

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JAN 10 2014

Appeal from Charleston County

S.C. Supreme Court

R. Markley Dennis, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

DARREN A. SIMMONS,

APPELLANT

APPELLATE CASE NO. 2013-000204

INITIAL BRIEF OF APPELLANT
PURSUANT TO WHITE v. STATE

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TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUES ON APPEAL.....3

STATEMENT OF THE CASE4

ARGUMENT7

CONCLUSION8

TABLE OF AUTHORITIES

Cases

Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969) 7

Santobello v. New York, 404 U.S. 257 (1971)..... 7

State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975)..... 7

State v. Gates, 299 S.C. 92, 382 S.E.2d 886 (1989)..... 7

State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982) 7

STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in accepting Simmons' guilty plea when it was not knowingly and voluntarily made because the state violated the plea agreement not to make any recommendation regarding sentencing and then asked the court for active incarceration?

STATEMENT OF THE CASE

In May 2010, the Charleston County Grand Jury indicted Darren Simmons on the charges of burglary second degree violent, unlawful possession of a pistol, and possession of the tools of a crime. On September 1, 2010, Simmons appeared before the Honorable Roger M. Young, Sr. and entered guilty pleas to the three charges. Simmons was represented by Mary Beth Mullaney, and the state was represented by Dale Savage. Simmons' two codefendants, Lamar Jones and Jessica Kelly pled guilty at the same time. Jones was represented by Ben Lewis and Kelly was represented by Jason King. Judge Young sentenced Simmons and Jones to fifteen years suspended to ten years incarceration and five years probation. Kelly was sentenced to five years active time and five years probation. App. 24, ll. 5 – 18.

Simmons' attorney filed a Motion to Reconsider the Sentence Or In the Alternative Withdraw the Guilty Plea on September 10, 2010. A hearing was held before Judge Young on November 9, 2010. The three co-defendants were again represented by the same attorneys as at the guilty plea. Judge Young denied the motions and ordered that the sentences remain the same. Supp. App.28, ll. 1 – 6. Simmons did not appeal the convictions or sentences or the Motion to Reconsider.

On August 24, 2011, Simmons filed an application for post-conviction relief (PCR). The state filed a return on October 10, 2011 an evidentiary hearing was held on January 11, 2012 before the Honorable R. Markley Dennis, Jr. Simmons was represented by Mark Archer, and the state was represented by Matthew J. Friedman. On February 27, 2012, Judge Dennis issued an order granting a belated appeal to Simmons pursuant to White v. State, supra, and denying all other allegations and dismissing them with prejudice. App. 128

– 137. Simmons’ attorney filed a notice of appeal. This Brief pursuant to White v. State follows accompanied by a petition for a writ of certiorari.

STATEMENT OF FACTS

Darren Simmons pled guilty, along with two co-defendants, Lamar Jones and Jessica Kelly, to breaking into two tractor trailer containers owned by the Carolina Rod and Gun Store in Charleston on December 15, 2009. There was also a juvenile involved who pled in Family Court. App. 9, ll. 3 – 9. Although the sentencing sheet was clearly marked that this plea was without negotiations or recommendations, the solicitor, during the guilty plea, asked the judge for active incarceration time for Simmons. There was no objection by defense counsel. App. 141-144; App. 11, ll. 19 – 21.

After the guilty plea, Simmons' attorney filed a Motion to Reconsider the Sentence Or in The Alternative Withdraw the Guilty Plea. App. 111-118. Among the concerns raised in this motion was that the state violated the plea agreement to make no recommendations as shown on the sentencing sheet, and then the state asked the plea court for an active sentence. App. 115, ll. 15- App. 117, ll. 16.

A hearing was held on November 9, 2010 before Judge Roger Young to hear the motion. All three co-defendants argued either a Motion to Reconsider or Withdraw the Plea. Simmons argued only a Motion to Reconsider the sentence asking for the same sentence that Jessica Kelly received which was five years active time and five years probation. Supp. App.10 – App. 11, ll. 17. The judge denied all of the motions finding that all of the sentences were appropriate. App. 28, ll. 1 – 6.

ARGUMENT

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). The record must show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege." State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975).

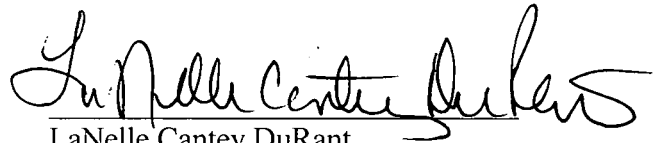
In Santobello v. New York, 404 U.S. 257 (1971), the United States Supreme court held that when a plea rests in any significant degree on a promise or agreement of the prosecutor, such promise must be fulfilled. The South Carolina Supreme Court held in State v. Gates, 299 S.C. 92, 382 S.E.2d 886-87 (1989), that a plea agreement rests on contractual principles.

The plea judge should have set Simmons guilty plea aside when the state asked for an active sentence because the sentencing sheet clearly said "with no negotiations or recommendations." App. 141-144. The plea judge should have at least inquired about the sentencing sheet and what Simmons' understanding was about the sentencing.

CONCLUSION

Based on the above, the sentences should be reversed, and the case remanded for resentencing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant". The signature is written in a cursive style with a large initial "L" and a long, sweeping tail.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of January, 2014.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

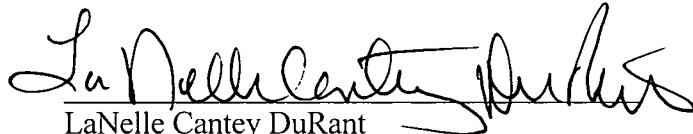
V.

DARREN A. SIMMONS,

APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant Pursuant to White v. State in the above referenced case has been served upon Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Darren Simmons, #342580, Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 10th day of January, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of January, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.