

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

JUL 08 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JENNIFER LORENE HATFIELD GRIFFIN,

APPELLANT

APPELLATE CASE NO. 2014-002042

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

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT 7

CONCLUSION 9

PETITION TO BE RELIEVED AS COUNSEL 10

TABLE OF AUTHORITIES

Cases

<u>Boykin v. Alabama</u> , 395 U.S. 238 (1969).....	8
<u>Carnley v. Cochran</u> , 369 U.S. 506 (1962).....	7
<u>Jackson v. Denno</u> , 378 U.S. 368 (1964)	7
<u>Kercheval v. United States</u> , 274 U.S. 2204 (1927).....	7
<u>State v. Patterson</u> , 278 S.C. 319, 295 S.E.2d 264 (1982)	8

STATEMENT OF ISSUE ON APPEAL

Whether appellant's guilty plea should be vacated where the judge questioned appellant about the crimes, and had appellant admit her guilt without informing her that she had the constitutional right to remain silent, and not answer questions since appellant was being questioned, while in custody, in a coercive setting, and she admitted her guilt before being advised of her constitutional right not to incriminate herself?

STATEMENT OF THE CASE

Appellant appeared for a guilty plea and probation revocation hearing on September 11, 2014 before the Honorable Deadra L. Jefferson. Scott Floyd represented appellant. The solicitor was Catherine Wyse. R. 1. The solicitor told the judge "I would go along with whatever probation was recommending, whatever time she's looking at for her probation violation. And the probation agent just informed me that's four years and three hundred and thirty-five days." R. 4, ll. 7-11.

The judge noted that appellant was on probation for financial transaction card theft where she had received a sentence of five years, suspended to two years and restitution. The solicitor then chronicled appellant's criminal record. R. 5 ll. 2-6.

Defense counsel Floyd said appellant wished to plead guilty with the probation revocation being part and parcel of the guilty plea. R. 6, ll. 9-12. The judge then placed appellant under oath.

Appellant informed the judge that she had three children, and that she had undergone substance abuse counseling while on probation. R. 7, ll. 3-25.

The solicitor then told the judge of the charges against appellant. In one indictment appellant was charged with stealing a gold necklace from a house worth \$450.

Another indictment alleged appellant stole items from the Kmart, and returned them for a refund in the amount of \$119.85. A third indictment involved stealing a purse and shoes from Belk's, and returning them for a refund. R. 10, ll.5-21. The judge then questioned appellant as follows:

THE COURT: Ma'am, do you agree or disagree with the facts?

THE DEFENDANT: Agree.

THE COURT: Do you feel anything needs to be changed or added to be changed or added to the facts.

THE DEFENDANT: Neither.

THE COURT: Are you pleading guilty because you're guilty?

THE DEFENDANT: I'm guilty.

R. 12, l. 24 – 13, l. 7.

It was only **after** appellant had admitted her guilt to these theft crimes that the judge advised appellant that she had the right not to answer these questions, that she had the right to remain silent, demand a jury trial, and to confront and cross-examine the state's witnesses. Appellant was also belatedly told she had the right to present any defenses during that jury trial. R. 13, ll.8-18.

Prior to sentencing, defense counsel Floyd told the judge that appellant had "done various amounts of time on each one of these [cases]. I think she had 120 that she served on one, 93 on another, and then 30 on another." Floyd told the judge that appellant had also served additional time for these same crimes. R. 17, ll. 5-13. Floyd wanted to ensure that appellant was given credit for the actual time she had served. R. 17, ll. 5-18, 23.

The judge responded that she was not going to calculate the time served that appellant was entitled to in this case. The judge offered that she would leave it to the Department of Corrections to go over the records, and determine what time served appellant was actually entitled to in this case. R. 18, ll. 8-24.

The judge then imposed concurrent sentences, and revoked additional sentences, all equaling four years concurrent time. R. 27, ll. 10-28.

This appeal follows.

ARGUMENT

Appellant's guilty plea should be vacated where the judge questioned appellant about the crimes, and had appellant admit her guilt without previously informing her that she had the constitutional right to remain silent, and not answer questions since appellant was being questioned, while in custody, in a coercive setting, and she admitted her guilt before being advised of her constitutional right not to incriminate herself.

Relevant facts

As seen, appellant was questioned by the judge about the state's allegations and asked to admit her guilt at the September 14, 2014 guilty plea and probation revocation proceeding. Earlier, on August 18, 2014, a probation arrest warrant was issued for appellant alleging she failed to report for a revocation hearing on August 1, 2014. A bench warrant was issued for her arrest on that date. R. 34. Thus, it was apparent appellant was in custody at the time she was questioned by the plea and revocation judge without being advised of her right to remain silent.

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 (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 (1962); Jackson v. Denno, 378 U.S. 368, 387 (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 (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.

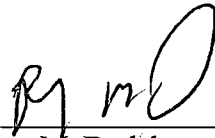
In Boykin, *supra*, the Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with full knowledge of the circumstances surrounding the plea and the attendant waiver of rights that occurs with the guilty plea.

The judge questioned appellant under oath, had her confess to her crimes, and state that she wished to plead guilty before being advised of her constitutional rights – including her right against compulsory self-incrimination. This violate the mandates of Boykin v. Alabama, 395 U.S. 238 (1969). Consequently, appellant's guilty plea should be vacated.

CONCLUSION

By reason of the foregoing arguments, appellant's guilty plea should be vacated.

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 8th day of July, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Deadra L. Jefferson, Circuit Court Judge

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RESPONDENT,

V.

JENNIFER LORENE HATFIELD GRIFFIN,

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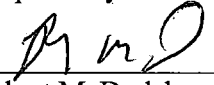
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jennifer Hatfield Griffin 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 probation revocation before Judge Deadra L. Jefferson, which was held on September 11, 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 Jennifer Hatfield Griffin.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of July, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Deadra L. Jefferson, Circuit Court Judge

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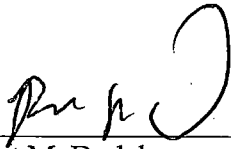
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

1. Entire plea and revocation transcript;
2. Administrative revocation report
3. Probation arrest warrant for failure to appear
4. Probation arrest warrant for allegedly violating probation.

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

July 8th, 2015



Robert M. Dudek
Chief Appellate Defender

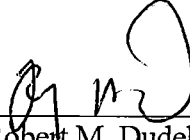
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(803) 734-1343

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."

July 8th, 2015



Robert M. Dudek
Chief Appellate Defender

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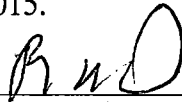
V.

JENNIFER LORENE HATFIELD GRIFFIN,

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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 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 and Designation of Matter and Record on Appeal have been served on Ms. Jennifer Hatfield Griffin, #305186, at Camille Griffin Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 8th day of July, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of July, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.