

RECEIVED

Sep 16 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRIAN KEITH NESBITT,

APPELLANT

APPELLATE CASE NO. 2023-001831

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

Appellant’s plea was not given voluntarily in the case because he
was not aware of all rights he waived upon pleading guilty to the
offense charged against him.....4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967) 7

Boykin v. Alabama, 395 U.S. 238 (1969)..... 5

California v. Green, 399 U.S. 149 (1970)..... 5

State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) 2

State v. Jacob, 393 S.C. 584, 713 S.E.2d 621 (2011) 3

State v. Nesbitt, 411 S.C. 194, 768 S.E.2d 67 (2015)..... 3

Stave v. Patterson, 278 S.C. 319, 295 S.C.2d 264 (1982) 5

Constitutional Provisions

U.S. Const. amend. V..... 5

U.S. Const. amend. XIV 5

STATEMENT OF ISSUE ON APPEAL

Appellant's plea was not given voluntarily in the case because he was not aware of all rights he waived upon pleading guilty to the offense charged against him.

STATEMENT OF THE CASE

Appellant Brian Keith Nesbitt pled guilty to voluntary manslaughter during the November, 2023 term of the Greenville County General Sessions Court before Judge Kristi F. Curtis. Appellant was sentenced to imprisonment for a period of twenty-two years. A pretrial Blair¹ hearing was held in the case prior to the guilty plea proceeding. Attorney Rodney Wade Richey represented appellant at the Blair hearing and guilty plea proceeding. Assistant Solicitors Kathryn Harper McCall and William Ryan Holloway appeared on behalf of the state at the Blair hearing and guilty plea proceeding.

Appellant appealed. The brief follows.

¹ State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

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. Jacob, 393 S.C. 584, 713 S.E.2d 621 (2011).

ARGUMENT

Appellant's plea was not given voluntarily in the case because he was not aware of all rights he waived upon pleading guilty to the offense charged against him.

A summary of the case was presented to the plea judge at the guilty plea proceeding. Reggie Brunlee was found dead inside his residence on October 9, 2019, pursuant to a welfare check per reports that he was missing. Brunlee had been stabbed to death. Apparently, Brunlee and appellant were roommates, and the two argued with each other prior to the stabbing. R. 216, l.14-p. 217, l.9.

During the plea proceeding, the trial judge informed appellant of the rights he waived upon pleading guilty as follows:

The Court: -- today's the day that we, you know, we've got a jury here. We can have a jury trial or you can enter this plea and I'm good with you either way. I'm not mad about it. But today's the day that we got to move forward one way or the other.

Mr. Nesbitt: Alright.

The Court: So your—when you plead guilty today, you're also waiving your right to confront the State's witnesses. So all of the witnesses like you've seen so far in the trial, they sit right here in the witness stand. There's no secret court. You get to hear all the testimony just like the jury does. You would get a chance to question those---

Mr. Nesbitt: If you---

The Court: ---witnesses. You would get a chance to present a defense on your own behalf—

Mr. Nesbitt: Yes, Ma'am.

The Court: -- to have your own witnesses testify and you understand that you're waiving those rights today?

Mr. Nesbitt: Yes, Ma'am R. 212, l.24-p. 213, l.18.

Conspicuously missing from the plea judge's listing of what rights were waived upon entering a guilty plea was the right to cross-examine one's accusers. The plea judge referred to the right to question...without specifically speaking further to the waiver of the right to cross-examine the state's accusers. A defendant who pleads guilty simultaneously waives several constitutional rights: including the privilege against self-incrimination, the right to a jury trial, and the right to confront his accusers. Stave v. Patterson, 278 S.C. 319, 295 S.C.2d 264 (1982), citing to Boykin v. Alabama, 395 U.S. 238 (1969). Furthermore, a guilty plea also specifically waives one's right to cross-examine witnesses as well. California v. Green, 399 U.S. 149 (1970).

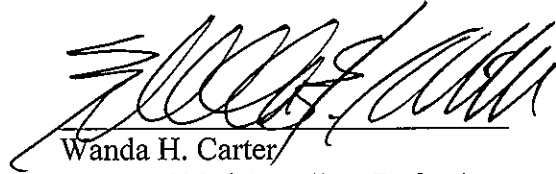
In Boykin v. Alabama, 395 U.S. 238 (1969), the Court summarized the waivers connected to guilty plea as follows:

Several federal constitutional rights are involved in a waiver that takes place when plea of guilty is entered in state criminal trial: first is privilege granted against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to states by reason of Fourteenth, second is right to trial by jury, and third is right to confront one's accusers; [and] a waiver of these three important federal rights cannot be presumed from a silent record. U.S.C.A. Const. Amends. 5, 14.

In the case at bar, the record established that appellant's plea was given involuntarily because he was unaware of the rights he waived upon entering his guilty pleas at the plea proceeding.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that appellant's guilty plea and sentence in the case be vacated.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of September, 2024.

RECEIVED

Sep 16 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRIAN KEITH NESBITT,

APPELLANT

APPELLATE CASE NO. 2023-001831

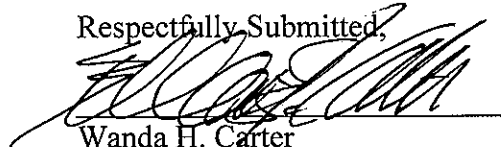
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brian Keith Nesbitt 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 guilty plea proceeding before Judge Kristi F. Curtis, which was held on November 14, 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 Brian Keith Nesbitt.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of September, 2024.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Sep 16 2024

SC Court of Appeals

Appeal from Greenville County
Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRIAN KEITH NESBITT,

APPELLANT

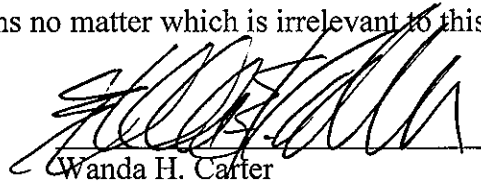
APPELLATE CASE NO. 2023-001831

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

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

- (1) Pre-Trial Transcript dated September 14, 2023
- (2) Trial/Guilty Plea Transcript dated November 13-14, 2023
- (3) Court's Exhibits Nos. 1 and 2 (Pre-trial Hearing September 14, 2023)
- (4) Explanation for Notice of Appeal with Exhibits
- (5) Indictments and Sentence sheets

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



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

This 16th day of September, 2024.

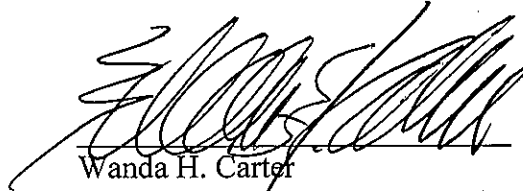
RECEIVED

Sep 16 2024

SC Court of Appeals

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."



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

This 16th day of September, 2024.

RECEIVED

Sep 16 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

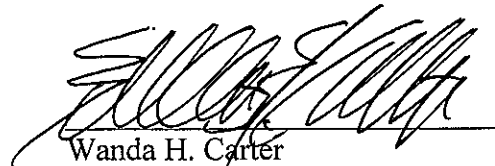
BRIAN KEITH NESBITT,

APPELLANT

APPELLATE CASE NO. 2023-001831

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 Brian Keith Nesbitt, #201166, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 16th day of September, 2024.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT