STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Eugene P. Warr, Jr, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAY EDWARD CHESTNUT,

APPELLANT

APPELLATE CASE NO. 2025-001447

ANDERS BRIEF OF APPELLANT

W. CHANDLER NORVILLE
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by refusing to relieve defense counsel?

STATEMENT OF THE CASE

The Horry County grand jury indicted Appellant for trafficking in fentanyl at its February 12, 2025 term. R. 214-15. The case was called to trial on July 14, 2025 before the Honorable Eugene P. Warr, Jr., who was sitting with the Honorable Michael Nettles, and a jury. R. 14. Appointed counsel Brett Perry represented Appellant; Joshua D. Holford represented the state. R. 14. On July 15, 2025, the jury convicted Appellant as charged. R. 183. Judge Warr sentenced Appellant to twenty-five (25) years' imprisonment. R. 193.

This appeal follows.

STANDARD OF REVIEW

A trial court's ruling on a motion to withdraw as counsel is reviewed by this Court for abuse of discretion. *Lucas v. State*, 352 S.C. 1, 7, 572 S.E.2d 274, 277 (2003). However, the determination of whether a conflict of interest exists is a question of law. *See generally State v. Gregory*, 364 S.C. 150, 612 S.E.2d 449 (2005). Questions of law are reviewed *de novo*. *See State v. Frasier*, 437 S.C. 625, 634, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The trial court erred by refusing to relieve defense counsel.

Relevant Facts

On August 22, 2023, Bryant Clark, a police informant, allegedly purchased fentanyl from Appellant during a controlled buy. R. 66. At the time, Clark had pending charges for trafficking in methamphetamine that were dismissed due to his assistance. R. 75, ll. 24 – 25; 79, l. 6-9. Clark was given $400 in official police funds, which he used to purchase what he believed to be heroin from Appellant. R. 63, ll. 3-9. Clark wore a recording device during the transaction, the recording from which was introduced at trial. R. 71, l. 3, State's Exhibit 2 (thumb drive)(on file with this Court).

Assistant Public Defender Kia Wilson was originally assigned Appellant's case on February 21, 2024. R. 199-200. Seven days later, on February 29, 2024, Appellant filed a *pro se* motion to relieve Wilson, "due to a possible conflict of interest and having appointed counsel (Brent [sic] Perry) in another case currently pending before the court." R. 201-03. The same day, the Honorable Benjamin Culbertson granted the motion and appointed Brett Perry to represent Appellant. R. 204-05.

A status conference was held before the Honorable Benjamin Culbertson on March 10, 2025. R. 1. At that conference, the state placed on the record that it was advancing a plea offer of a negotiated fifteen (15) years, or a "straight up" plea—where the state would remain silent at sentencing—to trafficking in fentanyl first offense, which has a sentencing range of seven (7) to twenty-five (25) years' imprisonment. R. 3. Mr. Perry put on the record that Appellant had not seen the video of the controlled buy and needed to see that video for himself before pleading

guilty, since he did not fully trust Perry who had seen it. R. 5-7. The plea offer was withdrawn, and a trial date was tentatively set for April 7, 2025. R. 12.

On May 7, 2025, Appellant filed a *pro se* motion to relieve Mr. Perry, stating that he was "not satisfied with the representation provided by [Perry] as he had failed to provide defendant with all the evidence against him and has failed to provide a defense to defendant regarding the charges." R. 207-08. He requested Ryan Payne be appointed in Mr. Perry's place. That motion was denied at some point unclear from the present record. R. 18, ll. 7-11. On June 2, 2025, Appellant filed a second *pro se* motion to relieve Mr. Perry, accusing him of threatening to "slap the s**t out of defendant and his girlfriend if we didn't shut up." R. 209-11. This prompted Mr. Perry to file a motion to be relieved as counsel on June 11, 2025, due to Appellant's allegations against him. R. 212-13.

Prior to jury qualification on July 14, 2025, the motions were heard together by the Honorable Michael Nettles. R. 17. Appellant argued his *pro se* motion himself, and he asserted that he felt disrespected by Mr. Perry's "unprofessional" behavior and wanted the Court to appoint Carla Todd, who already represented him on other charges, to represent him in this case. R. 18-19. Judge Nettles responded that Appellant's "choices at this time...are to proceed forward *pro se* or allow counsel to assist you. Which would you rather do?" R. 19, ll. 15-18. After Appellant stated he would rather have an attorney, Judge Nettles responded, "Well, I will ask that he assist you in that regard." R. 19, ll. 19-21.

Immediately thereafter, Mr. Perry argued his motion to be relieved. R. 20, l. 24. Mr. Perry explained that Appellant "made allegations that [Perry] committed an assault against [Appellant] and his girlfriend...alleging that I told them that I was going to beat the shit out of them if they didn't shut up when we were leaving the courthouse." R. 21, ll. 20-25. Mr. Perry

explained that, in response to these allegations, he requested security camera footage from the courthouse under the Freedom of Information Act which showed Appellant's allegations to be false. R. 22, ll. 3-9. Mr. Perry asserted to the trial court that:

> [t]he attorney-client relationship has been damaged to the point that I do not believe it is possible for me to provide effective assistance of counsel based on the fact that, because of the animus that has arisen, there has been ineffective communication between the attorney and client and it is extremely difficult for me to go forward and adequately represent Mr. Chestnut, given the allegations that have been made against me.

R. 22, ll. 10-19. Judge Nettles simply responded, "Did you make yourself available to speak with him?" R. 22, ll. 20-21. After receiving an affirmative response, Judge Nettles denied the motion. R. 22, ll. 22-24.

Appellant was convicted and sentenced to twenty-five (25) years' imprisonment. R. 183; 193.

Discussion

The breakdown of the attorney-client relationship between Appellant and Mr. Perry was so serious as to create a direct conflict of interest. Therefore, the trial court abused its discretion by failing to relieve Mr. Perry as counsel. Due to this conflict of interest, Appellant is not required to show prejudice; the error is *per se* reversible. Further, even if Appellant is required to show prejudice, he was prejudiced by this error, because, absent the conflict of interest with an attorney he did not trust, Appellant would have likely pleaded guilty in exchange for a significantly shorter prison sentence if advised to do so by an attorney he trusted. This Court should reverse.

Motions to relieve as counsel generally lie within the sound discretion of the trial court. *Lucas v. State*, 352 S.C. 1, 7, 572 S.E.2d 274, 277 (2002) (*quoting Matter of Goodwin*, 279 S.C.

274, 276-77, 305 S.E.2d 578, 579 (1983)). However, an actual conflict of interest is always satisfactory cause for removal of an attorney. *State v. Gregory*, 364 S.C. 150, 153, 612 S.E.2d 449, 450 (2005). When a defendant shows that there is an actual conflict of interest, he need not demonstrate prejudice. *Id.* (*citing* inter alia *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001)). A failure by the trial court to removal an actually conflicted attorney is *per se* reversible error. *See id.* A conflict of interest arises where "a defense attorney places himself in a situation inherently conductive to divided loyalties." *Id.* (*quoting Zuck v. Alabama*, 588 F.2d 436, 439 (5th Cir. 1979)). These divided loyalties can be between two different clients, or, as relevant here, between the attorney himself and the client. *See* Rule 1.7, RPC, Cmt. [1], Rule 407, SCACR ("Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests."). "[T]he Sixth Amendment requires that a defendant may not be represented by counsel who might be tempted to dampen the ardor of his defense in order to placate" someone else. *Zuck*, 588 F.2d at 440.

Here, Appellant and his girlfriend accused Mr. Perry of a crime and an ethical violation. While nothing came out of these allegations, Mr. Perry took them seriously enough to begin evidence gathering to establish a defense to the allegations and spoke openly about the "fabrication" of the alleged misconduct. Mr. Perry believed Appellant to be a potential witness against him in a potential criminal or disciplinary action. This places Appellant's interests squarely adverse to his own, creating a conflict of interest. The trial court committed reversible error in failing to relieve Perry.

Further, although Appellant need not establish prejudice, he was in fact prejudiced by the lower court's error. Appellant was made two plea offers: one for a negotiated fifteen years' imprisonment, and the other for a sentencing range between seven and twenty-five years'

imprisonment. These plea offers were withdrawn by the solicitor due to the lack of trust and communication between Appellant and Perry. Appellant, after conviction, was sentenced to twenty-five years' imprisonment, ten years longer than he would have received under the first plea offer, and eighteen years longer than the lowest end of the range offered in the second plea offer. Had Appellant had an attorney he trusted, he likely would have accepted one of these two plea offers, especially given the clear strength of the state's case against him.

Accordingly, Mr. Perry had an actual conflict of interest, and the trial court should have relieved him. This Court should reverse Appellant's conviction and sentence and remand for a new trial.

CONCLUSION

For the foregoing reasons, Appellant's conviction and sentences should be reversed and this case remanded for a new trial.

W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of December, 2025.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ray Chestnut 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 Eugene P Warr, Jr, which was held on July 14-15, 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 Ray Chestnut.

Respectfully Submitted,

W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of December.

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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;
(2) Entire Trial Transcript;
(3) State's Exhibit 2 (thumb drive);
(4) Certificate of Representation Appointing Kia Wilson;
(5) Pro Se Motion to Relieve Counsel February 29, 2024;
(6) Order Appointing Conflict Attorney;
(7) Certificate of Representation Appointing Brett Perry;
(8) Pro Se Motion to Relieve Counsel May 7, 2025;
(9) Second Pro Se Motion to Relieve Counsel June 2, 2025;
(10) Motion to Be Relieved As Counsel.

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

W. Chandler Norville
Appellate Defender

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ATTORNEY FOR APPELLANT

This 31st 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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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 Ray Chestnut, #304094, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 31st day of December, 2025.

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