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Apr 17 2024

SC Court of Appeals

asSTATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Heath P. Taylor, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KARI K. RYANT,

APPELLANT

APPELLATE CASE NO. 2023-000911

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

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The trial judge erred in allowing appellant to appear pro se at his sentencing hearing as appellant did not voluntarily waive his right to counsel at that time because his mental illness rendered him incapable of comprehending the dangers and disadvantages of self-representation.....4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

<u>Anders v. California</u> , 386 U.S. 738, 87 S.Ct. 1396 (1967).....	7
<u>Faretta v. California</u> , 422 U.S. 806 (1975)	5
<u>Prince v. State</u> , 301 S.C. 422, 392, S.E.2d 462 (1990)	5
<u>State v. Black</u> , 400 S.C.10, 732 S.E.2d 880 (2012).....	3
<u>State v. Dial</u> , 429 S.C. 128, 838 S.E.2d 501 (2020)	6
<u>State v. Edwards</u> , 384, S.C. 504, 682 S.E.2d 820 (2009)	3
<u>State v. Mazique</u> , 419 S.C. 282, 797 S.E.2d 730 (2016)	3

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing appellant to appear pro se at his sentencing hearing as appellant did not voluntarily waive his right to counsel at that time because his mental illness rendered him incapable of comprehending the dangers and disadvantages of self-representation.

STATEMENT OF THE CASE

Appellant Kari K. Ryant was convicted of murder per jury trial held during the October, 2022 term of the Orangeburg County General Sessions Court before Judge Heath P. Taylor. Assistant Solicitors Thomas B. Scott and Brad Riley prosecuted the case, and Attorney Scott Palmer represented appellant at trial. Sentencing hearings were held on January 12, 2023, and April 24, 2023, before Judge Taylor. Assistant Solicitor Thomas B. Scott appeared on behalf of the state at both sentencing hearings. Attorney Scott Palmer represented appellant during the sentencing hearing held on January 12, 2023. Appellant appeared pro se at the April 24, 2023 sentencing hearing. Judge Taylor sentenced appellant to imprisonment for a period of fifty years.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

In criminal cases, this Court sits to review errors of law only, and is bound by the trial court's factual findings unless those findings are clearly erroneous. State v. Mazique, 419 S.C. 282, 797 S.E.2d 730 (2016) citing to State v. Edwards, 384, S.C. 504, 682 S.E.2d 820 (2009). Thus on review, the Court is limited to determining whether the trial court abused its discretion, and an abuse of discretion occurs when the Court's decision is unsupported by the evidence controlled by error of law. Mazique, citing to State v. Black, 400 S.C.10, 732 S.E.2d 880 (2012). The appellate court does not re-evaluate the facts based on its own view of the facts, but simply determines whether the trial court's ruling is supported by any evidence. Mazique, citing to Edwards, *supra*.

ARGUMENT

The trial judge erred in allowing appellant to appear pro se at his sentencing hearing as appellant did not voluntarily waive his right to counsel at that time because his mental illness rendered him incapable of comprehending the dangers and disadvantages of self-representation.

On the afternoon of May 10, 2020, Naja Sanders' dead body was discovered near an area around Whitman and Calhoun Streets in Orangeburg County. R. 112, 1.4-p.119, 1.22.

At trial, Sanders' mother testified that appellant came to her residence on May 10, 2020, and asked of her son's whereabouts. Shortly thereafter, Sanders, who was inside her home, departed from inside and walked out with appellant on that day. R. 120, 1.14-p. 132, 1.12.

State's witness Shanna Jenkins testified that she was out walking in the area in question around 5:00 p.m. on May 10, 2020, when she encountered Sanders and another male walking together in the same location. Jenkins stated that she heard yelling after she passed by the two men. Jenkins added that when she returned to the scene to investigate, she found Sanders lying on the ground in the same area. R. 247, 1.4-p. 257, 1.20.

The autopsy report revealed that Sanders died from a gunshot wound to the back of his neck. R. 295, 1.14-20.

Appellant was charged with Sanders' murder pursuant to a review of video surveillance gathered from the streets Sanders and appellant travelled on the day in question, and per two police interrogations of appellant on two separate occasions thereafter.

On October 20, 2020, appellant was convicted of murder via trial by jury. Trial counsel was present during appellant's first sentencing hearing session; however, at that time appellant expressed a desire to appear pro se. At the end of the first sentencing hearing, an agreement was

reached wherein the trial judge agreed to assign another attorney to represent appellant prior to the next sentencing hearing. R. 373, 1.10-14. R. 386, 1.16-23.

Subsequently, at the second sentencing hearing session, appellant again announced his decision to proceed pro se. R. 393, lines 1-14. After answers were submitted by appellant in response to questions regarding issues surrounding the right to counsel, the trial judge ruled that appellant voluntarily waived his right to counsel. R. 397, lines 19-22.

At both sentencing hearings, the trial judge advised appellant with respect to the fact that he lacked the required legal knowledge and training to represent himself, and listed the reasons why his decision to represent himself was an unwise undertaking. R. 373, 1.19-p. 377, 1.18. R. 393, 1.18-p. 397, 1.10. Nonetheless, appellant remained steadfast regarding his choice to proceed pro se at his sentencing hearing. The trial judge concluded that appellant's waiver of his right to counsel was voluntarily entered prior to the second sentencing hearing.


To establish a valid waiver of counsel, the accused must be advised of his right to counsel and adequately warned of the dangers and disadvantages of self-representation. See Prince v. State, 301 S.C. 422, 392, S.E.2d 462 (1990), citing to Faretta v. California, 422 U.S. 806 (1975). Note that in Prince, the Court held that the defendant was so mentally disturbed at the time of the plea (during which time he appeared pro se) that he could not have understood the dangers and disadvantages of self-representation, and thus could not have entered a valid knowing and voluntary waiver of his right to counsel in the case. Similarly, in the case at bar, it was revealed that petitioner was previously housed at the McCord Center for alcohol/drug abuse and mental illness issues. R. 374, 1.7-10. Clearly, this was a matter that should have been addressed in depth during appellant's sentencing hearings in connection with his resolve to appear pro se. Therefore, in light of the fact that appellant apparently possessed mental challenges, then this clearly

rendered appellant's waiver of his right to counsel to be an invalid waiver in the case. It appears that appellant probably lacked the mental capacity to enter a valid waiver of his right to counsel. A mental impairment constitutes a factor in assessing the validity of a defendant's waiver of the right to counsel. See State v. Dial, 429 S.C. 128, 838 S.E.2d 501 (2020).

The trial judge erred in allowing appellant to appear pro se at his sentencing hearing as his apparent mental issues precluded a voluntary waiver of his right to counsel at that time.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that appellant's sentence be vacated and his case remanded to the lower court for a new sentencing proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of April, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kari K. Ryant 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 Heath P. Taylor, which was held on , 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 Kari K. Ryant.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of April, 2024.

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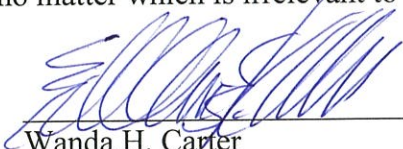
APPELLATE CASE NO. 2023-000911

**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 October 17-19, 2022
- (2) Sentencing Hearing Transcript dated January 12, 2023
- (3) Sentencing Hearing Transcript dated April 24, 2023
- (4) Indictments

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



Wanda H. Carter
Deputy Chief Appellate Defender

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ATTORNEY FOR APPELLANT

This 17th day of April, 2024.

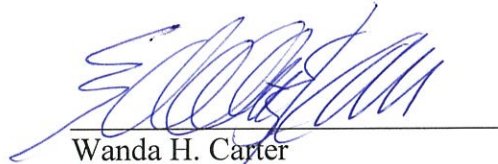
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CERTIFICATE OF COUNSEL

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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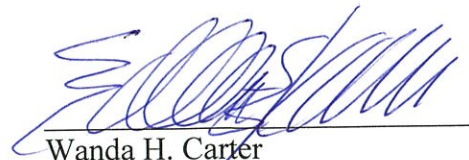
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APPELLATE CASE NO. 2023-000911

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 Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Kari K. Ryant, #390789, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy, Turbeville, SC 29162, this 17th day of April, 2024.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT