

**RECEIVED**

**Sep 16 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Clarendon County

Honorable R. Ferrell Cothran, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ROBERT ASHLEY WHEELER, III,

APPELLANT.

APPELLATE CASE NO. 2024-000645

---

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 REVIEW .....3

ARGUMENT

Appellant’s guilty pleas were given involuntarily because he was  
unaware of the sentencing consequences of the pleas to the extent  
that the trial judge failed to advise that the state’s recommendation  
was not binding at sentencing in the case. ....4

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL .....6

**TABLE OF AUTHORITIES**

**Cases**

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967)..... 6

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

Brady v. United States, 397 U.S. 742 (1970)..... 5

Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991) ..... 4

Hill v. Lockhart, 474 U.S. 52 (1985) ..... 5

Holland v State, 322 S.C. 111, 470 S.E.2d 378 (1996) ..... 4, 5

Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999)..... 4

Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)..... 4

State v. Hazel, 276 S.C. 392, 271 S.E.2d 602 (1980)..... 4

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

Wolfe v. State, 326 S.C. 158, 485 S.E.2d 368 (1997) ..... 4

**Constitutional Provisions**

U.S. Const. amend. VI ..... 5

**STATEMENT OF ISSUE ON APPEAL**

Appellant's guilty pleas were given involuntarily because he was unaware of the sentencing consequences of the pleas to the extent that the trial judge failed to advise that the state's recommendation was not binding at sentencing in the case.

## STATEMENT OF THE CASE

Appellant Robert A. Wheeler, III, pled guilty to first degree burglary, possession of a firearm by a person convicted of a violent felony, possession of a weapon during the commission of a violent crime, and seven counts of first degree assault and battery during the July, 2023 term of the Clarendon County General Sessions Court before Judge R. Ferrell Cothran. Appellant was sentenced to prison for an aggregate term of thirty five years. Assistant Solicitor Darla Pierce appeared on behalf of the state at the guilty plea proceeding, and Attorney Scott Robinson appeared on behalf of appellant at that time. A sentencing reconsideration motion was filed on August 3, 2023. Judge Cothran denied said motion on April 10, 2024.

Appellant appealed. This brief follows.

### **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 guilty pleas were given involuntarily because he was unaware of the sentencing consequences of the pleas to the extent that the trial judge failed to advise that the state's recommendation was not binding at sentencing in the case.

The solicitor apprised the plea judge of the facts that led to the offenses charged against appellant. Apparently, security cameras revealed that appellant was present unlawfully inside a residence in the Turbeville area of Clarendon County on May 12, 2021, wherein he stayed holed up until SWAT team officers (who were fired upon by appellant) arrived on the scene and apprehended him. R. 9, l.23 – p. 11, l. 22.

During the plea proceeding, the solicitor stated that there was a recommended cap on a thirty-five-year sentence as part of the plea bargain reached in the case. The solicitor informed the plea judge that there was “a recommendation of a cap of 35 years.” R. 3, line 16. However, the plea judge never advised petitioner at the plea proceeding that the recommendation was not binding with respect to sentencing in the case.

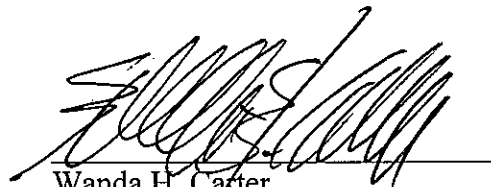
A sentencing judge is not required to accept the state's sentencing recommendation and may deviate from the sentencing recommendation. See Holland v State, 322 S.C. 111, 470 S.E.2d 378 (1996) and Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). A guilty plea is not given voluntarily if the defendant is not aware of the sentencing consequences of his plea. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 276 S.C. 392, 271 S.E.2d 602 (1980). Compare Wolfe v. State, 326 S.C. 158, 485 S.E.2d 368 (1997), where the defendant's plea was deemed voluntarily given because the trial judge asked the defendant twice whether he understood that the sentencing recommendation was not binding in the case. A plea is voluntarily given only if it is entered by a

competent defendant who understands both the charges filed and the consequences of the plea. Brady v. United States, 397 U.S. 742 (1970).

In addition, trial counsel erred in violation of the Sixth Amendment and Hill v. Lockhart, 474 U.S. 52 (1985), by failing to advise petitioner that the plea judge might reject the state's sentencing recommendation cap presented in the case. See Holland v. State, supra, where the Court held that the defendant's plea was voluntarily given because trial counsel advised him of the possibility that the plea judge would not accept the plea recommendation in the case. A plea will not be accepted as valid if it is not given voluntarily. Boykin v. Alabama, 395 U.S. 238 (1969).

### CONCLUSION

Based on the foregoing argument, counsel for appellant would request that his guilty pleas be vacated and a new proceeding in the circuit court be held in the case.



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 Clarendon County

Honorable R. Ferrell Cothran, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ROBERT ASHLEY WHEELER, III,

APPELLANT.

APPELLATE CASE NO. 2024-000645

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Robert Ashley Wheeler 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 R. Ferrell Cothran, which was held on July 24, 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 Robert Ashley Wheeler.

Respectfully Submitted,



---

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 Clarendon County  
Honorable R. Ferrell Cothran, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ROBERT ASHLEY WHEELER, III,

APPELLANT.

APPELLATE CASE NO. 2024-000645

---


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

---

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

- (1) Guilty Plea Transcript
- (2) Motion To Reconsider
- (3) Order Denying Motion to Reconsider
- (4) Indictment

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.

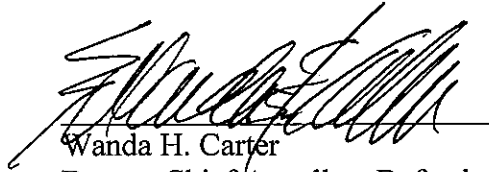
**RECEIVED**

**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 Clarendon County

Honorable R. Ferrell Cothran, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ROBERT ASHLEY WHEELER, III,

APPELLANT.

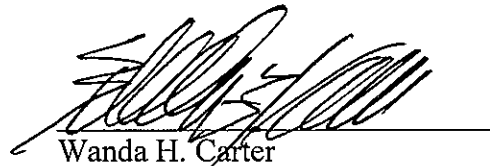
APPELLATE CASE NO. 2024-000645

---

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 Robert Ashley Wheeler, III, #191962, at Broad River Correctional Institution, 4460 Broad River Rd., Columbia, SC 29210, this 16th day of September, 2024.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT