

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

RECEIVED

Appeal from Lexington County

NOV 18 2014

G. Thomas Cooper, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

)
V.

MICHAEL PAUL DIXON,

APPELLANT

APPELLATE CASE NO. 2014-000574

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	
The trial judge erred in considering prejudicial information irrelevant to punishment at sentencing.	5
CONCLUSION	6
PETITION TO BE RELIEVED AS COUNSEL	7

TABLE OF AUTHORITIES

Cases

<u>State v. Franklin</u> , 276 S.C. 240, 226 S.E.2d 896 (1976).	6
<u>State v. Liberte</u> , 336, S.C. 648, 521 S.E.2d 744 (1999).....	6

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in considering prejudicial information irrelevant to punishment at sentencing.

STATEMENT OF THE CASE

Appellant Michael Paul Dixon pled guilty to manufacturing methamphetamine, second offense, during the October 2013 term of the Lexington County General Sessions Court before Judge G. Thomas Cooper, and was sentenced to imprisonment for a period of twenty years. Erik J. Drylie represented appellant at the plea proceeding and Assistant Solicitor Michael D. Ross appeared on behalf of the state.

Appellant appealed. This brief follows.

ARGUMENT

The trial judge erred in considering prejudicial information irrelevant to punishment at sentencing.

At the plea proceeding, the solicitor apprised the trial judge of the facts of the case. On January 24, 2013, police officers responded to a tip by arriving at a particular residence in Lexington where they “caught [appellant] red-handed...making methamphetamine.” Tr. 6, l. 25 – p. 7, l. 20

At sentencing, two agents in effect requested harsh punishment by referencing how drugs damage “the community.” Agent Finch made the following comments:

Agent Finch: I’d like ask for a sentence of anywhere from ten to fifteen years based on the fact that methamphetamine production is probably one of the top things that the narcotics officers in Lexington County respond to. Just two weeks ago I believe we had three labs, one of which had six people. Not only is it we’re talking about the overtime when people here called out, we’re also talking about damages to the communities. I’m assigned to the DEA task Force downtown in Columbia. Everybody knows Lexington County’s known for one thing, and that’s meth production. It’s people like [appellant] who cause that reputation and cause the damage to our community.

Agent Ross’ comments follow:

Mr. Ross: I would just like to reiterate what Agent Finch says There’s pockets of this county where good folks that live out in the country are just kind of overrun by meth labs, Judge, and there’s a time for mercy, a time for rehabilitation, and if that is not acted upon when leniency is granted, then there’s a time for severe punishment, and I think this is that case where he’s been given leniency and now is the time for punishment.

A sentencing judge should know all material facts, including any information material to punishment, and the defendant’s prior record. State v. Franklin, 276 S.C. 240,

226 S.E.2d 896 (1976). However, any issues regarding “the community” would constitute irrelevant and prejudicial information outside appellant’s record and the facts of his case. By analogy, compare the ruling in the case of State v. Liberte, 336, S.C. 648, 521 S.E.2d 744 (1999), where the Court held that a prosecutor cannot urge jurors to convict a defendant in order to protect community values, preserve order, or deter future law breaking. For example, in the drug case of Liberte, the solicitor in effect equated the reasonable doubt instruction as a means to gain an acquittal for the defendant and an attack on police who were trying to “keep drugs off our streets.” The Liberte Court reversed and held that:

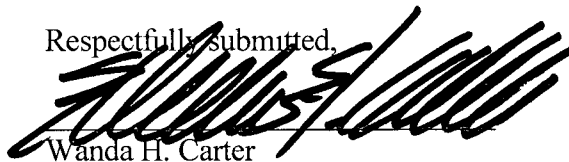
In our view, the argument was calculated to appeal to the jury’s passions and prejudices by playing on the jury’s fear of the impact of drugs on our society. The argument invited the jury to convict the Defendants, even if the evidence did not prove their guilt beyond a reasonable doubt, in order to keep the streets safe from the scourge of drugs. Such an appeal is clearly improper.

Similarly, the views espoused by the agents in this case about how drugs damage the community constituted prejudicial and irrelevant information at appellant’s sentencing, which in turn deprived appellant of his right to a fair sentencing proceeding.

CONCLUSION

Based on the foregoing argument, appellant requests that the Court vacate appellant’s sentence and remand the case for a new sentencing proceeding.

Respectfully submitted,

A large, bold, handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over the printed name.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of November, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL PAUL DIXON,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael P. Dixon states:

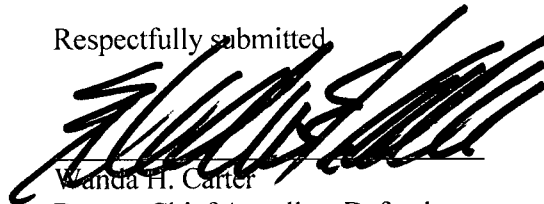
1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge G. Thomas Cooper, which was held on March 10, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Michael P. Dixon.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of November, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL PAUL DIXON,

APPELLANT

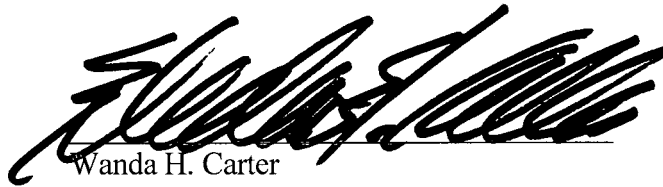
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire transcript dated October 15, 2013
- (2) True-billed indictment;

I certify that this designation contains no matter which is irrelevant to this appeal.

November 18th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

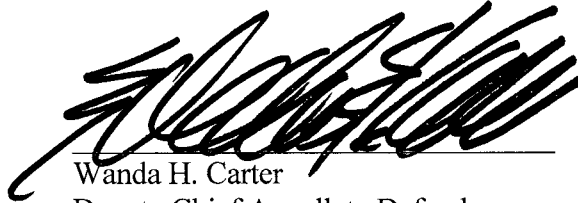
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings "

November 18, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29201

RECEIVED

NOV 18 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 18 2014

SC Court of Appeals

Appeal from Lexington County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

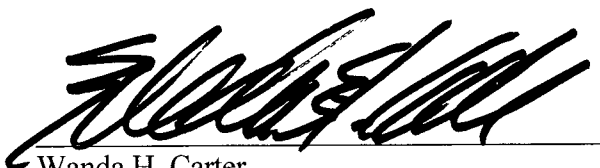
V.

MICHAEL PAUL DIXON,

APPELLANT

CERTIFICATE OF SERVICE

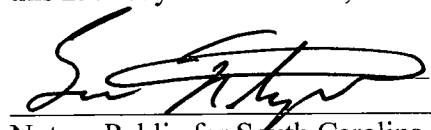
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Michael P. Dixon, #357412 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 18th day of November, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of November, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022 .