

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

Craig D. Brown, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

ARTHUR R. LADIA,

APPELLANT,

APPELLATE CASE NO. 2014-001426

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE v. STATE

JOHN H. STROM
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the plea court commit a reversible error and violate Appellant's due process rights when the court recorded on the sentencing sheet that it was levying a ten year sentence against Appellant for second degree burglary, after having made an unambiguous oral pronouncement that Appellant was sentenced to only two years with respect to the second degree burglary charge?

STATEMENT OF THE CASE

Indictment

On February 2, 2012, the Lexington County Grand Jury indicted Appellant, Arthur Ladia, for armed robbery, burglary in the first-degree, and criminal conspiracy. App.158-159.

Plea Hearing

On June 21, 2012, Appellant appeared before the Honorable D. Craig Brown, and pled guilty to attempted armed robbery, burglary in the second degree, and criminal conspiracy. App. 1 – 39. Appellant was represented by John W. Locklair, III and the State was represented by Assistant Solicitor Angela Garrett.

The plea judge sentenced Appellant to fifteen years imprisonment for attempted armed robbery, two years imprisonment for burglary in the second degree, and five years imprisonment for criminal conspiracy. App. 38, ll. 8-19. The sentences were to be served concurrently. *Id.*

Appellant did not file a timely appeal.

PCR Application and Evidentiary Hearing

On June 18, 2013, Appellant filed an application requesting post-conviction relief (PCR). Appellant alleged counsel was ineffective; that his guilty plea was made involuntarily; and that counsel failed to file a motion for reconsideration when requested. App. 40 – 52. On July 5, 2013, Appellant filed an amended application. App. 53 – 54. On December 20, 2013, the State filed its Return. App. 55 – 60.

On April 14, 2014, an evidentiary hearing was held before the Honorable William P. Keesley. App. 61 – 139. Anna R. Good represented the Appellant and Assistant Attorney General Walt Whitmire represented the State.

Order of Dismissal

On June 4, 2014, Judge Kessley filed an Order of Dismissal denying Appellant relief, but granting a review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). App. 140 – 154.

ARGUMENT

The plea court committed a reversible error and violated Appellant's due process rights when the court recorded on the sentencing sheet that it was levying a ten year sentence against Appellant for second degree burglary, after having made an unambiguous oral pronouncement that Appellant was sentenced to only two years with respect to the second degree burglary charge.

Relevant Facts

On November 19, 2011, Henry Durugbor was robbed at gun point in his hotel room. App. 12, ll. 18 – App. 14, ll. 13. Durugbor was identified to an individual, known only as “Tay”, as a potential robbery target by Charlene “China” De Jesus, who had been with Durugbor during the day and knew that he had money and electronics in his hotel room. App. 15, ll. 1-22. Tay then allegedly contacted Appellant and two other unknown individuals, instructing them to meet up with De Jesus and rob Durugbor. *Id.*

After robbing Durugbor and burglarizing his hotel room, the group fled the scene in a vehicle driven by Marquetta Foster and owned by her parents. *Id.* at ll. 22-25. A maid at the hotel reported their license plate number to the police, who contacted Foster's parents. App. 16, ll. 2-23. Foster turned herself in and cooperated with law enforcement. App. 16, ll. 9 – App. 17, ll. 14. She identified Appellant as the gunman in the robbery. *Id.* Durugbor also identified Appellant in a line-up. App. 17, ll. 9-14.

By the time of Appellant's plea, De Jesus and Foster had both pled and were cooperating with the State. App. 18, ll. 3-18. Also cooperating with law enforcement was Latasha Busbee, who was arrested for using Durugbor's credit cards. App. 17, ll. 15-21. None of the other men involved in the robbery, including Tay, were ever identified. App. 17, ll. 24 – App. 18, ll. 2.

Plea Negotiations and Hearing

The State initially offered the Appellant to plead guilty to all charges with the State making no recommendations as to sentencing. App. 100, ll. 1-10. Appellant rejected this offer. App. 98, ll. 18-23. The State subsequently offered to allow Appellant to plead guilty to armed robbery and violent burglary, again with no recommendation. App. 97, ll. 20-24. This was also rejected.

With the case set for trial, the State made a final offer to let Appellant plead guilty to attempted armed robbery. App. 98, ll. 18-23. Appellant accepted this offer and a plea hearing was scheduled for June 21, 2012. *Id.* However, at the plea hearing, the State reneged on its offer and demanded that Appellant plead guilty to additional charges of second degree burglary and criminal conspiracy. App. 98, ll. 18 – App. 99, ll. 13. At the strong advice of Locklair, Appellant agreed to plead guilty to the additional charges as well.

At the plea hearing, the State outlined the facts of Appellant's case and added, "Foster has cooperated from the beginning. So has Ms. Busbee. [Appellant] has never indicated anything, which is fine. But the other man that was with [Appellant] has never been identified, and [Tay] has never been identified." App. 17, ll. 22 – App. 18, ll. 2. The State then noted that De Jesus, who had an extensive criminal record, had just pled guilty to strong arm robbery and criminal conspiracy and received a thirteen year sentence. App. 18, ll. 10-15.

In an effort to counter the State, counsel stressed Appellant's accomplishments as a student and lack of a criminal record as mitigating factors. App. 21, ll. 7 – App. 29, ll. 13. Appellant's mother and grandmother were also present for the hearing and spoke on Appellant's behalf. App. 29, ll. 22 – App. 32, ll. 23.

The court then sentenced Appellant to concurrent terms of fifteen years for attempted armed robbery; two years for second-degree burglary; and five years for criminal conspiracy. App. 38, ll.

7-19. However, the plea court's sentencing sheet records that Appellant was sentenced to ten years for second degree burglary. App. 164. This ambiguity was not addressed by the plea court and Locklair never filed a motion for reconsideration.

Pursuant to the procedure mandated by *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974); this appeal follows.

Discussion

The trial violated Appellant's due process rights and committed reversible error when the court wrote on the sentencing sheet indicating that it was levying a ten year sentence against Appellant for second degree burglary, after having made an unambiguous oral pronouncement that Appellant was sentenced to only two years with respect to the second degree burglary charge.

Trial courts generally have wide discretion in determining what sentence to impose. *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). However, the accused has a due process right to be present at all hearings in his case to the extent that that a fair and just hearing would be frustrated by his absence. *Boan v. State*, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010) citing *United States v. Gagnon*, 470 U.S. 522, 105 S.Ct. 1482 (1985).

Moreover, when there is a discrepancy between an oral pronouncement of a sentence and a written sentencing order, the oral pronouncement controls. See *Smith*, at 276, 695 S.E.2d 850 at 852 (an unambiguous sentencing sheet is void against an unambiguous plea colloquy because to enhance defendant's sentence based on the sentencing sheet would result in a deprivation of the defendant's right to due process.); see also *Bordeaux v. State*, 410 S.C. 495, 500, 765 S.E.2d 143,

145 (20014) (PCR judge committed an error of law in ruling the ambiguous sentencing sheets took precedence over the unambiguous plea transcript).

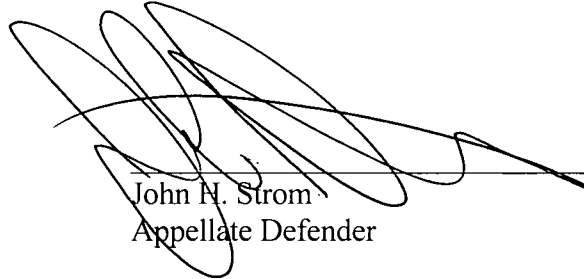
In the present case, the plea hearing transcript makes clear that Appellant was sentenced to two years for second-degree burglary. App. 38, ll. 7-19. What is unclear in the present case is whether the plea court, subsequent to the sentencing hearing, exercised its discretion and increased the sentence from two years to ten years or if the ten year sentence recorded on the sentencing sheet is an inadvertent scrivener's error. *Tant v. South Carolina Dept. of Corrections*, 408 S.C. 334, 342, 759 S.E.2d 398, 402 (2014) (citing *State v. DeAngelis*, 257 S.C. 44, 50, 183 S.E.2d 906, 909 (1971)("[a]mbiguity or doubts relative to a sentence should be resolved in favor of the accused"). At a minimum, Locklair should have sought clarification for the discrepancy and if the plea judge intended to increase the sentence to ten years, Appellant had a right to be present and to be heard on this matter. *See Boan*, at 276, 695 S.E.2d 850 at 852.

Accordingly, the plea court committed a reversible error when the court wrote on the sentencing sheet indicating that it was levying a ten year sentence against Appellant for second degree burglary, after making an unambiguous oral pronouncement that Appellant was sentenced to only two years with respect to the second degree burglary charge.

CONCLUSION

By reason of the foregoing argument, Appellant's plea should be vacated and this case remanded to the Lexington County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John N. Strom", is written over a horizontal line. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

John N. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of February, 2015.

STATE OF SOUTH CAROLINA

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APPELLATE CASE NO. 2014-001426

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Arthur R. Ladia states:

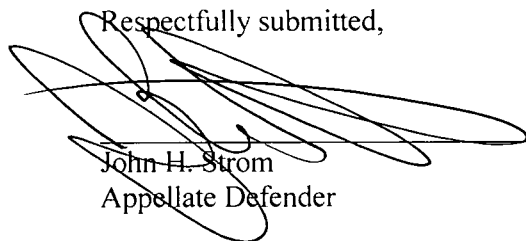
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on April 14, 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 Arthur R. Ladia.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of February, 2015.

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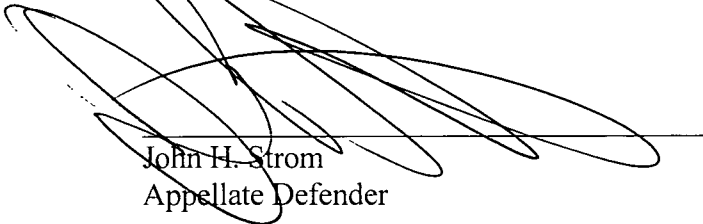
ARTHUR R. LADIA,

APPELLANT,

APPELLATE CASE NO. 2014-001426

CERTIFICATE OF SERVICE

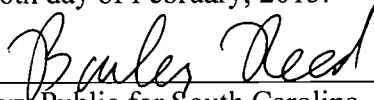
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant Pursuant to White v. State in the above referenced case has been served upon John Walt Whitmire, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant Pursuant to White v. State has been served on Arthur R. Ladia, #351416 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of February, 2015.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of February, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021 .