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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from York County Court of General Sessions  
The Honorable Daniel DeWitt Hall, Circuit Court Judge

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Appellate Case No. 2024-000568

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The State.....Respondent

v.

Jonathan Stanley Ostrowski.....Appellant

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**ANDERS BRIEF OF APPELLANT**

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ATTORNEYS FOR APPELLANT

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**STATEMENT OF ISSUES ON APPEAL**

- I. WHETHER THE PLEA COURT ERRED IN ACCEPTING THE PLEA AGREEMENT AND APPELLANT'S NEGOTIATED PLEA TO TRAFFICKING METHAMPHETAMINE, SECOND OFFENSE IF APPELLANT WAS FIRST IMPROPERLY CHARGED WITH TRAFFICKING METHAMPHETAMINE, THIRD OFFENSE.**

## STATEMENT OF THE CASE

Appellant was charged with trafficking in methamphetamine, 28 grams or more but less than 100 grams, third offense following a traffic stop on August 18, 2023. (R. pp. 13-14). York County Assistant Solicitor Austin N. Smith prosecuted the case. Appellant was represented by the undersigned Attorney Yarborough.

On April 4, 2024, Appellant appeared before the Honorable Daniel DeWitt Hall to plead guilty to trafficking in methamphetamine, 28 grams or more but less than 100 grams, second offense, pursuant to a plea agreement. (R. p. 4, lines 2-8). Also pursuant to the agreement, the recommendation was for twelve years imprisonment; the charge otherwise carries a sentence of up to 30 years. (R. p. 4, line 7; p. 5, lines 5-6). *See* S.C. Code Ann. § 44-53-375(C)(2)(b).

Assistant Solicitor Smith explained to the Judge that but for the agreement in which he was pleading to trafficking second offense, this would have been third offense, as he had an offense in 2018 and in 2022. (R. p. 9, lines 12-14). However, Appellant had been tried and convicted of trafficking in 2018, which has been overturned on appeal by this Court. (R. p. 9, lines 20-22; p. 10, lines 18-20). *See State v. Ostrowski*, 435 S.C. 364, 867 S.E.2d 269 (Ct. App. 2021). On remand in 2022, he pleaded guilty to a time-served sentence of three years for trafficking methamphetamine, less than 28 grams, first offense. (R. p. 9, lines 19-25).

After a colloquy with Appellant, Judge Hall accepted Appellant's plea as knowingly and voluntarily made and sentenced him to twelve years imprisonment with three days credit for time served. (R. p. 4, line 2—p. 7, line 20; p. 11; pp 15-16).

A timely Notice of Appeal was filed with this Court on April 8, 2024. This appeal follows.

## STATEMENT OF THE FACTS

The facts are taken from the State's summary during the hearing, which was given as the factual basis for the plea. On August 18, 2023, Appellant had been legally parked within city limits of Rock Hill, South Carolina when an officer patrolling the area ran his license plate. (R. p. 8, lines 5-10). The officer saw that the car was registered to Appellant and that he had an outstanding warrant from another jurisdiction for obtaining goods under false pretenses. (R. p. 8, lines 9-13).

The officer initiated a traffic stop after observing Appellant run a stop sign. (R. p. 8, lines 14-20). Appellant refused to exit the vehicle and was said to grab at his crotch area while resisting and being hostile. (R. p. 8, lines 21-23). The officer believed at first he may have been grabbing at a weapon but subsequently realized he had been grabbing for a baggie of narcotics. (R. p. 8, line 23—p. 9, line 1). His resisting was reported to have caused an altercation in the officers' attempts to get him out of the vehicle. (R. p. 9, lines 1-2).

Once out of the vehicle, Appellant was said to have thrown a large amount of methamphetamine into the street and other amounts were found in his car and still in his clenched hand. (R. p. 9, lines 3-10). The combined drug weight in total was 54.11 grams of methamphetamine. (R. 9, lines 10-11). Note that after the summation of the facts, Appellant was neither asked nor did he otherwise state that he agreed with the factual basis for the plea.

## STANDARD OF REVIEW

In criminal cases, the appellate court reviews errors of law only. *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001). An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.*

## ARGUMENT

### **I. THE PLEA COURT ERRED IN ACCEPTING THE PLEA AGREEMENT AND APPELLANT'S NEGOTIATED PLEA TO TRAFFICKING METHAMPHETAMINE, SECOND OFFENSE BECAUSE APPELLANT WAS FIRST IMPROPERLY CHARGED WITH TRAFFICKING METHAMPHETAMINE, THIRD OFFENSE.**

Whether an offense qualifies as a second or subsequent offense is determined by S.C. Code Ann. § 44-53-470. Section 44-53-470 provides, in pertinent part:

(A) An offense is considered a second or subsequent offense if:

...

(3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs; and

(4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

(B) In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article.

§ 44-53-470(A)(3)-(4) and (B).

Our state legislature has long used sentencing enhancement schemes to deter recidivism, and while prevention of reoffending is a strong legitimate state interest, constitutional rights are implicated by sentencing enhancements. *See generally, State v. Payne*, 332 S.C. 266, 269-72, 504 S.E.2d 335, 336-37 (Ct. App. 1998) (citations omitted). *See also Rainey v. State*, 307 S.C. 150, 151-52, 414 S.E.2d 131, 132 (1992) ("Penal statutes are construed strictly against the State and in favor of the defendant. Where the terms of a statute are clear and unambiguous, they must be

applied according to their literal meaning. More recent and specific legislation supersedes prior, general law.") (internal punctuation and citations omitted).

Here, Appellant's 2018 trafficking conviction should not have been counted as a prior offense because it was overturned on appeal by this Court. The 2018 and 2022 conviction recounted by the State during the plea hearing were for the same offense basis. Thus, only his 2022 conviction, in which he pleaded guilty to trafficking, first offense after appeal and remand, should have been counted as one prior conviction under § 44-53-470. Appellant thus only had one qualifying prior conviction under § 44-53-470. Appellant therefore should not have been originally charged in this case with trafficking methamphetamine, third offense. Because Appellant was incorrectly charged at the start, the downgrade of the charge to second offense as per the agreement was erroneous.

## **CONCLUSION**

In light of the foregoing, Appellant respectfully urges this Court to vacate his conviction and sentence and remand for a new trial.

Respectfully Submitted,

William G. Yarborough, III  
South Carolina Bar #10271

Lauren C. Hobbis  
South Carolina Bar #103190

By: s/ William G. Yarborough, III  
South Carolina Bar # 10271

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**PETITION TO BE RELIEVED AS COUNSEL**

Undersigned Counsel do hereby state:

1. They are currently counsel of record for Appellant, Jonathan Stanley Ostrowski in the above-captioned appeal.
2. Undersigned Counsel have each reviewed the record from Appellant's plea and sentencing proceedings before Judge Daniel DeWitt Hall, which was held on April 24, 2024, and in their opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), an arguable legal issue that arose during the proceedings has been briefed.

Wherefore, Undersigned Counsel requests this Court to be relieved as appellate counsel in this case.

Respectfully Submitted,

William G. Yarborough, III  
South Carolina Bar #10271

Lauren C. Hobbis  
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By: s/ William G. Yarborough, III\_ .  
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**DESIGNATION OF MATTER**

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The Appellant, Jonathan Stanley Ostrowski, by and through his undersigned attorney,  
hereby proposes the following materials to be included in the record on appeal:

- Transcript of Plea and Sentencing Hearing, held on April 4, 2024
- Indictment (2023-GS-46-04939)
- Sentencing Sheets (2023-GS-46-04939)

Pursuant to Rule 209(c), the undersigned hereby certifies that this Designation contains no matter  
irrelevant to the appeal.

Respectfully Submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Anders Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings (No. 2014-04-15-02).

This 20th day of June, 2024.

Respectfully Submitted,

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