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Feb 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ALVARO SELESTE MCBRIDE,

APPELLANT.

APPELLATE CASE NO. 2024-000988

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

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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 CASE2

STANDARD OF REVIEW3

ARGUMENT

Appellant’s guilty plea was involuntary and unknowing because after appellant informed the plea court he had not taken his mental health medications, the judge made no further inquiry despite earlier in the hearing discussing appellant’s competency and being in possession of a report from the Department of Mental Health describing appellant’s mental illnesses.....4

CONCLUSION..... 8

PETITION TO BE RELIEVED AS COUNSEL9

TABLE OF AUTHORITIES

Cases

State v. Blair, 273 S.E.2d 536, 275 S.C. 529 (1981) 5

Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017)..... 5

State v. Drayton, 270 S.C. 582, 243 S.E.2d 458 (1978)..... 3

State v. White, 364 S.C. 143, 611 S.E.2d 927 (Ct. App. 2005)..... 6

STATEMENT OF ISSUE ON APPEAL

Was appellant's guilty plea rendered involuntary and unknowing because after appellant informed the plea court he had not taken his mental health medications, the judge made no further inquiry despite earlier in the hearing discussing appellant's competency and being in possession of a report from the Department of Mental Health describing appellant's mental illnesses?

STATEMENT OF THE CASE

Appellant was indicted in Chesterfield County for kidnapping, first-degree criminal sexual conduct, first-degree burglary, breaking into a motor vehicle, financial transaction card theft, and third-degree burglary. R. 3. On April 27, 2023, the Honorable Paul M. Burch held a hearing concerning appellant's representation. R. 3. The court reporter did not note the name of the solicitor. R. 1. Tonya Copeland Little represented appellant. R. 1. Judge Burch relieved Ms. Little and appointed another lawyer to represent appellant. R. 8.

On June 3, 2024, appellant appeared again before Judge Burch to plead guilty. R. 12. Again, the name of the solicitor does not appear on the transcript. R. 12. Jacob Godwin and Jamie Scruggs represented appellant, but they are different lawyers than the attorney appointed by Judge Burch at the prior hearing. R. 12. The solicitor stated the deal was for appellant to plead to first-degree burglary and kidnapping with a recommendation of twenty-five years' imprisonment and the other charges would be dismissed. R. 14. The court accepted appellant's plea and sentenced him according to the recommendation of the State. R. 29, 48-49.

Two days later, Judge Burch held another hearing, on June 5, 2024. R. 51. Mary Thomas Johnson-Lee represented the State and Jacob Godwin represented appellant. R. 51. The solicitor asked Judge Burch to check the box on appellant's sentencing sheet requiring him to register as a sex offender. R. 53. Judge Burch said his failure to do so was a scrivener's error and ordered registration. R. 53-54. Appellant's attorney filed an appeal and appellant provided a *pro se* explanation sufficient to allow this appeal to go forward.

STANDARD OF REVIEW

A trial judge's determination of a defendant's competency to stand trial is reviewed for an abuse of discretion. State v. Drayton, 270 S.C. 582, 583-84, 243 S.E.2d 458, 459 (1978).

ARGUMENT

Appellant's guilty plea was involuntary and unknowing because after appellant informed the plea court he had not taken his mental health medications, the judge made no further inquiry despite earlier in the hearing discussing appellant's competency and being in possession of a report from the Department of Mental Health describing appellant's mental illnesses.

At the very beginning of this guilty plea, the solicitor brought up appellant's mental health. R. 14. She told the judge that the defense requested competency and insanity evaluations. R. 14-15. The Department of Mental Health found appellant competent to stand trial. R. 15. She handed up the DMH report and a proposed order finding appellant competent. R. 15. Defense counsel said he had no concerns about appellant's competency under State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981). Judge Burch signed the order. R. 15.

The DMH report diagnosed appellant with four mental illnesses: Antisocial Personality Disorder, Cannabis Use Disorder, Stimulant Use Disorder, and Adjustment-Disorder with Mixed Anxiety and Depressed Mood. R. 59. In 1999, after getting expelled from school, DMH saw appellant for Conduct Disorder. R. 61. In DJJ in 2000, he was prescribed Prozac and then in 2001, trazodone. R. 61. At the Chesterfield jail, appellant reported a history of depression and ADHD. R. 61. He was given Wellbutrin, Remeron, and Celexa. R. 61.

The interview notes in the DMH report discuss appellant's history of not taking his medication every day. R. 62. Appellant did not take his medication the morning of his interview with the examiner "due to fear of potential side effect of nausea or sedation." R. 62. In the interview, appellant described a suicide attempt when he was young and current hallucinations of shadow people. R. 62-63.

After marking the competency order and the DMH report as exhibit one to the plea hearing, Judge Burch began his colloquy with appellant. R. 16. The court asked appellant if he had any mental health issues and appellant responded, “I have.” R. 22. Instead of asking what his mental health problems were, the judge asked whether appellant had ever been hospitalized because of mental illness. R. 22. Appellant said he had not. R. 22.

Judge Burch then asked, “Are you under the influence of any drugs, alcohol, or medication, a combination of both, that could possibly be affecting your understanding today?” R. 22. Appellant answered, “No, I haven’t, Your Honor. I haven’t taken my medicine this morning.” R. 22-23. Instead of asking about his medicine and whether he needed it, the court only asked appellant whether he fully understood what he was doing. R. 23. Appellant said he did. R. 23. After the recitation of the facts by the solicitor and a few more standard questions, the court accepted appellant’s guilty plea. R. 23-29. In his *pro se* explanation why this appeal of a guilty plea should be allowed to go forward, appellant wrote that he was not on his mental health medication and that the record should show he was “very unstable and kept asking for my meds.” R. 70.

Blair requires a competency hearing when the issue of a criminal defendant’s sanity is raised. Blair at 532-33, 273 S.E.2d at 537-38. The Blair hearing at appellant’s plea was perfunctory. In Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017), the Court found plea counsel deficient for failing to request a competency examination. “Plea counsel was clearly on notice” of Ramirez’s mental deficiencies. Ramirez at 22-23, 795 S.E.2d at 845-46. The Court reversed because there was “a reasonable probability” that Ramirez was incompetent at the time he entered his plea. Id. at 23, 795 S.E.2d at 846. Like the attorney in Ramirez, here the judge

was “on notice” of appellant’s mental illnesses and the medications he was taking, but performed no further inquiry into whether appellant needed his medication to understand the proceeding.

In State v. White, 364 S.C. 143, 611 S.E.2d 927 (Ct. App. 2005), this Court addressed a trial judge’s failure to order a competency examination after learning about the defendant’s mental health problems. The White Court affirmed the trial judge, but the opinion shows a much greater inquiry into the defendant’s mental status than happened at appellant’s plea. The plea judge in White asked the same standard question asked by Judge Burch here—whether the defendant had ever been treated for mental problems. White at 145, 611 S.E.2d at 927.

After White’s affirmative answer, her attorney explained her history of psychiatric hospitalizations, her diagnoses, and her medication, Tegretol. Id. Unlike at appellant’s plea, the trial judge wanted to know more about White’s medication and asked whether Tegretol affected her ability to understand the plea hearing. Id. White’s lawyer said she understood the case, but after the plea was accepted called a doctor to the stand in mitigation. Id. at 145-46, 611 S.E.2d at 928-29.

The doctor explained White’s history of mental illness and that she had a shunt embedded in her brain that might have played a role in her behavior. Id. But the doctor said on the stand that a GBMI plea would not fit her situation. Id. The plea judge in White heard directly from a doctor about the defendant’s mental status. The court also heard extensive explanation from White’s lawyer who was very familiar with her mental status.

Contrast the inquisitive trial judge’s actions in White with the summary conclusion by the plea court and appellant’s attorney at appellant’s plea. Both were “on notice” of appellant’s mental problems and that he was not on his medication. Unlike the White plea judge, no questioning occurred and no doctor testified about the impact of appellant being unmedicated at

his plea. As appellant wrote in his guilty plea explanation, he was “unstable” at the time of the plea. Without any investigation into appellant’s medication, his plea was invalid. This Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's guilty pleas and remand this case for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 28th day of February, 2025.

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IN THE COURT OF APPEALS

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Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

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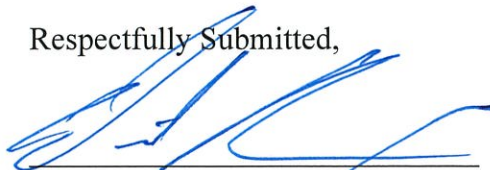
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alvaro Seleste Mcbride states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Paul M. Burch, which was held on June 5, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Alvaro Seleste Mcbride.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 28th day of February, 2025.

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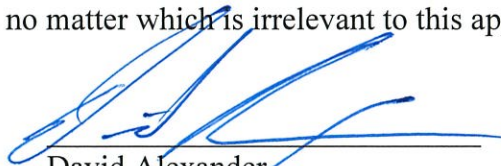
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments and sentencing sheets;
- (2) Hearing transcript dated April 27, 2023;
- (3) Guilty plea hearing transcript dated June 3, 2024;
- (4) Hearing transcript dated June 5, 2024;
- (5) Order finding Defendant competent to stand trial and attached report; and
- (6) *Pro se* guilty plea explanation by Appellant.

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



David Alexander
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ATTORNEY FOR APPELLANT

This 28th day of February, 2025.

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 Alvaro Seleste McBride, #309079, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 28th day of February, 2025.



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