



ALAN WILSON
ATTORNEY GENERAL

May 27, 2014

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Darren A. Simmons v. State of South Carolina
Appellate Case No. 2013-000204

Dear Mr. Shearouse:

Enclosed please find the original Initial Brief of Respondent pursuant to White V. State to the South Carolina Supreme Court in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this Initial Brief of Respondent pursuant to White V. State.

With highest regards,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh
Enclosures

cc: LaNelle Durant, Esquire

OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2013-000204

DARREN SIMMONS,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

INITIAL BRIEF OF RESPONDENT PURSUANT TO WHITE V. STATE

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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Did the lower court err in accepting the Appellant's guilty plea when the Appellant's plea was not entered knowingly and voluntarily because the State violated the plea agreement to not make any recommendation with regard to sentencing?

STATEMENT OF THE CASE

For purposes of this Brief, the Respondent adopts the Appellant's Statement of the Case.

ARGUMENT

The Respondent submits the Appellant's guilty plea was entered freely and voluntarily and the Court's acceptance of the Appellant's guilty plea was not improper because the State did not violate any plea agreement with the Appellant by requesting the Appellant serve an active sentence.

The record reflects the Appellant pled guilty to burglarizing storage containers in the back of a gun shop. (App. 9-10). During the plea proceeding the solicitor told the Court “[b]ecause of what they came with and what they were trying to do, the State wants active time one each of these defendants.” (App. 11:19-21). Counsel for the Appellant then argued for a suspended Youthful Offender Act sentence. (App. 21:15-18). Ultimately, the Appellant was sentenced to fifteen years, suspended to ten year active time, followed by five years probation for burglary, five years for possession of the tools of a crime, and one year for unlawful carrying of a pistol. (App. 24:13-18). Plea counsel for the Appellant subsequently filed a Motion to Reconsider claiming the solicitor agreed to make no recommendation with regard to sentencing and then violated the agreement by asking the Court to impose an active sentence during sentencing. (App. 115).

The Respondent submits the Appellant's guilty plea was entered freely and voluntarily. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d

136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

The Respondent submits the transcript reflects the Appellant's guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. The record reflects the Appellant was advised by the Court of the following: the offenses he was pleading guilty to, that the offenses he was pleading guilty to were strike offenses and classified as violent, the potential sentences he was facing, his right to a jury trial, the State's burden to prove him guilty beyond a reasonable doubt, his right to appeal if convicted, his right to challenge the State's evidence, and his right to testify at trial. (App. 4-5). The Appellant told the Court he was choosing to waive these right and that he was pleading guilty because he was indeed guilty. (App.5:22-24, 6:3-5). The Appellant also told the Court that he was not under the influence of drugs or alcohol and had not been threatened or promised anything to plead guilty. (App. 6:18-20, 7:3-8). Based on the Appellant's statements to the Court during his guilty plea, the Respondent submits the Court did not err by accepting the Appellant's guilty plea.

The Respondent also submits the State's request for an active sentence was not improper and did not affect the voluntariness of the Appellant's guilty plea. The record reflects there was no agreement between the Appellant and the State with regard to sentencing. The South Carolina Court of Appeals decision in State v. Rikard is dispositive on the issue of whether or not the State's request for an active sentence was improper when the Appellant's sentencing sheet indicated his plea was "without recommendation or negotiation". 371 S.C. 295, 638 S.E.2d 72 (2006). In Rikard, the

defendant alleged the State failed to abide by its representation on the sentencing sheet not to recommend a sentence. Id. at 302, 638 S.E.2d at 76. Rikard pled guilty and was advised by the Court that her plea was “straight up” and without any recommendations or negotiated sentence from the State. Id. at 299, 638 S.E.2d at 74. The solicitor requested the maximum sentence during sentencing. Id. The Court held Rikard’s reliance on the sentencing sheet was not dispositive. The Court held further “[t]he sentencing sheet offers three alternatives to designate the nature or status of the plea. Those alternatives provided that the plea is: (1) without negotiations or recommendation; (2) a negotiated sentence; or (3) a recommendation by the State. In this instance, the option of “without negotiations or recommendation” was selected by the solicitor, Rikard, and Rikard’s counsel. It is axiomatic that the phrase “without negotiation or recommendation” means the State and the defendant have not agreed to sentencing. Therefore, either party is free to request a favorable sentence.” Id. at 306, 638 S.E.2d at 76.

The Appellant, like Rikard, pled guilty straight up and relies on the sentencing sheet’s indication that the guilty plea was “without negotiations or recommendation” in support of his claim that the State violated a plea agreement. Also like in Rikard, the solicitor made a request to the Court with regard to the defendant’s sentence. Because the facts in Rikard are almost factually identical to the facts in this case, this Court should follow Rikard’s holding that when a sentencing sheet indicates a plea is “without negotiations or recommendation” the State and the defendant have not agreed to sentencing and **either party** is free to request a favorable sentence. The Respondent submits the State’s request for an active sentence had no effect on the voluntariness of his guilty plea and the Court did not err by accepting the Appellant’s guilty plea.

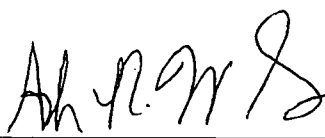
CONCLUSION

The Respondent respectfully requests this Court to dismiss this appeal.

Respectfully submitted,

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Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

BY: 

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ATTORNEYS FOR RESPONDENT

May 27, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Charleston County
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

DARREN SIMMONS

Petitioner,

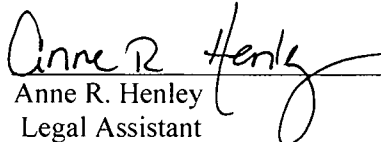
v.

STATE OF SOUTH CAROLINA,

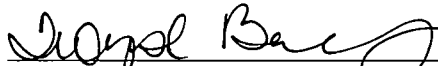
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Respondent Pursuant to White v. State to The SC Supreme Court has been served upon opposing counsel, LaNelle Durant, this 27th day of May 2014.


Anne R. Henley
Legal Assistant

SWORN to before me this
27th day of May, 2014.

 (L.S.)
Notary Public for South Carolina.
My Commission Expires: 8/22/2022