

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Berkeley County
J.C. Nicholson Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILTON Q. GREENE

APPELLANT

MEMORANDUM IN SUPPORT OF APPEAL

WILTON Q. GREENE
Lieber Corr. Inst.
P.O. Box 205
Ridgewille S.C. 29472
APPELLANT

RECEIVED

NOV 03 2014

SC Court of Appeals

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TABLE OF AUTHORITIES

U.S. v. Redd, 161 F.3d 793 (4th Cir. 1998) _____

Other Legal Authorities _____

Fed. R. Crim. P. 12 (b) 3 (B) _____

Fed. R. Crim. P. Rule 52 (b) _____

Criminal Law key 385 _____

Appeal / Post Conviction § 335 ineffective assistance _____

(2)

STATEMENT OF ISSUE ON APPEAL

Was trial Counsel ineffective in failing to object and or move the Court for a direct verdicts prior to trial?

Was trial Counsel ineffective in failing to object to the Jury Instruction?

Was trial Counsel ineffective in failing to object to the Sentencing?

STATEMENT OF THE CASE

IN April of 2013, the Berkeley County Grand Jury indicted Appellant for Armed Robbery and Kidnapping, indictments # 2013-GS-08-755 and 2013-GS-08-756. ON May 20, 2013, Appellant proceeded to Jury trial before the Honorable J.C. Nicholson Jr. Attorney Chad Shelton represented Appellant. The Jury returned a Verdict of guilty and Judge Nicholson Jr. Sentence Appellant to 30 years imprisonment. A Timely notice of intent to Appeal was served on May 28, 2013. This Brief follows

ARGUMENT

Trial Counsel was ineffective in failing to object and or move the court for a direct verdict prior to trial.

ON May 20, 2013 Appellant appeared before the trial court on a motion to relieve Counsel (R.P. 4, lines 4-9). During this particular motion Appellant was destitute of discernment (R.P. 24 lines 18-20) however, Appellant asserts that he has increased his knowledge by acknowledging the fact that trial Counsel was ineffective in failing to object and or move the court for a direct verdict pursuant to Fed. R. Crim. P. 12(b) 3(B) (R.P. 69, lines 11-P 71 line 25)

Appellant asserts that this error was (is) prejudice because trial Counsel knows that any objections to defects in the indictment must be made prior to trial. And by failing to object and or move the court for a direct verdict at the time the evidence was offered (R. P. 151, lines 12-21) the error would not be preserved for appellate review, "because to preserve and issue for appellate review a contemporaneous objection must be made when the evidence is offered." Criminal Law 1036.1(1). Nevertheless under rule 52(b) of the Fed. R. Crim. P. the court may notice, in its discretion "[p]lain errors or defects affecting substantial rights", even though no objection was made. See U.S. V. Redd, 161 F. 3d 793 (4th Cir. 1998)

In U.S. V. Redd, the court ruled that Redd's argument was unsuccessful because Redd's argument was based on the form of the evidence and not their substance and also because Redd was informed prior to trial that the witness would testify that the gun was silver.

IN Appellant's case the variance in the evidence relates to "Substance and Not to Form" and trial Counsel concurs (R.P. 237, lines 22-24).

Even relevant evidence may be excluded on the grounds of its competency. Criminal Law Key 385

IN Appellant's case Appellant was not provided with adequate notice of a variance prior to trial. Thus Appellant's Fifth Amendment rights were violated.

See Appeal / Post-Conviction § 335 ineffective assistance (2)

ARGUMENT

Trial Counsel was ineffective in failing to object to the Jury instruction.

It's plain and obvious.

ARGUMENT

Trial Counsel was ineffective in failing to object to the sentencing.

It's plain and obvious.

CONCLUSION

Base on the above arguments Appellant is entitled to a new trial.

5/~~Wilton Q Green~~

WILTON Q. GREENE

Lieber CORR. INST.

P.O. Box 205

Ridgeville SC 29472

Appellant

State of South Carolina
In the COURT OF APPEALS

Appeal from Berkeley County
J.C. Nicholson Jr. Circuit Court Judge

THE STATE,

RESPONDENT,

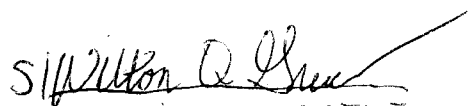
V.

Wilton Q. GREENE

APPELLANT

CERTIFICATE OF SERVICE

The undersigned appellant hereby certifies that a true copy of the enclosed memorandum in support of appeal of appellant in the above referenced case and a letter has been served upon Susan B. Hackett, Esquire at South Carolina Commission on Judicial Defense, Division of Appellate Defense P.O. Box 11589 Columbia, S.C. 29211-1589; this day of Oct. 23, 2014.


WILTON Q. GREENE
Appellant

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SC Court of Appeals

Oct. 23, 2014

Wilton Q. Greene #351286
Lieber Corr. INST.
P.O. Box 205
Ridgeville S.C. 29472

Susan B. Hackett
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211-1589

Dear Ms. Hackett

Under Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493-
which held that and appointed attorney must advocate his/her client's cause
vigorously and may not withdraw from a nonfrivolous appeal - appointed counsel
must present on appeal all nonfrivolous arguments requested by his/her client.

At this time Ms. Hackett I reverently request that you go for the
jugular like the great advocate John W. Davis suggested and present
my affixed non-frivolous argument.

By the way Ms. Hackett I've discovered that the issues you argued are
issues already denied by the trial court. And we both know that the trial court
has sound discretion of the court and that decision will not be disturbed on
appeal absent and abuse of discretion. See Simpkins v. State, 401 S.E. 2d 142
(S.C. 1991).

With the kindest regards I am,

Very truly yours

Wilton Q. Greene

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SC Court of Appeals

OCT. 23, 2014

Wilton Q. Greene
Lieber Corr. Inst.
P.O. Box 205
Ridgeville S.C. 29472

Jenny A. Kitchens, Clerk
P.O. Box 11629
Columbia, S.C. 29211

Dear Clerk,

Please find enclosed for filing in your court the following; one (1) Certificate of Service, a one (1) page letter addressed to Appellant's attorney Susan B. Hackett and a Memorandum In Support of Appeal which is a true copy.

Would you please be kind and courteous by informing me via letter when the filing has been completed. Thank you and good day.

Sincerely,
Wilton Q. Greene

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SC Court of Appeals

Wilton Q. Greene
Lieber Corr. Inst.
P.O. Box 205
Ridgeville S.C. 29472

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OCT 29 2014

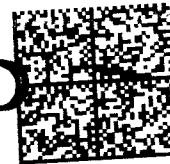
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Jenny A. Kitchens Clerk
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Columbia, S.C. 29211

