

RECEIVED

FEB 03 2026

SC Court of Appeals

State Of South Carolina
In The Court Of Appeals

Appeal from Chesterfield County
Honorable Michael S. Holt, Circuit Court Judge

The State

v.

Respondent,

Raekwon Malik Ellerbe,

Appellant

Appellate Case No. 2023-001543
Motion To Correct And Reconsider

Appellant moves before this Honorable Court with a "Motion To Correct And Reconsider" order of the Honorable Judge Kristi Curtis, issued November 13, 2025 denying Appellant's motions filed pursuant to his "Pro Se Anders Brief Actual Innocence," on the following grounds:

1. Correction and reconsideration is necessary by the Court to secure and maintain uniformity of its decision;
2. Appellant's issues raised in his "Pro Se Anders Brief Actual Innocence," involves questions of exceptional importance in the administration of justice.

Appellant contends that the South Carolina COA order acknowledges that on October 16, 2025, Appellant filed a "Pro Se Anders Brief Actual Innocence", in which he, along with issues raised, filed a "Petition To Appoint New Counsel On Appeal", requesting that the Court: (1) vacate the Anders brief filed by appellate counsel; (2) appoint "new, independent counsel to represent Appellant"; and (3) "order new counsel to file a full merits brief" on the issues identified in the Anders brief, the issues identified in Appellant's prose brief, and any other meritorious issues. (Note: The COA order left out the last sentence pursuant to (3), which is very important and states, "ensuring that Appellant's claim of "actual innocence" concerning the murder conviction is fully and fairly adjudicated on its merits.").

Appellant contends that the COA order also acknowledges his amendment to his prose Anders brief filed on October 30, 2025.

However, the record proves that without a ruling on the merits of his case, the Appellate Court ~~incorrectly~~ ^{incorrectly} construed his case as a mere request letter to relieve counsel, and denied Appellant's motions supporting its decision citing and quoting State v.

Graddick, 345 S.C. 383, 385-86 (2001) (finding no reversible error in a refusal to relieve counsel based on arguments that counsel was not representing the defendant's interests,

Counsel was not prepared, and the defendant did "not feel comfortable" with counsel).

Appellant contends that State v. Graddick has no significance to his case factually nor legally. Appellant request that this Honorable Court corrects the record to reflect that at no time did he argue that the trial court erred in refusing to relieve his trial counsel because he was not representing his interest, was not prepared, or that he did not feel comfortable with counsel, as the COA alleges in its order denying his motions by citing and quoting Graddick in support of its order.

Appellant respectfully request that this Court Alters and Corrects its order to reflect that the request pursuant to his "Pro Se Anders Brief Actual Innocence" to: (1) appoint new counsel on appeal; (2) to vacate Anders Brief by Appellant Counsel, and (3) Order new counsel to file a full merits brief on the issues identified in the Anders brief, the issues raised in Appellant's Pro Se Anders Brief, and any other issues the Court finds meritorious, and adjudicate his case fully and fairly on the merits, are not made up request, but, are the actual procedures set forth by the United States Supreme Court in Anders v. California, 87 S.Ct. 1396 (1967) that an Appellate Court should

follow when conducting the independent judicial determination of appeal merits when an Anders Brief is filed and the Court finds that there are meritorious issues preserved for appeal. See Anders v. California, 386 U.S. 738 (1967), "if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court - not counsel - then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal." See also State v. McKernedy, 348 S.C. 270 (2002).

Appellant contends that the COA order fails to

reflect that it: (1) conducted a full examination of "all" the proceedings, including Appellant's "Pro Se Anders Brief Actual Innocence," Appellant's Amended brief; (2) after full examination of "all" the proceedings, decided whether Appellant's issues raised in his "Pro Se Anders Brief" is wholly frivolous, and (3) whether the COA found that Appellant's issues were arguable on the merits pursuant to any legal points, and if so, this would require the COA to afford Appellant the assistance of counsel to argue the appeal.

Appellant's Issues Raised In His "Pro Se Anders Brief Actual Innocence Involves Questions Of Law Of Exceptional Importance In The Administration Of Justice

Appellant contends that the United States Supreme Court has held that a direct appeal is a "critical stage," therefore, Appellant's direct appeal itself, not withstanding the fact that Appellant raises issues in his "Pro Se Anders Brief Actual Innocence," that involves questions of law of exceptional importance in the administration of justice which requires that he is afford "full" protection of the Sixth and Fourteenth Amendment of the United States Constitution.

Issues Raised On Appeal

1. Trial judge's statements at sentencing phase that Appellant was, "clearly overcome with grief and emotion at the time... It's clear from the video it's not what you intended... You didn't mean to kill her," was a finding that negated the essential element of murder, malice aforethought which was related to guilt or innocence and, was therefore a directed verdict of acquittal.

On February 24, 2025, The U.S. Supreme Court, Justice Sotomayo clarified any confusion as to what constitutes an acquittal in Woodward v. California, 145 S.Ct. 534 (2025), holding that when ~~determining~~ ^{determining} whether a judge's ruling is a "judgment of acquittal," the Court should first address this question in light of this Court's more recent... intervening decisions in McElrath v. Georgia, 144 S.Ct. 651 (2024) and Evans v. Michigan, 568 U.S. 313 (2013), among others." See and incorporate "Motion To Amend Pro Se Anders Brief Actual Innocence."

2. The trial court erred in failing to direct a verdict of

Acquittal for murder, where the evidence submitted did not raise to the level of substantial circumstantial evidence necessary to submit the case to the jury, where murder required proof of malice aforethought, but the judge recognized that at the time of the shooting, Appellant was "clearly overcome with grief and emotion at the time . . . it's clear from the video it's not what you intended . . . You didn't mean to kill her." Since a defendant is entitled to a directed verdict where the State has failed to present evidence of the offense charged.

3. The Appellate Counsel erred in filing an Anders brief on a meritorious, non-frivolous issue, thereby abandoning Appellant at a critical stage of his appeal in violation of his Sixth Amendment right to counsel and Fourteenth Amendment right to due process, where the meritorious issue is. "The trial court erred in failing to direct a verdict of acquittal for murder, where murder required proof of malice aforethought, but the judge recognized Appellant was "clearly overcome with grief and emotion" at the time of the shooting, since a defendant is entitled to a directed verdict where State has failed to present evidence of the offense charged."

4. The trial court erred in failing to direct a verdict of acquittal for murder, where there was a total failure of competent evidence that proved that the bullet defendant fired killed victim and shot victim's baby, when, forensic firearms expert testified that bullet from victim's autopsy, and ballistics test in comparison to defendant's gun were "inconclusive," and, therefore, the evidence submitted did not raise to the level of substantial circumstantial evidence necessary to submit the case to the jury.

5. Appellate Counsel abandoned her role as an advocate for Appellant and took on the role of his adversary which violated his Sixth Amendment right to counsel and Fourteenth Amendment right to due process when she made several misstatements of facts in her Anders brief that cut to the heart of Appellant's actual innocence defense, where the State failed to present competent evidence tending to prove guilt.

Appellant contends that the above issues raised is support^{ed} by trial transcript which by law proves that the trial judge's statements constituted an acquittal; and the evidence proves Appellant's innocence pursuant to lack of

malice aforethought; and an "inconclusive" ballistics report and testimony from forensic firearms expert as to the bullet fired from Appellant's gun being the bullet that killed victim.

These facts, along with the fact that, despite this, his Appellate Counsel filed an Anders brief overlooking these meritorious issues; The Appellate Court issues an order denying Appellant's motions incorrectly construing his pleas to protect his Constitutional rights on his first appeal pursuant to his "Pro Se Anders Brief Actual Innocence" as a mere letter requesting to relieve counsel - leaving Appellant to again plea to the Court with this "Motion To Correct And Reconsider," to protect his rights on first appeal, is proof of the exact thing the Sixth and Fourteenth Amendment protects him from. From

being discriminated against because he is poor (indigent), thus forcing the shift to Appellant ^{to prove} that he deserves the benefit of counsel (effective counsel) on appeal who will examine the record, research the law, and marshaling of arguments on his behalf, especially where Appellant challenges that his appeal was taken from him not in good faith.

Appellant contends that a "rich man" with Appellant's same case would benefit from counsel "all" of these constitutional safeguards under such circumstances.

See Anders v. California, 87 S.Ct. 1396 (1967), "For a decade or more, a continuing line of cases has reached this Court concerning discrimination against the indigent defendant on his first appeal. Beginning with Griffin v. People of State of Illinois, 351 U.S. 12, (1956) where it was held that equal justice was not afforded an indigent appellant where the nature of the review depends on the amount of money he has; at 19, 76 S.Ct. at 591, and continuing through Douglas v. People of State of California, 372 U.S. 353 (1963), this Court has consistently held invalid those procedures 'where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself.' At 358, 83 S.Ct. at 817. Indeed, in the federal courts, the advice of counsel has long been required whenever a defendant challenges a certification that an appeal is not taken in good faith. Johnson v. United States, 352 U.S. 565 (1957), and such representation must be in the role of an advocate, Ellis v. United States, 356 U.S. 674, 675 (1958), rather than as amicus curiae."

In the present case, Appellant's Appellate Counsel has presented an issue in her Anders brief that is far from "wholly frivolous" and indeed goes to the very heart of Appellant's "actual innocence" regarding the murder conviction. The issue directly challenges an element of the charged offense - malice aforethought - which is essential for a murder conviction in South Carolina.

The Supreme Court of the United States reiterated the Counsel's role in Smith v. Robbins, 528 U.S. 259 (2000), emphasizing that states must have a procedure for "ensuring that indigent criminal defendant's receive adequate and effective appellate review." *Id.* at 270. While Smith allowed for some procedural variations, it maintained the fundamental requirement that "appointed counsel's performance was not deficient" and that "the client's appeal was not prejudiced by counsel's failure to find a meritorious issue." *Id.* at 285. However, Appellant's case is distinguished from Smith. Here, Appellate Counsel's performance is deficient because she has not only mischaracterized a clearly arguable issue of fundamental legal error as frivolous, but, has also overlooked the most important issues, that trial judge's comments as to the lack of malice, according to United States Supreme Court law constituted an "acquittal"; and, the fact that

the trial judge should have never allowed Appellant's case to go before a jury once the forensic firearms expert testified that the bullet from victim's autopsy, and ballistics test in comparison to bullet's fired from defendant's gun were "inconclusive." Appellant contends that Appellate Counsel's deficient performance directly prejudices him and amounts to abandoning Appellant at a "critical stage," under such circumstances, a new appeal must be afforded Appellant without showing prejudice. Anders v. California, 87 S.Ct 1396 (1967).

Reconsider

For the foregoing reasons, incorporate "Pro Se Anders Brief Actual Innocence," "Motion To Amend Pro Se Anders Brief Actual Innocence," and "Petition To Appoint New Counsel," Appellant respectfully request that this Honorable Court: (1) conduct a full examination of "all" the proceedings; (2) after full examination of "all proceedings, decide whether Appellant's issues raised in his "Pro Se Anders Brief Actual Innocence" and "Motion To Amend Pro Se Anders Brief Actual Innocence" is wholly frivolous, and (3) if Appellant's

issues are found to be meritorious pursuant to any legal points, afford Appellant the assistance of new counsel to assist the Court in arguing the appeal to ensure Appellant's Sixth Amendment and Fourteenth Amendment rights are protected on his first appeal.

In light of this motion, Appellant respectfully request that this Honorable Court reconsider its order.

Date (1-27-26)

Respectfully submitted,
S, FMM GMR

Raekwon M. Ellerbe

#359480

Ker. C. I.

4848 Goldmine HWY

Kershaw S.C. 29067

Certificate of Service

RE: State v. Raekwon Ellerbe

Case No. 2023-001563

I Raekwon M. Ellerbe certifies that on this day of January 2026 filed a "Motion To Correct And Reconsider" by placing in U.S. Mail postage pre-paid sent to the addresses below:

South Carolina Court of Appeals

P.O. Box 11629

Columbia, S.C. 29211

Attorney General

Alan Wilson

P.O. Box 11549

Columbia S.C. 29211

S, *RMM* *EME*

Raekwon M. Ellerbe

Ker. C.I.

4848 Goldmine HWY

Kershaw S.C. 29067

RECEIVED

FEB 03 2026

SC Court of Appeals

Notice

RE: State v. Raekwon Ellerbe
Case No. 2023-001563

RECEIVED

FEB 03 2026

SC Court of Appeals

Dear Clerk:

Enclosed please find one original and one copy of "Motion To Correct And Reconsider."

Stamp file please send copy to me.

Date: 1-27-26

South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

With kind regards,
S, *RMM* *EME*

Raekwon M. Ellerbe
Ker. C. I.
Kershaw S.C. 29067

The South Carolina Court of Appeals

The State, Respondent,

v.

Raekwon Malik Ellerbe, Appellant.

Appellate Case No. 2023-001563

ORDER

On October 9, 2024, Appellant's appointed counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). Thereafter, this court granted Appellant's requests for extensions of time to file his pro se brief. On October 30, 2025, this court received Appellant's pro se brief and his amendment to his pro se brief. On October 16, 2025, Appellant filed a motion to "appoint new counsel on appeal," in which he requested this court (1) vacate the *Anders* brief filed by appellate counsel, (2) appoint "new, independent counsel to represent Appellant," and (3) "[o]rder new counsel to file a full merits brief" on the issues identified in the *Anders* brief, the issues identified in Appellant's pro se brief, and any other meritorious issue. After careful consideration, we deny Appellant's motion. *See State v. Graddick*, 345 S.C. 383, 385-86, 548 S.E.2d 210, 211 (2001) (finding no reversible error in a refusal to relieve counsel based on arguments that counsel was not representing the defendant's interests, counsel was not prepared, and the defendant did "not feel comfortable" with counsel).

Kristi J. Curtis

J.

FOR THE COURT

Columbia, South Carolina

cc:

Raekwon Malik Ellerbe, 00392059

Alan McCrory Wilson, Esquire

Melody Jane Brown, Esquire

FILED
Nov 13 2025

Joanna Katherine Delany, Esquire
Paul Michael Burch, Jr., Esquire

7
Naekwan Ellerbe #392059
4848 Goldmine Highway
Kershaw, SC 29067



US POSTAGE
ZIP 29067 \$002.44⁰
02 4W
0000378441 JAN 28 2025

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

D.B.
1

RECEIVED

JAN 28 2025

KERSHAW
MAILROOM