

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

Dec 08 2025

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ARMAD RASHAD ALI IRBY,

APPELLANT

APPELLATE CASE NO. 2025-000192

ANDERS BRIEF OF APPELLANT

GARY H. JOHNSON
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

Did the lower court abuse its discretion in denying appellant's motion to withdrawal his guilty plea before sentencing when appellant entered a guilty plea under the coercion of ineffective assistance of plea counsel?

STATEMENT OF THE CASE

On February 18, 2022, an assailant shot at and wounded RJ while he was driving his automobile. R. 9, ll. 6 – 20. While RJ did not know appellant, law enforcement connected appellant to the shooting through video evidence and the vehicle the assailant used in the shooting. R. 9, l. 17 – 10, l. 2. Appellant was indicted for attempted murder by a Spartanburg grand jury on August 19, 2022. R. 41.

On January 14, 2025, appellant appeared before the Honorable J. Derham Cole, Jr., and entered a guilty plea with sentencing to be deferred for a later hearing. R. 1 Appellant was represented by James Farr at the guilty plea and James Hunter appeared on behalf of the state. R. 1. Judge Cole accepted the guilty plea and deferred sentencing until January 24, 2025. R. 11. By written motion of plea counsel, appellant sought to withdraw his guilty plea before sentencing. R. 38. Judge Cole heard arguments on the motion on January 24, 2025, and refused to allow withdrawal of the plea. R. 26, l. 17 – 27, l. 22. Judge Cole then sentenced appellant pursuant to the terms of the plea from the January 14, 2025, hearing. R. 30.

STANDARD OF REVIEW

“The withdrawal of a guilty plea is generally within the sound discretion of the trial judge.” State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982); State v. Cantrell, 250 S.C. 376, 378, 158 S.E.2d 189, 191 (1967)(“A motion to withdraw a plea of guilty, and to be allowed to enter a plea of not guilty, addresses itself to the discretion of the trial judge before whom the plea is entered, and, in the absence of a clear abuse of discretion, this court will not interfere.”). A refusal to allow withdrawal from an involuntary guilty plea would be an abuse of discretion requiring reversal. *See* State v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006).

ARGUMENT

The lower court abused its discretion in denying appellant's motion to withdrawal his guilty plea before sentencing when appellant entered a guilty plea under the coercion of ineffective assistance of plea counsel.

Plea counsel represented appellant for more than two years before the plea was entered. R.

3, l. 22 – 4, l. 2. Appellant attempted without success to bring the matter to trial.

This is my first time ever – second rather -- last week and this week -- ever coming to court for my case, because I've been trying to go to trial since 2023.¹

Kelly² told me that by January 24th this case should be tried. January 24th come; 2024 come. He don't know nothing. He don't know nothing. So I'm like what's going on. Trying to go to trial. He files a motion.

January 31st of 2024, speedy trial.³ Disregarded that. Motion to dismiss.⁴ Disregarded that. Every motion I put in for my case was disregarded up until November 4th. He emails my attorney and says if you keep filing motions I'm to ask the family to see what they want to do. I took that as a threat. I told my lawyer I took that as a threat.

R. 21, l. 16 – 22, l. 4.

Rather than press the motion to dismiss, plea counsel pressured appellant into involuntarily agreeing to plead guilty. Appellant, during the hearing to withdrawal his guilty plea, unequivocally

¹ Appellant was indicted on August 19, 2022, and given credit for more than 1000 days pretrial detention (which included monitored home detention) at sentencing. R. 44.

² Appellant may be referencing a pre-trial hearing before Judge Keith Kelly who was assigned general sessions duties for July of 2023 in Spartanburg County.

³ Plea counsel filed a speedy trial motion on January 31, 2024. R. 33.

⁴ Plea counsel filed a motion to dismiss the charges for violating appellant's right to a speedy trial on October 31, 2024. R. 35.

stated that “I was forced into this. I didn't do nothing. I'm innocent.” R. 29, ll. 6 – 8. Plea counsel acknowledged appellant’s assertion that the original plea was involuntary and that “I [plea counsel] told him just to say yes and that I didn't prepare him and stuff like that.” R. 30, ll. 20 – 21. Appellant relayed to the lower court that his plea attorney, in delaying sentencing, would allow appellant the time to consider and withdrawal the plea:

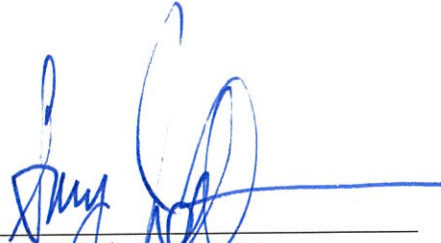
Comes back, hey, you going to take a plea today but they'll sentence you next week. I'm under the impression, okay, now I can think about what I want to do instead of either take this plea or start trial in 14 days that I never even prepared for or nothing.

R. 25, ll. 3 – 7.

Here, the lower court abused its discretion in failing to allow appellant to withdraw an involuntary guilty plea. *See State v. Rikard*, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006). Appellant was coerced into pleading guilty due to a lack of trial preparation by plea counsel and the implied promise the plea could be withdrawn before sentencing. Appellant’s assertion that his right to a speedy trial was violated is supported by the Record before this Court. Had the lower court allowed the withdrawal, the merits of appellant’s motion to dismiss could have been addressed. Recently, this Court has ruled that the violation of the right to a speedy trial is non-jurisdictional and thus waived during a guilty plea. *See State v. Green*, 436 S.C. 492, 872 S.E.2d 869 (Ct. App. 2022). This waiver, due to ineffective assistance of plea counsel, creates significant prejudice on appellant’s part. To the extent the Record would support a finding appellant’s guilty plea was voluntary, the trial court abused its discretion in failing to allow the withdrawal in order for appellant to fully litigate and be heard on an important constitutional right that has, by the entry of the guilty plea, been waived.

CONCLUSION

Based upon the foregoing argument, appellant respectfully requests that this Court reverse the lower court, allow the withdrawal of appellant's guilty plea, and remand this matter to the Court of General Sessions for further proceedings.



Gary H. Johnson
Appellate Defender
SC Bar #8898

ATTORNEY FOR APPELLANT

This 8th day of December 2025.

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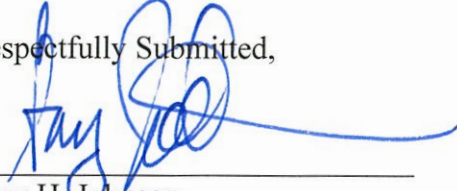
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Armad Irby 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 J. Derham Cole, which was held on Jan 14, 24, 2025, 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 Armad Irby.

Respectfully Submitted,



Gary H. Johnson
Appellate Defender
SC Bar #8898

This 8th day of December 2025.

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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 indictment(s):
- (2) Sentence Sheet
- (3) Transcript Dated January 14, 2025
- (4) Transcript Dated January 24, 2025
- (5) Motion for Speedy Trial Dated January 31, 2024
- (6) Notice of Motion and Motion for Change of Venue Dated July 1, 2024
- (7) Notice of Motion and Motion to Dismiss for Violation of Armad Irby's Right to a Speedy Trial Dated October 31, 2024
- (8) Notice of Motion and Motion to be Relieved as Counsel Dated January 16, 2025
- (9) Notice of Motion and Motion to Vacate Guilty Plea from January 14th, 2025 Dated January 16, 2025
- (10) Order to be Relieved Dated February 7, 2025

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

This 8th day of December 2025.



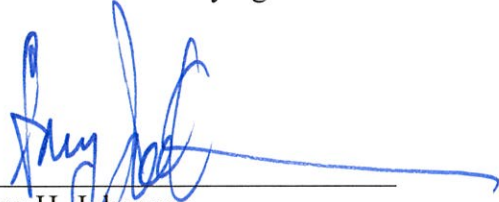
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CERTIFICATE OF COUNSEL

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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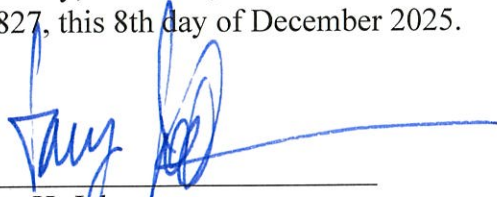
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CERTIFICATE OF SERVICE

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 Armad Irby, #396313, at Allendale Correctional Institution, 1057 Revolutionary Trail, Fairfax, SC 29827, this 8th day of December 2025.



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