

STATE OF SOUTH CAROLINA
S.C. Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

April 22, 2024

RECEIVED

APR 29 2024

SC Court of Appeals

In re: State v. Bobby Ray McClure, Jr.,
Case No.: 2022-000347

Dear Court of Appeals;

This matter is being respectfully brought to the attention of this Honorable Court of Appeals, in lieu of Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), which affords the Appellant the right by statute, to include additional issues of concern for appellate review.

In this case, the Anders brief was filed by January 30, 2023, and according to the time frame allowed. Appellant included his pro-se brief outlining the following issues for review:

- 1). WHETHER APPELLANT'S SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED ON APPEAL, OR IN THE ALTERNATIVE:
- 2). WHETHER APPELLANT'S FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS WERE VIOLATED WHEN APPELLANT COUNSEL FILED AN ANDERS BRIEF, AS OPPOSED TO A "MERITS" BRIEF UNDER THE CIRCUMSTANCES OF THIS CASE?
- 3). WHETHER TRIAL COUNSEL SHOULD HAVE BEEN SUBSTITUTED AT APPELLANT'S WITHDRAWAL HEARING BECAUSE THE ATTORNEY WOULD HAVE BEEN LABORING UNDER A DIRECT ACCUSATION OF CONFLICTING INTEREST?

Again, this case stems from an indictment from the county of York, South Carolina, where Appellant was indicted for 100 grams or more of cocaine. On or about March 7, 2022, Appellant was ill-advised to enter a guilty plea by a former prosecutor, now defense counsel, that handled his prior convictions. Yes, Ms. Twana Burris Alcide, did in fact prosecute the Appellant, and on that basis as well as others, Appellant moved to withdraw his guilty plea.

On the motion to withdraw the guilty plea, Judge Cole, heard the motion and at the conclusion, denied the motion for withdrawal. By a written order handed down on March 23, 2022. In which this pro-se brief under Anders timely followed.

Here, Appellant seeks to be admonished "the status" of the pending appeal, as well as to acknowledge the State failed to file any answer, which it was not obligated to do so, to the pro-se brief filed. Seemingly here however, as an admission to the claim(s) arising in this appeal.

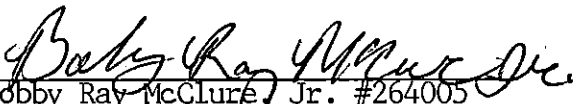
For example, Ms. Twana Burris Alcide, couldn't logically represent her client's interest at the motion hearing to withdraw the plea. When actually, the facts giving rise to the motion involved "her prior occupation as a prosecutor". That prosecuted the Appellant, that created one of the most fundamental instances of a strained conflict of interest. In that; "she could not seriously represent the competing interest one being herself". The other, the defendant in which she previously prosecuted.

Usually, ineffective assistance of counsel is not recognized on appeal, but instead better addressed pursuant to §17-27-10 through 150. However, there are circumstances where the facts are so clear that counsel render deficient performance Strickland v. Washington, supra, and Cronic v. United States, supra, where prejudice is presumed. Warranting reversal of the conviction and sentence. See Pro-se Appellant brief, at pg. 55-6.

In addition, Appellant also argued the state withheld critical evidence of a video tape that would have demonstrated his innocence (See Pro-se brief at pgs 6-7), coupled with the letters from co-defendant admitting the drugs were his rather than Appellant.

In conclusion, Appellant under no circumstances forwards this instant inclusion as to anger, frustrate or rush this court for a ruling. However, this case should have been remanded while at circuit court level, to have afforded Appellant his right to withdraw the plea under the circumstances which clearly appears in the record. Wherefore, Appellant is awaiting relief in this matter and any additional relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/ 
Bobby Ray McClure Jr. #264005
Kershaw Correctional Inst. HA
4848 Goldmine Hwy.
Kershaw, S.C. 29067

cc: filed
4/22/2024

Bobby Ray McClure Jr #264005
Kershaw Correctional Inst. HA 255
Kershaw, S.C. 29067

US POSTAGE
ZIP 29210 \$001.63⁰
02 APR 26 2024

RECEIVED
APR 29 2024
SC Court of Appeals

Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
APR 24 2024
KERSHAW CI
MAIL ROOM

LEGAL