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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

XAVIER MAURICE WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2023-001658

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

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STATEMENT OF ISSUE ON APPEAL

The plea judge erred in accepting appellant's guilty plea because said plea was entered involuntarily due to a misunderstanding regarding sentencing consequences where misadvice with respect to parole eligibility was given to appellant in the case.

STATEMENT OF THE CASE

Appellant Xavier M. Washington pled guilty to voluntary manslaughter during the July 2019 term of the Bamberg County General Sessions Court before Judge Clifton Newman. Appellant was sentenced to imprisonment for a period of twenty-seven years. Attorney Ola A. Johnson represented appellant at the guilty plea proceeding, and Assistant Solicitor David Miller appeared at the hearing on behalf of the state.

Appellant appealed his guilty plea and sentence. 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

The plea judge erred in accepting appellant's guilty plea because said plea was entered involuntarily due to a misunderstanding regarding sentencing consequences where misadvice with respect to parole eligibility was given to appellant in the case.

This case involved a pre-planned drug (marijuana) transaction between multiple individuals that ended in the exchange of gunfire between them. The shootings left two men injured (Kevin Lopez and Pedro Lopez) and one man dead (William Pearson). The drug deal, which was not completed, took place on March 29, 2014, on Vorhees Road in Bamberg County, South Carolina, where one group of men (appellant, Brandon Priester and Terrance McClendon) met with another group of men (Kevin Lopez, Pedro Lopez, and William Person). After appellant and Priester exited their vehicle and walked to the truck where the other men were waiting, an argument between the men erupted, guns were drawn, and gunshots were fired by appellant, Priester, and Kevin Lopez.

During the guilty plea proceeding held in the case, the following colloquy occurred regarding the subject of parole eligibility:

> Court: On the issue of parolable or not parolable, we know murder is day for day. What's your understanding?
>
> Solicitor: Voluntary is 85 per cent, Your Honor.
>
> Court: Alright …Is that your understanding?
>
> Defense Counsel: Yes, sir.
>
> Court: Alright. So that may modify this. Earlier…I said that whatever sentence you receive you should expect to..do. But it is not in the same classification as murder.
>
> Defense Counsel: Yes, sir.

> Court: It is 85 percent and I guess it's still considered non-parolable...
>
> Solicitor: Right.
>
> Court: 85 percent. Is it parolable or is that the sentence?
>
> Solicitor: No, sir, it's--it is----it is a no parole offense and there are limitations on the amount of good time and education credits that can be earned, which mean(s) if you do what you're supposed to do, you get out at 85 per cent. But some people who get 85 per cent sentences end up serving more than 85 percent of their sentence because they do not even earn the minimal good time or earn(ed) work credits that or education credits that they can earn. R. 53, l. 14 – p. 54, l.14.

The inference from the solicitor's explanation regarding parole eligibility, which was endorsed by the plea judge and defense counsel, gave appellant the impression that he was pleading to a no parole offense that was parolable. Voluntary manslaughter is a class A felony offense under S.C. Code Ann. § 16-1-90 (2010), which in turn is classified as a no parole offense under S.C. Code Ann. § 24-13-100 (2010). However, although S.C. Code Ann. § 24-13-150 (2010) allows for early release, discharge, or community supervision after serving 85 percent time; nonetheless, the sentence is not reduced to achieve the 85 percent due to earned work credits, or good time credits, or education credits, which was implied in the solicitor's explanation of the same at the plea proceeding. The calculus is fluid.

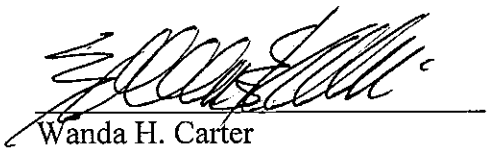
Parole eligibility is considered a collateral consequence of a sentence; however, if a plea judge misinforms on parole eligibility and a defendant is misled to his detriment (especially if there is "something more" contained in the misadvice), then the guilty plea will be rendered involuntarily given. See Frazier v. State, 351 S.C. 385, 570 S.E.2d 172 (2022). Here, appellant received misadvice and "something more" with respect to misinformation on his parole eligibility status from the solicitor in the case. The "something more" was the agreement

between the plea judge and defense counsel with respect to the solicitor's inaccurate explanation of parole eligibility summarized at the guilty plea proceeding.

In addition to the requirements outlined in Boykin,[1] a plea is not considered voluntarily given unless the defendant is aware of the nature and elements of the offense, and the penalties involved, i.e., sentencing consequences. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Appellant's plea was entered involuntarily because he pled guilty upon receipt of misadvice given to him regarding sentencing consequences (parole eligibility) in the case.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that appellant's conviction and sentence be vacated.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of October, 2024.

[1] In Boykin v. Alabama, 395 U.S. 238 (1969), the Court held that a defendant must be apprised of the rights he waived upon pleading guilty, which would include the right to a trial by jury, the right to confront his accusers, and the privilege against self-incrimination before the plea could be deemed voluntarily given in a case.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Xavier Maurice Washington 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 Clifton Newman, which was held on July 22, 2019, 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 Xavier Maurice Washington.

Respectfully Submitted,

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of October, 2024.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Entire Guilty Plea Transcript
(2) Indictment and Sentence Sheet

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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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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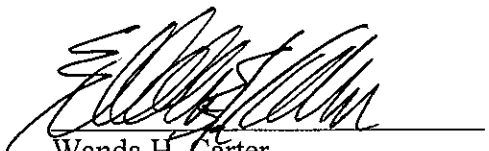
CERTIFICATE OF SERVICE

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 Xavier Maurice Washington, #336667, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 3rd day of October, 2024.



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