lack the capacity to distinguish moral or legal right from wrong, so he was not insane at the time of the crime. Therefore, the trial judge did not err in accepting the guilty but mentally ill plea.

VI. The trial judge properly denied Appellant's post-trial motion to reconsider his sentence.

First, Appellant seems to argue that the trial judge should not have found that Appellant did not want to proceed with the withdrawal of his guilty plea. A hearing was held on June 18, 2021, to address Appellant's motion to withdraw plea or in the alternative reconsider sentencing. At this hearing Appellant's counsel indicated to the court that Appellant no longer wanted to go forward on the motion to withdraw the plea. (R. 510-514). Judge Culbertson questioned Appellant about whether he wanted to go forward on the motion to withdraw the guilty plea. (R. 514). Judge Culbertson explained to Appellant that if he withdrew the guilty plea he would be facing the murder charge he was originally indicted for and would not have the offer of voluntary manslaughter that he originally pled to. (R. 514-515). Appellant indicated that he understood and that is why he did not want to go forward on that motion and only the motion to reconsider the sentence. (R. 514-515). Therefore, there was no motion to withdraw for the trial judge to rule on.

Second, Appellant argues that the trial judge erred in denying Appellant's motion to reconsider. Specifically, Appellant argues the trial judge erred by not honoring or inquiring into the plea agreement.

Appellant's counsel stated that her position was to reach a resolution with a sentence of no greater than 20 years. (R. 516-517). "Through the week of May the 3rd, 2021, Ms. Munnerlyn and I spoke several times in an effort to resolve this case without a trial. My position never changed and refer to the deal of a plea deal that allowed my client to waive his right to a trial, waiving his right to assert his affirmative defense of not guilty by reason of insanity. In exchange for that, Ms. Munnerlyn was to notify the Court that she did not object or oppose a cap of 20 years and would remain silent on the sentence itself." (R. 517). The State argued that there was never an agreement and placed in an email that was sent. "This will confirm that I have agreed to accept a plea of guilty but mentally ill to voluntary manslaughter in the above referenced matter, State v. Childs, with an exposure of 30 years. Please be advised that the siblings of Jackie Purvis will most assuredly be asking for a sentence at or near the higher end of the sentencing spectrum. Under the circumstances, I will not object to a sentence of 20 years and will explain this to the judge in chambers. However, we will not place on the record a cap. The sentence, as always, will be left up to the judge." (R. 527-528). The judge ruled that there was no agreement of a cap of 20 years. He ultimately denied the motion stating "I think the sentence is appropriate. He's not asking to withdraw his guilty plea so it did not influence his decision to plead guilty; otherwise, he'd want to proceed with the withdrawal of his guilty plea at this time." (R. 530).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

105 Main St.
Bennettsville, SC 29512
(843) 479-6516

BY: _____
AMBREE M. MULLER
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 377-1141

ATTORNEYS FOR RESPONDENT

January 25, 2024

RECEIVED
Jan 25 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2021-000688

THE STATE, Respondent,

v.

HANEEF AQUIL CHILDS, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

BY: _____
AMBREE M. MULLER
Bar # 104213

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 779-8477
ATTORNEYS FOR RESPONDENT

January 25, 2024

RECEIVED
Jan 25 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2021-000688

THE STATE — Respondent,

v.

HANEEF AQUIL CHILDS, — Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the Final Brief of Respondent on Aimee J. Zmroczek, counsel of record for Appellant, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 25th day of January, 2024.

Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211