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JAN 09 2026

STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

Appellate Case No. 2025-001447

Lower court case No. 2025-GS-26-00631

State of South Carolina, Respondent,
VS

Ray Edward Chestnut, Appellant.

PRO-SE RESPONSE TO ANDERS BRIEF (Submitted Pursuant to Anders v. California, 386 U.S. 738 (1967)).

INTRODUCTION AND ANDERS STANDARD

Appellant Ray Edward Chestnut, proceeding pro-se, submits this response to appellate counsel's Anders brief asserting that non-frivolous issues exist. This assertion is incorrect.

Under Anders v. California, 386 U.S. 738, 744 (1967), when appointed counsel seeks to withdraw, the appellate court must conduct a full,

independent review of the entire record. If the appellate identifies any issue that is arguable on its merits, the court may not summarily affirm, but must order merits briefing or appoint substitute counsel.

An issue is non-frivolous if it is not "wholly without merit." *Penson v. Ohio*, 488 U.S. 75, 83-84 (1988). Jurisdictional defects, structural errors, defective verdicts, and illegal sentences categorically satisfy this standard.

STATEMENT OF THE CASE AND FACTS

Appellant was indicted in Horry County for trafficking fentanyl and tried in the Court of General Sessions.

The record reflects that:

1. Judge Michael Nettles presided over the trial proceedings on Day one;
2. Judge Eugene P. Warr, Jr. presided on Day two of the trial;

3. The only assignment order in the record is a South Carolina Supreme Court order dated April 7, 2025, assigning Judge Warr to the Horry County Court of General sessions for the week of July 14, 2025 for the purpose of training with Judge Nettles;
4. No substitution or reassignment order exists authorizing Judge Warr to preside independently, accept verdicts, or impose sentence.
5. The jury verdict form fails to identify the governing trafficking statute and fails to require a jury finding as to drug weight;
6. Appellant was sentenced to a mandatory enhanced trafficking sentence based on facts never found by the jury.

Each defect is apparent from the face of the record.

ISSUE ONE

THE TRIAL COURT LACKED SUBJECT-MATTER JURISDICTION WHERE A DIFFERENT JUDGE IMPOSED SENTENCE AND PRESIDED ON DAY TWO

OF TRIAL WITHOUT LAWFUL AUTHORITY, AND WHERE THE ONLY ASSIGNMENT ORDER AUTHORIZED TRAINING - NOT PRESIDING JURISDICTION

A. Jurisdiction must be expressly conferred

A circuit judge's authority to act derives solely from constitutional and statutory assignment. Where a judge acts without lawful authority, the court lacks subject-matter jurisdiction and the resulting judgment is void ab initio.

South Carolina courts have long held that subject-matter jurisdiction defects:

- cannot be waived,
- may be raised at any time, and
- require vacatur.

See *State v. Bailey*, 276 S.C. 32, 274 S.E. 2d 913, 914-15 (1982); *State v. Sweets*, 386 S.C. 339, 688 S.E. 2d 569, 571-72 (2010).

B. The April 7, 2025 order authorized training only - not presiding authority.

The only assignment order appearing in the record is a South Carolina Supreme Court order dated April 7, 2025, assigning Judge Eugene P. Warr Jr. to the Horry County Court of General sessions for the week of July 14, 2025 expressly for the purpose of training with Judge Michael Nettles.

That order does not authorize Judge Warr to:

- preside independently,
- conduct proceedings as the court,
- accept verdicts, or
- impose sentence.

A training assignment permits observation and supervised participation; it does not confer judicial authority by implication. Jurisdiction must be explicitly granted, not inferred.

C No substitution or reassignment order exists

Despite the change in presiding judge between trial and sentencing (from Day one to Day Two), the record contains:

- no substitution order
- no reassignment order; and
- no supreme Court order authorizing Judge Warr to act as the presiding judge for verdict or sentencing on Day Two of the trial.

Absent such authorization, Judge Warr lacked subject-matter jurisdiction to impose sentence.

A judgment entered by a judge without jurisdiction constitutes structural error and is void. See *State v. McKnight*, 422 S.C. 223, 810 S.E. 2d 1, 6 (2018).

This issue alone precludes Anders affirmance.

ISSUE TWO

THE VERDICT FORM IS FATALLY DEFECTIVE BECAUSE IT FAILS TO IDENTIFY THE GOVERNING STATUTE AND FAILS TO REQUIRE A JURY FINDING AS TO DRUG WEIGHT, AS REQUIRED FOR A TRAFFICKING CONVICTION

A. A verdict must identify the offense and statutory basis

A valid verdict must reflect the jury's unanimous determination of the specific statutory offense. A verdict that does not identify the governing statute or elements fails to establish what crime the jury found beyond a reasonable doubt.

In *State v. Jenkins*, 408 S.C. 118, 758 S.E.2d 1, 6-7 (2016), the court held that verdict forms must permit explicit jury findings and may not rely on incorporation by reference to the indictment.

The verdict form here fails to list the applicable trafficking statute, rendering the verdict legally ambiguous.

B. Drug weight is an essential element of trafficking

Trafficking offenses are defined by drug weight. The offense level and mandatory punishment depend entirely on the quantity.

Any fact increasing the statutory punishment range constitutes an element that must be found by a jury beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Alleyne v. United States*, 570 U.S. 99, 103 (2013).

C. The verdict form contains no jury finding as to drug weight

The verdict form does not:

- specify any weight threshold,
- list alternative trafficking ranges, or
- reflect a unanimous jury determination of

(p. 8)

quantity.

Without a jury finding on weight, the court lacked authority to enter a trafficking conviction or impose a mandatory sentence. See *State v. Sweets*, 386 S.C. at 345-46, 688 S.E. 2d at 572-73.

D. The defect cannot be cured by indictment or instructions

A defective verdict cannot be cured by reference to the indictment or jury instructions. The verdict must stand on its face, reflecting what the jury actually found. See *United States v. Gaudin*, 515 U.S. 506, 510 (1995).

Because the jury was never required to find the statute violated or the drug weight involved, no lawful verdict was returned.

ISSUE THREE

THE SENTENCE IS ILLEGAL AND JURISDICTION-

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ALLY VOID BECAUSE (1) ENHANCING FACTS WERE NOT FOUND BY A JURY AS REQUIRED BY APPENDI AND ALLEYNE, AND (2) THE SOLICITOR FAILED TO FILE OR SERVE THE MANDATORY WRITTEN NOTICE OF ENHANCEMENT REQUIRED BY S.C. CODE ANN. 44-53-470; THESE DEFECTS DEPRIVED THE COURT OF AUTHORITY AND MAY BE RAISED AT ANY TIME

A. Illegal sentences are jurisdictional and may be raised at any time

South Carolina law is settled that a sentence not authorized by law is illegal, deprives the court of authority, and is subject to correction at any time. *State v. McKnight*, 422 S.C. at 229, 810 S.E. 2d at 6. Because authority to impose punishment is a jurisdictional prerequisite, an illegal sentence constitutes a jurisdictional defect that cannot be waived.

B. Absence of jury finding renders the enhanced sentence illegal

Any fact that increases a statutory penalty — including a mandatory minimum — must be found by a jury beyond a reasonable doubt.

Apprendi v. New Jersey, 530 U.S. at 490;

Alleyne v. United States, 570 U.S. at 103.

Here, the enhanced trafficking sentence was imposed on assumed statutory factors never submitted to or found by the jury. The sentence therefore exceeded the court's lawful authority and is illegal and void.

C. Independent statutory ground: failure to provide written notice under 44-53-470

Independent of the constitutional violation, the sentence is illegal because the solicitor failed to file or serve the mandatory written notice of intent to seek enhancement required by S.C. Code Ann. 44-53-470. The record contains no such notice prior to trial or sentencing.

Compliance with 44-53-470 is a condition

precedent to enhanced punishment. when the state fails to satisfy a statutory prerequisite to enhancement, the court never acquires authority to impose the enhanced sentence. A sentence imposed without statutory authorization is jurisdictionally void. State v. McKnight, 422 S.C. at 229, 810 S.E. 2d at 6.

D. Failure of notice cannot be cured after the fact

Mandatory statutory notice cannot be supplied by argument at sentencing or post-trial proceedings. Because the state did not comply with 44-53-470, the enhanced sentence is unauthorized by law and void.

E. Jurisdictional consequence and Anders posture

Because the enhanced sentence was imposed without lawful authority, the defect is jurisdictional, apparent on the face of the

record, and may be raised at any time.

Jurisdictional sentencing errors independently defeat Anders review and require merits consideration. *Penson v. Ohio*, 488 U.S. at 83-84.

ANDERS ANALYSIS AND REQUIRED RELIEF

The issues presented are jurisdictional, structural, constitutional, and record-based.

They are not frivolous. Once a non-frivolous issue is identified, the court must not affirm under Anders. *Penson*, 488 U.S. at 83-84.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this court:

1. Reject appellate counsel's Anders brief;
2. Order full merits briefing or appoint substitute counsel; and
3. Address the jurisdictional and constitutional

defects identified herein.

Respectfully submitted,
/s/ Ray Chestnut

Ray Edward Chestnut

Appellant, Pro Se

SCDC # 304094

Kirkland Correctional Institution

4344 Broad River Road

Columbia, SC 29210

January 6, 2026

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS

Case No. 2025-GS-26-00631

THE STATE OF SOUTH CAROLINA,)
Plaintiff,)

vs.)

RAY EDWARD CHESTNUT,)
Defendant.)

**VERDICT FORM
RAY EDWARD CHESTNUT**

I. TRAFFICKING FENTANYL

As to the offense of Trafficking Fentanyl – occurring on or about August 22, 2023, we the jury by unanimous consent find the Defendant

____ Not Guilty

✓ _____ Guilty

FILED
HORRY COUNTY
2025 JUL 15 P 4:44
RENEE H. OLIVIS
CLERK OF COURT
HORRY COUNTY, SC

The verdict must be unanimous. Please notify Bailiff upon reaching a verdict.

Foreman Signature

15th Day of July, 2025

Horry County, South Carolina

COUNTY OF HORRY

) INDICTMENT/CASE#: 2025-GS-26-00631

) AW#: 2023A2610700934

STATE vs.

) Date of Offense: 08/22/2023

Ray Edward Chestnut

) S.C Code§: 44-53-370(e)

AKA: Raymond Edward Chestnut, Ray Edward Chestnut

SSN: [REDACTED]

) CDR Code #: 4084

RACE: B

SEX: M

DOB: [REDACTED]

) Range of Offense: Trafficking Fentanyl, 4g but <14g 2nd Offense (25 YEARS & \$100,000)

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Trafficking in Fentanyl, 4 - 14 grams - 2nd offense

Range of Offense Pled: (25 YEARS & \$100,000)

In violation of § 44-53-370(e)(9) of the S.C. Code of Laws, bearing CDR Code # 4084

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS MANDATORY GPS § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted Lesser Included Offense Defendant Waives Presentment to Grand Jury

The plea is: w/o Rec/Negotiations Negotiated Recommendation _____

[Signature]
Joshua D. Holford,
Solicitor

80071

SC Bar #

Brett Allen Perry, Attorney
for Defendant

6991

SC Bar #

The Defendant is committed to the SCDC County Detention Center Home Incarceration Program
for a determinate term of 25 days/months/years/Time Served YOANTE _____ years and/or shall pay a fine
of \$ _____; provided that upon the service of _____ days/months/years/Time Served and or payment
of \$ _____ plus costs and assessments as applicable*; balance is suspended with probation for _____ months/years
and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.

The sentence shall run CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDC
166 days/months To include time spent on monitored house arrest prior to trial and sentencing

SPECIAL CONDITIONS:

- PTUP _____
- No Contact with Victim Domestic Violence Intervention Program Hold for Inpatient Treatment
- Sex Offender Registry pursuant to S.C. Code § 23-3-430 SAC/MHC if necessary
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135
- Other: _____

RESTITUTION See Separate Order (20% per S.C. Code §24-21-490(B))

§14-1-206 (Assessments 107.5%)		Restitution	\$ _____
§14-1-211 (A)(1) Conv. Surcharge		FINE:	\$ _____
§14-1-211 (A)(2)(DUI Surcharge)			\$ _____
§56-5-1995 (DUI Assessment)			\$ _____
§56-1-286 (DUI Breath Test)			\$ _____
§14-1-212 (Law Enforcement Funding)			\$ _____
§14-1-213 (Drug Court Surcharge)			\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)			\$ _____
§50-21-114 (BUI Breath Test Fee)			\$ _____
§56-5-2942(J) (Vehicle Assessment)			\$ _____
3% to County (if paid in installments)			\$ _____
<input type="checkbox"/> Appointed PD or appointed other counsel. Provisio requires \$500 to be paid to Clerk during probation and shall be collected before any other fees			\$ _____
<input type="checkbox"/> §17-3-45(B) Unpaid Application Fee to be paid to the Public Defender Fund			\$ _____
		\$40	\$ <u>40.00</u>
		TOTAL	\$ <u>323.25</u>

Fine/Costs and Assessments are to be paid to the Clerk of Court within \$25.00 days/months

beginning 8.15.2050

Renee Elvis
Clerk of Court/Deputy Clerk
Bobbi Fisher
Court Reporter

2793
Judge Code

July 15, 2025
Sentence Date

[Signature]
Presiding Judge

SCCA217B
01/27/2025

Attorney General
1000 Assembly St.
Columbia, SC 29201

Lewisburg Prison Project 570-523-1104
115 Farley Circle, Suite 110
Lewisburg, PA 17837

Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528

Horry County Solicitors Office
P.O. Box 1276
Conway, SC 29528

Lovely Law Firm
1053 London Street
Myrtle Beach, SC 29577

The Supreme Court of South Carolina

ORDER

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that the Honorable Eugene P. Warr, Jr. be assigned to the Trials term of the Court of Common Pleas for Richland County for the week of July 7, 2025, to train with the Honorable Jocelyn Newman.

IT IS FURTHER ORDERED that the Honorable Eugene P. Warr, Jr. be assigned to the Trials term of the Court of General Sessions for Horry County for the week of July 14, 2025, to train with the Honorable Michael G. Nettles.

IT IS FURTHER ORDERED that the Honorable Eugene P. Warr, Jr. be assigned to the Trials term of the Court of Common Pleas for Horry County for the week of July 21, 2025, to train with the Honorable Benjamin H. Culbertson.

IT IS FURTHER ORDERED that the Honorable Eugene P. Warr, Jr. be assigned to the Trials term of the Court of General Sessions for Sumter County for the week of July 28, 2025, to train with the Honorable Paul M. Burch.



FOR THE COURT C.J.
John W. Kittredge
Chief Justice of South Carolina

Columbia, South Carolina
April 7, 2025

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CERTIFICATE OF SERVICE

JAN 09 2026

SC Court of Appeals

This is to certify that a copy of the foregoing was served on the parties addressed below by via U.S. mail with appropriate postage on this 6th day of January, 2026.

Addressee(s):

Chandler Norville, Appellate Defender
South Carolina Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

[REDACTED]

Alan Wilson, Attorney General
Office of the S.C. Attorney General
P.O. Box 11549
Columbia, SC 29211

/s/ Ray Chestnut
Ray Edward Chestnut

Ray Edward Chestnut, SCDC # 304094
Kirkland Correctional Institution
4344 Broad River Road
Columbia, SC 29210

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Kirkland R&E Center
Mailroom

Attn: Jenny A. Kitchings, clerk
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* Legal mail