

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

JAN 30 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SHEDRIX STEWARD,

APPELLANT.

APPELLATE CASE NO. 2014-000919

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by revoking appellant's probation based on his guilty plea to shoplifting where the guilty plea record did not show the requisite knowing and voluntary waiver of appellant's constitutional rights necessary for acceptance of a guilty plea?

STATEMENT OF THE CASE

Appellant was indicted at the November 29, 2012 term of the Lancaster County Grand Jury for the offense of shoplifting third or subsequent property crime. R. p. 14-15. Appellant pled guilty, and he was sentenced on October 11, 2012 to five years imprisonment, suspended upon the service of ninety days, and eighteen months probation. R. p. 16.

Appellant was subsequently indicted [2014-GS-29-242] for the offense of shoplifting third or subsequent property crime. R. p. 12-13. Tr. 4, ll. 1-7.

Appellant appeared on April 18, 2014 before the Honorable Ernest Kinard. Amy Rainey represented appellant, and Bill Nowicki was the assistant solicitor. Ashley Burch was the probation agent. R. p. 1.

Appellant entered a guilty plea to the 2014 indictment for shoplifting third or subsequent property crime. R. p. 4, ll. 1-16. Judge Kinard told appellant his plea would constitute a violation of his probation. R. p. 5, ll. 5-7.

Judge Kinard sentenced appellant to two years imprisonment, and he revoked nine months of appellant's probation and ordered it terminated upon appellant's release. R. p. 7, ll. 1-12.

This appeal follows.

ARGUMENT

The court erred by revoking appellant's probation based on his guilty plea to shoplifting where the guilty plea record did not show the requisite knowing and voluntary waiver of appellant's constitutional rights necessary for acceptance of a guilty plea.

During the very truncated guilty plea and probation revocation proceeding appellant told the judge he did not want a jury trial. Appellant was **not** told that he had the right to confront and cross-examine his accusers, nor was he told that he gave up his right to remain silent if he pled guilty. R. p. 4, l. 1 – 7, l. 10.

The judge told appellant that this guilty plea to this property offense was a violation of his probation. Appellant stated that he understood this fact. R. p. 5, ll. 5-7.

The solicitor informed the judge that on November 9, 2013 a black male entered the Walmart, and the alarm went off when the suspect tried to leave the store with some clothing items. The suspect ran when the alarm went off. The assistant solicitor said law enforcement watched the videotape of the incident, and determined appellant was the suspect. R. p. 5, ll. 11-24.

Defense Counsel Rainey told the judge that appellant was forty-three-years-old, and that he needed help for his drug problem. R. p. 6, ll. 10-25. The judge noted that appellant had several property crimes, and that appellant was a many time shoplifter. R. p. 7, ll. 1-12. The judge sentenced appellant to two years imprisonment, with credit for time served. The judge also revoked nine months of appellant's probation, to run concurrent to the two year sentence, and ordered probation terminated upon appellant's release. R. p. 7, ll. 1-12.

Discussion

Appellant submits that his guilty plea was not knowingly and voluntarily entered, and it therefore should be vacated along with the probation revocation that was inextricably entwined with it. “A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.” Kercheval v. United States, 274 U.S. 220, 224, 47 S.Ct. 582, 583 (1927). The requirement that the prosecution spread on the guilty plea record the prerequisites of a valid waiver of rights is therefore no less important than ensuring that a confession, an admission of various acts, is reliable before it is admitted into evidence. See Carnley v. Cochran, 369 U.S. 506, 516, 82 S.Ct. 884, 890 (1962); Jackson v. Denno, 378 U.S. 368, 387, 84 S.Ct. 1774, 1786 (1964).

Consequently, due process of law requires that before a guilty plea can be voluntarily and intelligently entered, 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. A valid waiver of those rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969).

In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), the Court emphasized that the record must clearly establish a waiver of the three constitutional rights listed in Boykin. In Boykin, supra, the Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with full knowledge of the circumstances surrounding the plea and the attendant waiver of rights that occurs with the guilty plea.

“A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.”

Kercheval v. United States, 274 U.S. 220, 224, 47 S.Ct. 582, 583 (1927). The requirement that the prosecution spread on the guilty plea record the prerequisites of a valid waiver of rights is therefore no less important than ensuring that a confession, an admission of various acts, is reliable before it is admitted into evidence. See Carnley v. Cochran, 369 U.S. 506, 516 82 S.Ct. 884, 890 (1962); Jackson v. Denno, 378 U.S. 368, 387, 84 S.Ct. 1774, 1786 (1964).

The judge here told appellant he had the right to a jury trial. The judge did not advise appellant he had the right to confront and cross-examine his accusers, and that he gave up his right to remain silent if you pled guilty. Consequently appellant's guilty plea was invalid, and it should be vacated.

The probation of appellant's probation was based *solely* on appellant's conviction via his guilty plea. Since appellant's guilty plea must be vacated, appellant submits the revocation of his probation must also be vacated.

CONCLUSION

By reason of the foregoing argument, appellant's guilty plea, and the revocation of his probation should be vacated.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of January, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

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SHEDRIX STEWARD,

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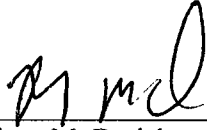
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shedrix Steward states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's guilty plea and the revocation of his probation before Judge J. Ernest Kinard, Jr., which was held on April 18, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Shedrix Steward.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of January, 2015.

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

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

- (1) True-billed indictments;
- (2) Entire Guilty Plea and Probation Revocation Transcript;
- (3) Sentencing sheets.

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

January 30th, 2015



Robert M. Dudek
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."

January 30, 2015.



Robert M. Dudek
Chief Appellate Defender

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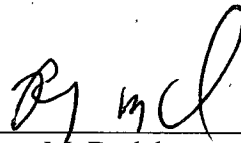
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant, Designation of Matter and Record on Appeal in the above referenced case have been served upon Matthew Buchanan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant, Designation of Matter and Record on Appeal have been served on Shedrix Steward at 1437 Tripp Lane, Lancaster, SC 29720, this 30th day of January, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of January, 2015.

Rhonda Demese Foxworth (L.S.)

Notary Public for South Carolina

My Commission Expires: October 17, 2021