

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILL BRELAND (AKA BREELAND),

APPELLANT

APPELLATE CASE NO. 2014-001330

ANDERS BRIEF OF APPELLANT

LAURA R. BAER
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 waiver of constitutional rights colloquy was insufficient under Boykin v. Alabama, 395 US 238, 89 S.Ct. 1709 (1969), which mandates that the record show the guilty plea was intelligently and knowingly entered with the full understanding of its consequences and the Constitutional rights waived, where the plea judge merely asked appellant if he wanted a jury trial and did not mention his right to confront the witnesses against him?

STATEMENT OF THE CASE

On May 22, 2014, Appellant was indicted by the Barnwell County Grand Jury for attempted murder. R. 27.

On May 27, 2014, Appellant appeared before the Honorable Edgar W. Dickson and pled guilty to the above offense. Appellant was represented by Laura A. McCann and the State was represented by Assistant Solicitor Susanna M. Ringler. R. 1. There was no recommendation as to sentencing. R. 5, ll. 22-24.

Judge Dickson accepted Appellant's plea and sentenced him to twenty years incarceration. R. 13, ll. 16-23.

This appeal follows.¹

¹ Plea counsel's Rule 203(b) Explanation references a Motion to Reconsider Sentence. The Motion to Reconsider filed May 29, 2014 and denied the same day does not appear to relate to Appellant's case, even though his name and case information are listed at the top, as he did not steal any property from the victim and there was no mention of any disclosure related to a third party during the plea colloquy. It appears that plea counsel may have confused information related to two different defendants in her filings.

ARGUMENT

The waiver of constitutional rights colloquy was insufficient under Boykin v. Alabama, 395 US 238, 89 S.Ct. 1709 (1969), which mandates that the record show the guilty plea was intelligently and knowingly entered with the full understanding of its consequences and the Constitutional rights waived, where the plea judge merely asked appellant if he wanted a jury trial and did not mention his right to confront the witnesses against him.

Relevant Facts

Appellant pled guilty to attempted murder for the stabbing of his wife on January 6, 2014. R. 9, l. 23 – 11, l. 7; R. 11, ll. 22-25. Appellant explained that he did not intend to kill the victim, but was heartbroken after catching her cheating on him. R. 19, l. 19 – 20, l. 3. Appellant suffers from both depression and paranoid schizophrenia. R. 7, ll. 3-10; R. 15, ll. 22-25. He initially indicated at the plea hearing that his medications for these conditions affected his ability to understand what they were doing at the hearing. R. 7, ll. 3-21. However, after consulting with his attorney, Appellant responded that he did understand what they were doing. R. 7, l. 22 – 8, l. 5. Plea counsel indicated she attempted to have Appellant's mental health professional attend the hearing, but he did not want to get involved in court proceedings. R. 17, ll. 12-17. She nevertheless averred that Appellant's violence was likely the result of his mental health condition. R. 17, ll. 18-20.

At the plea hearing, the following colloquy took place regarding Appellant's constitutional rights:

Court: You have gone over with him his constitutional rights?

Plea counsel: I have.

Court: Do you believe he has understood everything that you've told him?

Plea counsel: Absolutely, Your Honor.

...

Court: Okay. She [Ms. McCann] says she also told you about, explained your constitutional rights to you.

Defendant: Yes, sir.

Court: Did you understand everything she told you?

Defendant: Yes, sir.

...

Court: Do you want a jury trial on this charge?

Defendant: No, sir.

Court: Do you understand you have the right to remain silent but you give up that right if you plead guilty because you have to admit you are guilty of this charge?

Defendant: Yes, sir.

Court: Okay. Do you still want to go forward with a guilty plea?

Defendant: Yes, sir.

R. 5, ll. 13-18; R. 8, l. 22 – 9, l. 2; R. 9, ll. 9-19.

Discussion

“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). Therefore, the requirement that the state place on the guilty plea record the prerequisites of a valid waiver of constitutional rights is 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 his 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).

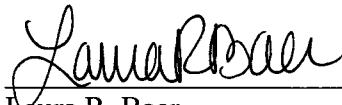
In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), the Court emphasized that the record must clearly establish a waiver of the three constitutional rights listed in Boykin. In Boykin, supra, the Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty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

The waiver of constitutional rights colloquy in this case was insufficient to satisfy the mandates of Boykin v. Alabama, 395 US 238, 89 S.Ct. 1709 (1969). Appellant was asked merely if he wanted a jury, rather than being provided an explanation of his right to a jury and what that entails. He was also never told on the record of his right to confront the witnesses and evidence against him. The plea court should not have relied upon plea counsel's off-the-record discussion with Appellant regarding his constitutional rights. This is especially so because the plea court knew of Appellant's mental health problems and that he initially indicated that his medication affected his understanding of the proceedings.

CONCLUSION

For the reasons set forth herein, Appellant Bill Breland a/k/a Breeland respectfully requests that his guilty plea be vacated.

Respectfully submitted,



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of March, 2015.

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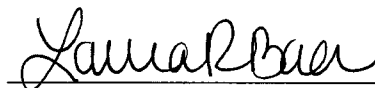
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bill Breland states:

1. She is 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 guilty plea before Judge Edgar W. Dickson, which was held on May 27, 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 plea.

WHEREFORE, she asks the Court to relieve her as counsel for Bill Breland.

Respectfully submitted,



Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of March, 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 indictment(s); and
- (2) Guilty plea transcript dated May 27, 2014.

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

March 6th, 2015



Laura R. Baer
Appellate Defender

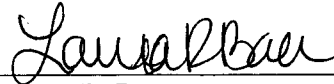
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PO Box 11589
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(803) 734-1343

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."

March 6th, 2015



Laura R. Baer
Appellate Defender

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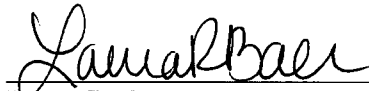
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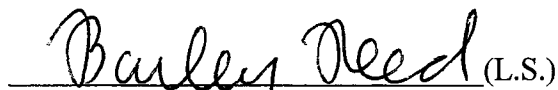
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant 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 on Bill Breland, #315919 at McCormick Correctional Institution, this 6th day of March, 2015.



Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

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

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021.