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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County
Court of General Sessions

Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2024-000643

The State,.....Respondent,

v.

Russell Lewis Walker,.....Appellant.

PRO. SE. BRIEF OF APPELLATE

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Statement of Issues on Appeal

1. Did the trial court violate the Defendant's procedural due process rights by conducting an ex parte communication with the State's attorney regarding the revocation of bond without the Defendant or his attorney present?
2. Did the trial court violate South Carolina Code of Laws § 17-15-55(B)(1) by not requiring a written motion for the revocation of bond and not providing notice and a hearing within 30 days?
3. Was the Defendant's guilty plea involuntarily given under duress and coercion due to unlawful imprisonment and threats made by his attorney?
4. Is the Defendant's conviction invalid as the charge to which he pled guilty does not constitute a criminal act under South Carolina law?
5. Did the trial court violate the Defendant's procedural due process rights by issuing a permanent restraining order without proper notice and hearing?

Statement of the Case

The Appellate Case Number is 2024-000643; The Appellate Court is The South Carolina Court of Appeals; The Full Title of the Case is, The State, Respondent, v. Russell Lewis Walker, Appellant. The Case Commences on July 20, 2021, when the Appellant, Russell Lewis Walker is arrested by SC0190000 EDGEFIELD COUNTY SO. Appellant was Arrested pursuant to four (4) Arrest Warrants. All four (4) Arrest Warrants were disposed of by the Court ending in Non-Conviction, on a date prior to the date of the judgement and sentence from which this appeal is taken. The Appellant was Imprisoned in McCormick, South Carolina, on April 9, 2024, by Order of the 11th Judicial Circuit Chief Judge for Administrative Purposes, the Honorable Debra R. McCaslin. The Appellant Plead Guilty to the allegations as they were read to him by the Court; and as they were presented by the State, at McCormick, South Carolina, in the McCormick County Courthouse, on April 10, 2024. On April 16, 2024, the Appellant was enrolled into a 12 week Anger Management Course as a condition of Probation Termination Upon Payment. On April 16, 2024, The Appellant was Charged with, Convicted of, and Sentenced for Assault and Battery 2nd Degree, all in the Edgefield County Court of General Sessions in absentia because he wasn't even there. The Appellant was sentenced to 3 years SS; CTS 268 days; 1 year Prob PTUP. The Date of the Conviction from which this Appeal is taken is April 16, 2024, and the Date of Filing this Appeal is April 22, 2024. The Lower Court or Tribunal is Edgefield (2024GS1900052, 2024GS1900053). The Respondent is State of South Carolina; Respondent Attorney(s): Alan McCrory Wilson, Mark Reynolds Farthing, and Douglas Wayne Fender, II (Former). The Appellant is Russell Lewis Walker;

Appellant Attorney(s): Derek S. Chiarenza (Former), Robert Michael Dudek (Former), and Wanda H. Carter. Wanda H. Carter, as Counsel for Russell Lewis Walker, autographed an ANDERS BRIEF OF APPELLANT, and a PETITION TO BE RELIEVED AS COUNSEL, and submitted the same for filing in this Court, and both were received by the Clerk of Court of The South Carolina Court of Appeals on July 18, 2024. A bona fide, true gentleman passed away around April of 2023. The late 11th Circuit Assistant Solicitor for Edgefield County, Mr. Erik Drylie, had relied on the original arrest warrants from July 20, 2021, now 3, years ago, to obtain the State's Grand Jury indictments. The State's burden hadn't changed any. To obtain the Appellant's conviction, the State would still have to convince a jury that Ms. James was the Appellant's "Household Member" between April of 2021, and July 20, 2021. The State had recently expended thousand's of dollars in the last 30 days or less, to cover the Fees of Scott Bernard, a private investigator from Lexington, South Carolina. Each Party was in recent receipt of some preliminary findings from the investigation, and it was abundantly clear to each party that the findings were favorable to the Defendant. In light of this newly discovered exculpatory evidence, the State concluded before the end of March, to abandon any matter that would require the State to prove Ms. James was ever the Appellant's "Household Member". The State purported to the Appellant's attorney on or about April 4, 2024, that it would obtain indictments on April 8, 2024, from the Edgefield County Grand Jury, in time for a pre-trial motions hearing set for April 9, 2024, in the adjacent Venue of McCormick South Carolina. It is a fact that the Edgefield County Grand Jury did not convene on April 8, 2024; and therefore it is also a fact that the Appellant was not

facing any criminal charges on April 9, 2024. It would therefore also be a fact that the Appellant could not have possibly been in violation of any sort of bond condition on April 9, 2024, because there were no charges pending against the Appellant on April 9, 2024. The Appellant's appearance before Judge McCaslin on April 9, 2024, for a motions hearing was also then conducted with no pending matters. Interestingly, when this fact was brought to the attention of Judge McCaslin, for the purpose of challenging the Court's Jurisdiction, Judge McCaslin ruled that she maintained jurisdiction. The Honorable Judge based her ruling on what she said she thought the State might do one day. Judge McCaslin said, she thinks the State will try to get an indictment at some point in time in the future, between April 9, 2024, and the April 22, 2024 date of the Jury trial she had already set which was only 13, days away. When Derek Chiarenza, the Appellant's attorney reminded Judge McCaslin, that his client was in court right then, that day, for a case that had not been indicted yet, Judge McCaslin responded forcefully saying, "It doesn't matter whether he's indicted or not. He was given a bond and he contacted the victim in violation of the bond. I'm revoking it, period." (R. p.22,1.18-22) The allegation read by the Court does not meet the statutory requirements for Assault and Battery in the Second Degree. The State also requested the Court to issue a permanent restraining order against the Defendant. Judge McCaslin summarily issued the restraining order without providing the Defendant proper notice and a hearing, violating procedural due process rights. The Defendant now appeals his conviction and the issuance of the restraining order, arguing that his procedural due process rights were violated, that his guilty plea was not voluntarily made, and that the conviction and restraining order are both invalid.

Standard of Review

The standard of review for due process violations is de novo. This means the appellate court will consider the issues anew, giving no deference to the lower court's decision. See *Morrissey v. Brewer*, 408 U.S. 471 (1972). For the voluntariness of a guilty plea, the appellate court reviews whether the plea was made knowingly and voluntarily, free from coercion.

Argument

Issue 1: Due Process Violations

The trial court conducted an ex parte communication with the State's attorney regarding the revocation of the Defendant's bond, in violation of the Defendant's procedural due process rights under the Fourteenth Amendment and Article I, § 3 of the South Carolina Constitution. On April 9, 2024, the Appellant and his attorney, Derek Chiarenza appeared before Judge McCaslin at the McCormick County Courthouse, in McCormick, South Carolina, for a pre-trial motions hearing. After the hearing, the Appellant and his attorney, Derek Chiarenza, left the courthouse together. The State's Assistant Solicitor, Mr. Fender, initiated an ex parte bond revocation hearing, after the Appellant and his attorney had left McCormick, South Carolina. Judge McCaslin allowed Mr. Fender's ex parte communication, and heard allegations of multiple violations of bond conditions, on a date and at a time when bond conditions could not possibly be violated because they did not exist. The Court ruled on nothing more than Mr. Fender's allegations. Mr Fender thanked Judge McCaslin for her ruling, and the Judge then ordered the State's attorneys to call the Appellant's attorney, Derek Chiarenza, and direct Mr. Chiarenza to return to McCormick, South Carolina with the Appellant for the purpose of arresting and imprisoning the Appellant without Notice, written motion, or Hearing. When Judge McCaslin unlawfully imprisoned the Defendant on April 9, 2024, the Defendant's attorney asked, "Your Honor, what bond (inaudible)?" Judge McCaslin responded, "I'm revoking what he's got pending right now, which is -- is it the -- I think they're going back to change it. But he's got what? Pending DVs?" The State responded, "Yes, Your Honor." Judge McCaslin clarified, "Had three pending DVs. I'm revoking --." (R.p.24,1.7-10)

Issue 2: Violation of South Carolina Code of Laws § 17-15-55(B)(1)

The lack of a written motion and proper notice also violated South Carolina Code of Laws § 17-15-55(B)(1). Additionally, the State had abandoned the pending charges, so there was no bond to revoke. MR. CHIARENZA: I believe the statute requires any motion to evoke bond. I have that notice and it has to be in writing and hearing has to be said. I'm going to tell you, I already know a little bit about this case and I know that there's some prior DVs and pending charges. And only because I've talked to the lawyers about this case and I just had pretrial on this case. I don't put up with anybody, anybody violating an order of this court. So I am going to take him into custody. Because that's not going to happen, period. MR. CHIARENZA: Your Honor. I believe that by rule motion to evoke bond must be in writing. THE COURT: I don't think any emergency hearing for violation of a bond needs to be in writing. (R.p.21,1.20-p.24,1.6)

Issue 3: Coercion and Duress

The Defendant's guilty plea was not voluntarily made. The Defendant was unlawfully imprisoned and coerced into accepting a plea deal under threats from his attorney that he would face additional years of imprisonment if he did not plead guilty. This violated the Defendant's right to a fair trial and due process. On April 10, 2024, no more than ten minutes before the guilty plea hearing, the Appellant's attorney gave the Appellant all of the information he was ever going to get, before deciding whether or not to take the State's plea offer. Ten minutes was plenty of time for the Appellant's attorney, to make arrangements with the County Auditor to vacate the office so he could explain the details to the Appellant in private, downstairs in the McCormick County Auditor's Office, which is where Derek Chiarenza did in fact explain the

"harmless" or "minimal" consequences to his Client, Russell Walker, that would accompany the guilty plea that Derek had worked so hard negotiating late last night. Derek explained that since it was just a plea to a Class A misdemeanor, same as when the Edgefield County Sheriff's Office failed to execute the arrest warrants pursuant to SC Code Ann. Section 16-5-40, causing the warrants to stack up against the Appellant, this A and B charge, it would not effect Russell Walker's biggest concern which was the loss of his 2nd amendment to the US Const. Right to bear arms. The Appellant rejected the plea offer. Mr. Chiarenza quickly provided the Appellant with a threat after the Appellant rejected the plea offer. Derek also told Russell Walker about the consequence that was now coming. Derek told his client that by rejecting this plea offer; he would be getting a minimum of two more years of the sudden imprisonment that he was then suffering from Judge McCaslin's ruling from Mr. Fender's ex parte action yesterday. The Appellant plead guilty under the duress and coercion. Intermediately after the court received the Appellant's guilty plea, the Court named the Appellant the respondent to a permanent restraining order without providing the Appellant any notice and without conducting a hearing.

Issue 4: Invalid Conviction

The charge to which the Defendant pled guilty does not constitute a criminal act under South Carolina law. The proposed indictment stated that the Defendant "did offer to or attempt to injure Christina James," which does not meet the statutory requirements for Assault and Battery in the Second Degree under South Carolina Code of Laws § 16-3-600(D)(1). There was no allegation of unlawful injury or present ability to injure, and

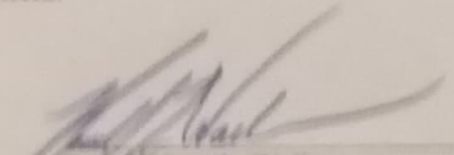
the elements of the crime were not satisfied. On April 10, 2024, the Defendant was coerced into pleading guilty due to threats of extended imprisonment by his attorney. Additionally, the Defendant had to waive Grand Jury presentment, and the proposed indictment read by the State did not constitute a criminal act. Judge McCaslin stated, "On or about, and it's an old case, July 20, 2021 that you did attempt -- it says to injure; A, Ms. James." (R.p.29,1.6-8) Appellant's plea is not even a crime of Assault and battery in the 3rd Degree. Finally , there is no mention of moderate bodily injury, an essential element for Assault and battery 2nd Degree.

Issue 5: Issuance of Permanent Restraining Order

The trial court issued a permanent restraining order against the Defendant without proper notice and hearing, in violation of the Defendant's procedural due process rights under the South Carolina and United States Constitutions. The summary issuance of the restraining order is a further example of the trial court's disregard for procedural due process.

Conclusion

Based on the foregoing arguments, the Defendant respectfully requests that the court vacate his guilty plea, find the conviction and the issuance of the permanent restraining order invalid, and prevent any further prosecution by the State, ensuring that his procedural due process rights are upheld.



Russell Lewis Walker
Appellate

This 10th day of October, 2024.

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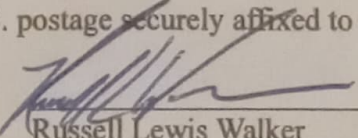
v.

Russell Lewis Walker,

Appellant.

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(2), and Rule 262(c)(2), SCACR, the undersigned does hereby certify that a true copy of Pro Se Brief of Appellate has been served on the Attorney General Mr. Allen Wilson, and Mr. Mark Farthing, Esquire, by U.S. Mail, in an envelope properly addressed to Allen Wilson and another addressed to Mark R. Farthing, both at the S.C. Attorney General's Office, P.O. Box 11549, Columbia, South Carolina, 29211, with sufficient U.S. postage securely affixed to each.


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On this 10th day of October, 2024

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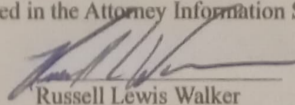
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Pursuant to Rule 262(a)(2), and Rule 262(c)(2), SCACR, the undersigned does hereby certify that a true copy of Pro Se Brief of Appellate has been served on Mark Farthing, Esquire, at the primary email address listed in the Attorney Information System, (AIS.)



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On this 10th day of October, 2024

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October 10, 2024

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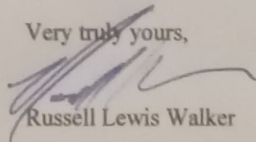
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Appellate Case No: 2024-000643

Dear Recipient,

Please find the Pro Se Brief enclosed.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Russell Lewis Walker", with a long horizontal flourish extending to the right.

Russell Lewis Walker

October 10, 2024