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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEYON PROPHET,

APPELLANT

APPELLATE CASE NO. 2023-000752

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

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

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court abused its discretion in denying the motion to relieve Counsel Breeden where both Appellant and Counsel Breeden informed the court that their attorney-client relationship had deteriorated to the point where Counsel Breeden could not effectively communicate with or represent Appellant?

STATEMENT OF THE CASE

Appellant was indicted during the August 2019 term of the Richland County grand jury for one count of armed robbery. R. 421-422. The State, represented by C. Dale Scott and R. Keith Taylor, Jr., called the case to trial on April 24, 2023, before the Honorable Jocelyn Newman and a jury. R. 1. Appellant was represented by Connie Breeden. R. 1. After a three-day trial Appellant was found guilty as indicted. R. 402, ll. 17-24. Appellant was sentenced to fifteen years incarceration. Appellant was given credit for pre-trial detention while in jail, but the court declined to give him credit for the 777 days spent on house arrest. R. 417, l. 12-R. 418, l. 5; R. 423-424.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A motion to relieve counsel is addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion. State v. Childers, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007) *citing* State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005); State v. Graddick, 345 S.C. 383, 385, 548 S.E.2d 210, 211 (2001). The movant bears the burden to show satisfactory cause for removal. Id.

ARGUMENT

The circuit court abused its discretion in denying the motion to relieve Counsel Breeden where both Appellant and Counsel Breeden informed the court that their attorney-client relationship had deteriorated to the point where Counsel Breeden could not effectively communicate with or represent Appellant.

Relevant Facts

Prior to jury selection Counsel Breeden informed the court that it needed to take up an attorney-client matter outside the presence of the prosecution. The courtroom was cleared, and an in-camera hearing was held. R. 42, ll. 9-20. Counsel Breeden informed the court that her relationship with Appellant had deteriorated to the point that they could not communicate with each other. She stated that Appellant had not come to her office or spoken to her on the phone to review his case. She further informed the court that Appellant and his family were being very hostile towards her, cursing at her, and following her around the courthouse threatening her. The relationship between Appellant and Counsel Breeden had begun to deteriorate in March when Appellant learned his case was coming up for trial. At the court's questioning Counsel Breeden clarified that while Appellant had not outright threatened her, his language, mannerisms, and how he communicated with her was threatening. Counsel Breeden stated that she was fearful of Appellant and that she could not represent him. R. 3, l. 6-R. 6, l. 22.

Appellant maintained that he and his family had attempted to contact Counsel Breeden without success. He stated the only time he heard from Counsel Breeden was to inform him to come to court. Appellant had applied for a public defender after informing the court the previous term that he did not want Counsel Breeden representing him. He was told that he would be assigned a public defender once Counsel Breeden had relieved herself from his case. However,

Counsel Breeden informed the court that Appellant had been conflicted out of the public defender's office on this case. Appellant additionally stated that he had witnesses for his case that Counsel Breeden had not contacted. He informed the court that there was no communication between himself and Counsel Breeden and confirmed that he did not want her to represent him. R. 7, l. 13-R. 24, l.

After discussing the matter with Appellant and Counsel Breeden the circuit court denied the motion to relieve counsel stating,

But listen to me. Y'all don't have to like each other. Y'all don't have to get along. You don't have to want to get a beer later. You want to have to -- you don't have to want to talk to each other, be friendly, any of that. You're entitled to a competent attorney, which I believe Ms. Breeden to be and competent representation that falls within the standard set by the Court, by the Supreme Court.

You're not entitled to an attorney that you like, or that returns every phone call, or that comes to visit you in Beaufort, or comes to visit you at the jail all the time. If what she has done -- and I don't know. I'm not going to ask her today. That'd be a different matter for a different day. But if she has given you competent representation, that's all you're entitled to, whether you like her, don't like her or, you know, takes some issue with the way she works.

I mean, you've never been a lawyer before. You've never represented anybody charged with a crime, and so you don't -- I mean, and I say that. I don't mean to be disrespectful. But you don't exactly know what she's doing, what she's working with, how she handles things. And she may even do things differently than I would do it or than the next attorney would. I don't know. But you're not entitled to have things exactly the way you want them done. You're entitled to competent representation.

And so I'm not going to relieve Ms. Breeden from your case. Y'all are gonna have to talk about whatever you need to talk about if you haven't in the past four years, three months, and five days since this charge has been pending.

R. 30, l. 8-R. 31, l. 17

Discussion

The Sixth Amendment provides that all criminal defendants shall enjoy the right to have assistance of counsel for their defense. United States v. Gonzalez-Lopez, 548 U.S. 140, 144 (2006). However, “[t]he Sixth Amendment does not confer an absolute right to be represented by one’s preferred attorney.” State v. Sanders, 341 S.C. 386, 389, 534 S.E.2d 696, 697 (2000) *citing* Wheat v. United States, 486 U.S. 153 (1988). “This right is circumscribed by the trial court’s obligation to safeguard the integrity of the proceedings and ensure trials are conducted according to the ethical standards of the profession.” Id. *citing* United States v. Howard, 115 F.3d 1151, 1155 (4th Cir.1997); United States v. Williams, 81 F.3d 1321, 1324 (4th Cir.1996). “Although the right to an attorney of one’s choosing is not unlimited, the Sixth Amendment does give some protection to a criminal defendant’s selection of retained counsel.” Id. at 390, 534 S.E.2d 697 *citing* United States v. Cunningham, 672 F.2d 1064, 1071 (2d Cir.1982). “Where this Sixth Amendment right is invoked, the court must balance the defendant’s right to his own freely chosen counsel against the need to maintain the highest ethical standards of professional responsibility.” Id. at 390, 534 S.E.2d at 697–98 *citing* Cunningham, 672 F.2d at 1071.

Trial courts are afforded wide latitude “in balancing the right to counsel of choice with the needs of fairness, and its interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.” State v. Cottrell, 421 S.C. 622, 634-635, 809 S.E.2d 423, 430 (2017) (cleaned up). “[T]he *erroneous* deprivation of a defendant’s counsel of choice is a structural error in violation of the Sixth Amendment.” Id. at 634, 809 S.E.2d at 430 (emphasis in original).

In evaluating whether the circuit court abused its discretion in denying a motion to relieve or substitute counsel, the appellate court may consider several factors including “the timeliness

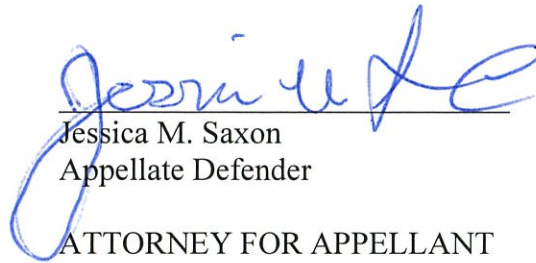
of the motion, the adequacy of the lower court's inquiry into the defendant's complaint, and whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense." State v. Sims, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991).

Under the factors articulated in Sims, *supra*, the circuit court abused its discretion in denying the motion to relieve counsel. Appellant timely made a motion to relieve counsel during the March 2023 term of court, some thirty days prior to trial. Counsel Breeden's motion to be relieved could be considered untimely as it was made on the morning of trial. However, it did not appear that Counsel Breeden had grounds to move to be relieved prior to that morning.

More importantly, both Appellant and Counsel Breeden informed the court that their attorney-client relationship had deteriorated to the point where they could not effectively communicate. Further, both indicated that they had not had any real discussions about the case or any possible defenses to the charge. Counsel Breeden even informed the court that she was scared of Appellant which greatly impacted her ability to effectively represent him. The statements made during the ex parte hearing regarding Counsel Breeden's fears and discomfort in continuing to represent Appellant, along with both parties' admissions that they had not fully discussed the case or defenses, constituted adequate grounds upon which to relieve counsel. Appellant was denied his Sixth Amendment right to effective counsel of his choice and he is entitled to a new trial.

CONCLUSION

By reason of the forgoing argument, Appellant respectfully request this Court vacate his conviction and remand his case back to the General Sessions Court of Richland County for a new trial.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 3rd day of April, 2024.

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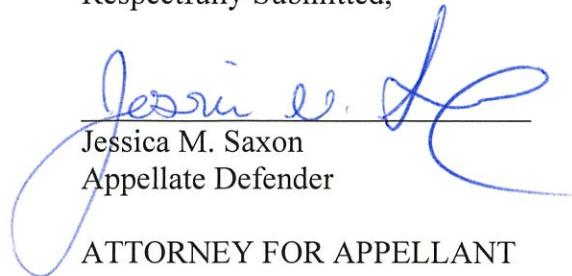
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Keyon Prophet states:

1. She is 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 Jocelyn J. Newman, which was held on April 24-26, 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 Keyon Prophet.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 3rd day of April, 2024.

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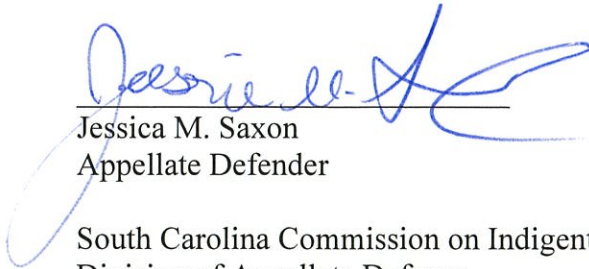
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment: 2019-GS-40-03845
- (2) Sentencing sheet
- (3) Trial Transcripts Dated April 24, 25, and 26, 2023
- (4) Ex-parte Hearing Transcript

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



Jessica M. Saxon
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This 3rd day of April, 2024.

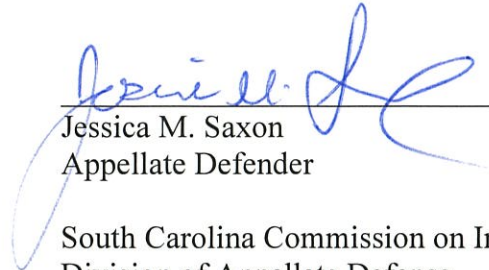
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CERTIFICATE OF COUNSEL

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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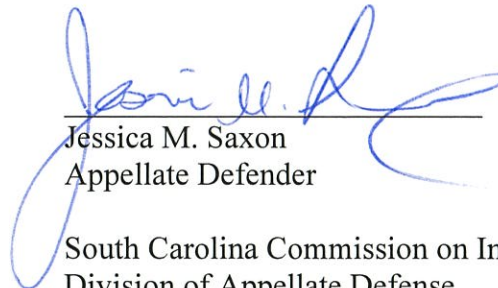
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APPELLATE CASE NO. 2023-000752

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 Keyon Prophet, #390828, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 3rd day of April, 2024.



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