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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M. Young, Sr., Circuit Court Judge
Appellate Case No. 2014-001051

THE STATE,

Respondent,

vs.

JOSEPH TODD ROWLAND,

Appellant.

MOTION TO STRIKE
AND
REQUIRE FILING OF
AMENDED INITIAL BRIEF OF APPELLANT

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In June of 2011, Appellant Joseph Todd Rowland was arrested following a narcotics investigation that led to the discovery of cocaine and marijuana in his residence. In April of 2012, Appellant was indicted by the Charleston County Grand Jury for one count of trafficking in cocaine, one count of possession of marijuana with intent to distribute, one count of possession of a firearm during the commission of a violent crime, and one count of unlawful possession of a stolen pistol. On May 12, 2014, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Roger M. Young, Sr., circuit court judge,

presiding. At the conclusion of trial, Appellant was convicted of trafficking in cocaine, possession of marijuana with intent to distribute, and possession of a firearm during the commission of a violent crime and was sentenced to an aggregate twenty-year term of imprisonment. Appellant then timely filed an appeal.

II.

On appeal, Appellant's appellate counsel filed an Initial Brief of Appellant with this Court on Appellant's behalf. In that merits brief, four issues have been raised for appellate consideration. However, two of those issues have been raised "[p]ursuant to *Anders v. California*" and appear to have been prepared personally by Appellant as opposed Appellant's appellate counsel.[1] (App. Br. p. i; pp. 18-19). Specifically, those two issues are stated as follows: (1) "Pursuant to *Anders v. California*, **my client asserts** that his Due Process rights were violated[;]" and (2) "Pursuant to *Anders v. California*, **my client asserts** the trial court erred in not finding the chain of custody was broken." (App. Br. p. i; pp. 18-19 (emphasis added)).

III.

As the United States Supreme Court has recognized, "a prisoner has no right to argue his own appeal[.]" Price v. Johnston, 334 U.S. 266, 285 (1948), overruled on other grounds by McCleskey v. Zant, 499 U.S. 467 (1991). Moreover, in South Carolina, there is no hybrid representation on appeal. See Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) ("There is no constitutional right to hybrid representation either at trial or on appeal."); Foster v. State, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989) (ordering the Clerk of Court to return a substantive pro se document filed while the petitioner was represented by counsel). In Miller v. State, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010), the South Carolina Supreme Court

[1] The relevant pages of the Initial Brief of Appellant have been attached to this motion as Attachment "A."

instructed: "There is no right to 'hybrid representation' that is partially pro se and partially by counsel[.]" Likewise, in Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002), the South Carolina Supreme Court addressed a situation where a petitioner's counsel submitted on the petitioner's behalf an amended petition for a writ of certiorari that was prepared pro se. In that case, the Supreme Court considered and denied the amended petition for a writ of certiorari. Id. at 15, 558 S.E.2d at 518. However, the Supreme Court instructed: "[I]n the future we **will not accept pro se filings simply forwarded through counsel**. Counsel shall instead use professional judgment in reviewing the document and shall submit the client's arguments only if relevant and only after they have been edited by counsel for review by the Court." Id. at 14, 558 S.E.2d at 518 (emphasis added).

IV.

In the case sub judice, the two issues raised in Appellant's merits brief "[p]ursuant to *Anders v. California*" appear to have been raised by Appellant personally, and the arguments made in support of those issues appear to have been prepared pro se. In fact, each of the issues has been directly raised in a manner that appears to be designed to establish to this Court the issues and arguments were raised and prepared by Appellant as opposed to his appellate counsel in light of the fact those two issues alone state "my client asserts[.]" Moreover, the substantive arguments offered in support of those two issues clearly do not appear to have been prepared by the same experienced attorney who prepared the arguments offered in support of the other two issues raised in Appellant's initial brief, seek for this Court to review material not designated in Appellant's Designation of Matter, and refer to nebulous concepts, such as a "violation of chain custody card rule required by P.D.E.A. and P.N.P." (App. Br. pp. 18-19). Because those issues and arguments have not been raised and prepared by Appellant's appellate counsel and, instead,

have merely been submitted to this Court on Appellant's behalf by appellate counsel, those pro se issues and arguments are improper and must not be accepted by this Court. See Miller, 388 S.C. at 347, 697 S.E.2d at 527 ("[T]here is no right to 'hybrid representation' that is partially pro se and partially by counsel[.]"); see also Jones, 348 S.C. at 14, 558 S.E.2d at 518 ("[W]e will not accept pro se filings simply forwarded through counsel."). As a result, the State asks this Court to strike the Initial Brief of Appeal and require the filing of an Amended Initial Brief of Appellant omitting any issues and argument prepared pro se by Appellant. See Jones, 348 S.C. at 14, 558 S.E.2d at 517 ("While counsel may choose to submit arguments urged by his client, counsel has an obligation to review those arguments for possible relevance and merit before submitting them. In other words, **counsel cannot serve as a mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client**." (emphasis added)).

WHEREFORE, Respondent prays that this Court will strike the Initial Brief of Appellant in light of the fact it contains improper pro se issues and arguments; require the filing of an Amended Initial Brief of Appellant omitting any improper pro se issues and arguments; hold the appeal in abeyance pending a ruling by this Court on Respondent's Motion to Strike and Require Filing of Amended Initial Brief of Appellant; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

By: _____
Mark R. Farthing

Office of the Attorney General
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(803) 734-3727

February 23, 2015

ATTACHMENT "A"

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Sr., Court of General Sessions Judge

Case No. 11-GS-10-5527, 5528, 5531
Appellate Case No. 2014-001051

State of South Carolina, ...Respondent,

v.

Joseph Todd Rowland, ...Appellant.

INITIAL BRIEF OF APPELLANT

Mark A. Peper, Esquire
1637 Savannah Highway
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Charleston, SC 29407
(843) 225-2520
Attorney for Appellant

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The Appellant did not testify at his trial, and no evidence was presented proving the he had actual or constructive knowledge of drugs being inside his Father's residence. Even assuming an inference could be made that he knew or should have known there were drugs in the house, the State would still fall short of its burden. Mere proximity or accessibility to contraband will not support a conclusion that an individual had knowing dominion and control over it. (*United States v. Williams*, 952 F.2d 418, 420 (C.C. Cir. 1991) (quoting *United States v. Foster*, 783, F. 2d 1087, 1089 (D.C. Cir. 1986)).

III. Pursuant to *Anders v. California*[3], my client asserts that his Due Process rights were violated.

If the Court would please take notice of the arrest warrants related to these matters, you will see that the arrest warrants were served on the applicant and or he was arrested on June 3, 2011. If the Court would take notice of the sentencing sheet, the Court will see that the applicant was convicted on May 13, 2014. By the arrest warrants, the date pursuant to service and or arrest related to said accusations, this means the applicant's due process matters should have been disposed of and completed by December 3, 2011. They there were not disposed of until May 13, 2014, over 3 years passed the 180 days prescribed by judicial order and the provision of the South Carolina constitution. There is no "*written*" order (with emphasis) of continuance filed with the clerk of court before the 180 day time period expired, or which was served on the applicant. Such an order of continuance by the applicant's rights of due process and pursuant to judicial order issued by the SC Supreme Court "cannot" be obtained after the fact. It must be obtained before the 180 day time period expires. To go beyond the prescribed time period and or deadline without a "*written*" (emphasis added) order of continuance creates a procedural defect which

[3] *Anders v. California*, 386 U.S. 738 (1967).

deprives the trial court of subject matter jurisdiction, and or the power or capability to exert and or invoke or continue its powers of subject matter jurisdiction in compliance to judicial order form the SC Supreme Court, rules of court and Due Process law to adjudicate the applicant's trial and or to accept any guilty plea. This violates the applicant's rights under Article 4 of the SC Constitution and the applicant's 5th, 6th, and 14th Amendment rights of the US Constitution as well as Article II and IV of the US Constitution. (State v. Langford, 400, SC 421, 735 S.E. 2d 471 S.C. (2012). U.S. v. Macdonald, 456 U.S. 1, 102 S.Ct. 1497 U.S. N.C. (1982).

IV. Pursuant to *Anders v. California*[4], my client asserts the trial court erred in not finding the chain of custody was broken.

The Applicant's Fifth, Sixth, and 14th Amendment rights were violated, along with Rule 403 of the SC Rules of Evidence, also in violation of Rule 6(b) of the SC Rules of Criminal Procedure, also in violation of chain custody card rule required by P.D.E.A. and P.N.P, also in violation of SC Criminal Law Article Rules 73-80, duties of a seizing officer of handling of a controlled substance. Also, it violated Article 6, Substance Evidence Forensic Testing Methods and Results. (*State v. White*, 382 S.C. 265, 676 S.E. 2d 684 (2009). (holding an expert cannot testify to an opinion on an unreliable test). (Transcript, p. 162). In the Appellant's case, there were no chain of custody forms from the seizing officer to establish the description the weight of the substances as resolves to no foundation in a broken chain of custody. (U.S. v. Turpin, 65 F.3d 1207 C.A. 4 (VA) (1995).

[4] *Anders v. California*, 386 U.S. 738 (1967).

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Appeal from Charleston County
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THE STATE,

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vs.

JOSEPH TODD ROWLAND,

Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Motion to Strike and Require Filing of Amended Initial Brief of Appellant on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Mark A. Peper, Esquire
1637 Savannah Highway, Suite 202
Charleston, SC 29407

I further certify that all parties required by Rule to be served have been served. This 23rd day of February, 2015.

ANNE A. MUELLER
Legal Assistant

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Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

February 23, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Joseph Todd Rowland – Appellate Case No. 2014-001051

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion to Strike and Require Filing of Amended Initial Brief of Appellant, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Mark A. Peper, Esq.
Victim Services