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Oct 21 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVIS DWONE BRYANT,

APPELLANT.

APPELLATE CASE NO. 2024-000239

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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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

ARGUMENT4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

<u>Anders v. California</u> , 386 U.S. 738, 87 S.Ct. 1396 (1967).....	7
<u>Boykin v. Alabama</u> , 395 U.S. 238 (1969).....	5
<u>Frazier v. State</u> , 351 S.C. 385, 570 S.E.2d 172 (2022).....	5
<u>Pittman v. State</u> , 337 S.C. 597, 524 S.E.2d 623 (1999).....	5, 6
<u>State v. Jacob</u> , 393 S.C. 584, 713 S.E.2d 621 (2011).....	3
<u>State v. Nesbitt</u> , 411 S.C. 194, 768 S.E.2d 67 (2015).....	3

Other Authorities

S.C. Code Ann. § 16-1-90 (2010).....	5
S.C. Code Ann. § 24-13-100 (2010).....	5
S.C. Code Ann. § 24-13-150 (2010).....	5
S.C. Code Ann. § 44-53-370(e)(3)(a)(1)	5

STATEMENT OF ISSUE ON APPEAL

The plea judge erred in accepting appellant's guilty plea on the drug offense charged against him because said plea was entered involuntarily where appellant received misadvice regarding parole eligibility consequences in the case.

STATEMENT OF THE CASE

Appellant Travis D. Bryant pled guilty to trafficking in opium/heroin (between 4 and 14 grams) and possession of a stolen vehicle during the February 2024 term of the Greenwood County General Sessions Court before Judge Frank R. Addy, Junior. Attorney Juankell Shingles represented appellant during the guilty plea proceeding, and Assistant Solicitor Cecil Yates Brown prosecuted the case. Judge Addy sentenced appellant to an aggregate prison term of twenty years. Appellant appealed his convictions and sentences. 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 on the drug offense charged against him because said plea was entered involuntarily where appellant received misadvice regarding parole eligibility consequences in his case.

On January 26, 2022, a confidential informant made a controlled drug buy from appellant in Greenwood, South Carolina. Appellant was subsequently arrested in connection with that drug transaction. Also, on August 11, 2020, it was discovered that appellant was in possession of a stolen vehicle per a police traffic stop that occurred in Greenwood, South Carolina. R.10, l. 18 – p.11, l. 21; R. 12, l. 21 – p. 13, l. 4. At the guilty plea proceeding, the following colloquy took place regarding the issue of parole eligibility in connection with the drug offense charge in the case:

THE COURT: The charge that [appellant] is signed up to plead guilty to is an 85 percent offense. And just prior to going on the record, [defense counsel] wanted the court to review with [appellant] the difference between a day-for-day sentence and an 85 percent sentence. I know that you've explained it to your client, but I'm assuming he just or you'd rather me just go ahead and reiterate what is that you've told him. Is that right?

DEFENSE COUNSEL: Yes, Sir.

THE COURT: Okay...the difference between what you've signed up to plead guilty is an 85 percent offense. That means you would have to do 85 percent of the negotiated twenty years that has been worked out in your case minus whatever credit off the top of the twenty years, and then you would be looking at serving 85 percent of the remaining time. Do you understand that?

APPELLANT: Yes, sir. R. 3, l. 15 – p. 4, l. 9.

THE COURT: It is not parole eligible...that's what the 85 percent thing is about. R. 5, lines 20-22.

THE COURT: As we discussed, it is an 85 percent offense....do you understand that?

APPELLANT: Yes, sir. R. 9 lines 3-6.

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. Appellant pled guilty to trafficking under S.C. Code Ann. § 44-53-370(e)(3)(a)(1), which is a class B felony offense under S.C. Code Ann. § 16-1-90 (2010) and 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 plea judge'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 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

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

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 21st day of October, 2024.

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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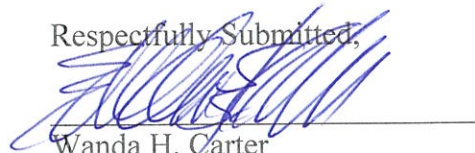
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Dwone Bryant 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 held on February 12, 2024, 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 Travis Dwone Bryant.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

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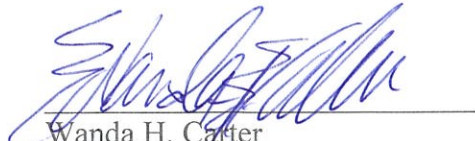
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Guilty Plea Proceeding Transcript
- (2) 2023-GS-24-0963 Indictment and Sentence Sheet
- (3) 2021 GS-24-0358 Indictment and Sentence Sheet

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


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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 Travis Dwone Bryant, #393314, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 21st day of October, 2024.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT