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Jan 29 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from McCormick County

Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN EDWARD ATWELL,

APPELLANT

APPELLATE CASE NO. 2023-001370

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
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The plea judge erred in accepting appellant's guilty plea because the plea was entered involuntarily as appellant was not told that the plea would result in a waiver of the Sixth Amendment right to confront the state's accusers against him in the case.

STATEMENT OF THE CASE

Appellant John Edward Atwell pled guilty to distribution of methamphetamine on August 7, 2023, at the McCormick County General Sessions Court before Judge William P. Keesley. Appellant was sentenced to imprisonment for a period of seven years, suspended upon the service of eighteen months and five years probation. Attorney Jason C. Chehoksi represented appellant at the plea proceeding, and Assistant Solicitor Douglas W. Fender, II, prosecuted the case. Judge Keesley amended appellant's sentence at a sentencing reconsideration hearing held on August 16, 2023, at the McCormick County General Sessions Court. Appellant's sentence was amended to seven years imprisonment, suspended upon the service of ninety days and three years probation. 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 plea because the plea was entered involuntarily as appellant was not told that the plea would result in a waiver of the Sixth Amendment right to confront the state's accusers against him in the case.

Appellant was charged for allegedly selling methamphetamine to a confidential informant on March 18, 2022. The trial judge summarized the rights waived upon entering a guilty plea as follows:

Court: When you plead guilty, you give up important rights including your right to remain silent and your right to a jury trial, you know that?

Appellant: Yes, sir.

Court: If you want a jury trial you're presumed innocent, the state has to prove you guilty beyond a reasonable doubt to convict you...you get to see, hear, and have your lawyer cross-examine every witness against you, you understand?

Appellant: Yes, Sir.

Court: By pleading guilty you give up all these rights...giving up defenses and challenges to evidence.

Appellant: Yes Sir. R. 5, lines 8-20.

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 his guilty plea would waive his right to confront his accusers. Therefore, appellant's guilty pleas were unconstitutionally and involuntarily given in

the case. The plea judge erred in accepting appellant's guilty plea because the plea was involuntarily entered.

CONCLUSION

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

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of January, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Edward Atwell states that:

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 plea before Judge William P. Keesley, which was held on August 7, 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 John Edward Atwell.

Respectfully Submitted,

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of January, 2024.

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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 August 7, 2023
- (2) Reconsideration Hearing Transcript Dated August 16, 2023
- (3) Indictment

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

s/Wanda H. Carter

Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense

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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.”

s/Wanda H. Carter

Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense

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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 Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on John Edward Atwell at 1519 Jefferson St, McCormick, SC 29835, this 29th day of January, 2024.

s/Wanda H. Carter

Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT