

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN RANSLOW ALLISON,

APPELLANT

APPELLATE CASE NO. 2014-002237

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy 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

RECEIVED

JAN 22 2015

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	
The trial judge erred in considering prejudicial and information at sentencing.....	5
CONCLUSION.....	9
PETITION TO BE RELIEVED AS COUNSEL	10

TABLE OF AUTHORITIES

Cases

<u>State v. Franklin</u> , 276 S.C. 240, 226 S.E.2d 896 (1976).....	7
<u>State v. Liberte</u> , 336, S.C. 648, 521 S.E.2d 744 (1999).....	8

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in considering prejudicial and irrelevant information at sentencing.

STATEMENT OF THE CASE

Appellant Steven Randlow Allison was convicted of distribution of methamphetamine per jury trial held during the October 2014 term of the Oconee County General Sessions Court before Judge Roger L. Couch. Aaron Angell represented appellant at trial and Assistant Solicitor Lindsay Simmons appeared on behalf of the state. Appellant was sentenced to imprisonment for a period of twenty-five years.

Appellant appealed. This brief follows

ARGUMENT

The trial judge erred in considering prejudicial and information at sentencing.

Undercover Agent Anna J. Orr testified that she participated in a controlled drug buy on July 15, 2013, via a meeting between confidential informant Sherry Gibson and appellant. Agent Orr testified that she was parked at a designated location in Oconee County and waited inside her parked car until Gibson and appellant arrived in their vehicle. Gibson and appellant both exited their vehicle and entered the back seat of her (Agent Orr's) parked vehicle. Shortly thereafter, Gibson placed the methamphetamine on the passenger's seat arm rest in Agent Orr's vehicle. Then, Agent Orr gave money (\$100.00) to appellant as payment. Minutes later, both Gibson and appellant entered their vehicle and drove away. Agent Orr stated that she heard appellant ask Gibson if she (Gibson) had given her (Orr) the drugs, and Gibson responded in the affirmative. R. 68, l. 6 – R. 77, l. 3.

Confidential informant Sherry Gibson testified regarding the drug sale as follows:

Q. Did you come to meet Agent Orr with Steven Allison on July 15th?

A. Yes.

Q. Did you observe a drug transaction in the car.

A. I did.

Q. Who passed Agent Orr the drugs?

A..I passed them.

Q. Was it at the direction of someone else, or was it your own idea?

A. Steve passed them to me, and I passed them—I laid them down right there on the console.

Q. Do you know why he wanted to do it that way?

A. I would assume so it wouldn't be passed through his hands.

Q. And were these your drugs or his drugs?

A. His.

Q. Did you profit from his sale of these drugs in any way?

A. No.

Q. Were you paid as a confidential informant for this?

A. I was.

Q. And when Agent Orr paid the Defendant for these drugs, who did she give payment to?

A. It passed through the hands – it passed through my hand through the back glass, the back window, to her hand.

Q. So the hand-to-hand of the money from Agent Orr, whose hands did that ultimately end up in?

A. In Agent Orr's?

Q. Agent Orr to?

A. [Defendant/Appellant]

Q. Okay. And so you did not receive the hundred dollars?

A. Oh, no.

Q. No?

A. No.

Q. Okay. And did this transaction occur in Oconee County?

A. It did. R. 86, l. 24 – R. 88, l. 12.

At sentencing, the solicitor made the following comments:

The Court: All right. Now, let's go over the prior record...

Ms. Simmons: ...[Appellant's] prior record begins in 1991 starting with failure to stop for a blue light; 1992, driving under suspension, fifth offense; 1992, fraudulent check; 1995, criminal domestic violence; 2002, shoplifting, manufacturing or distribution of ice, crack or crank. In 2002, Your Honor, for the Court's information, he received a seven year sentence with ATU at that time. Again in 2003, there was another conviction for manufacturing and distribution and a trafficking ten to twenty-eight grams. That was seven years concurrent with the seven he was already serving. Then in 2008, there was a DUS, a possession of methamphetamine, and a drug paraphernalia charge. Judge, he got three years on that in 2008. Then simple possession of marijuana in 2008. Judge, in 2008 he received a ten-year sentence for burglary second degree suspended to the service of three years. And it looks like three drug convictions were run concurrent with that. A DUS, and a petit larceny. Judge, I think he has an out of state disorderly conviction. As of today, he has one more distribution pending with our office that I did dismiss after this trial. But he does have a pending burglary with Mr. Wagner that is still pending.

Judge. I just think that based on the fact that his criminal record goes back over thirty years at this point – and he's been a menace to law enforcement. He's been in prison several times and has not been able to reform himself. I believe a thirty-year sentence is appropriate because he's shown he cannot live in society and abide by the laws.

R. 144, l. 20 – R. 146, l. 4.

A sentencing judge should know all material facts, including any information material to punishment, and the defendant's prior record. State v. Franklin, 276 S.C. 240, 226 S.E.2d 896 (1976). However, in the case at bar, the solicitor went beyond appellant's criminal record and information material to punishment and declared appellant's purported status as a menace to police and the implied that he was a menace to society as

well and must receive the harshest sentence because her view was that he could not abide by our written laws. This speculation and mischaracterization of appellant sans any basis in fact to substantiate said claims constituted prejudicial information that should not have been submitted to or considered by the trial judge. More importantly, the solicitor's claims and predictions constituted irrelevant information that had nothing to do with appellant's prior record, which should have been the main focus at sentencing. The accusation that appellant was a "menace" to police and in effect to society, and the prediction that appellant was deemed incapable of living and abiding by the laws of society constituted irrelevant and prejudicial information outside appellant's record and the facts of his case. Thus, appellant's sentencing proceeding was unfair and sans due process, and he was prejudiced with respect to sentencing as a result.

By analogy, compare the ruling in the case of State v. Liberte, 336, S.C. 648, 521 S.E.2d 744 (1999), where the Court held that a prosecutor cannot urge jurors to convict a defendant in order to protect community values, preserve order, or deter future law breaking. In the drug case of Liberte, the solicitor in effect equated the reasonable doubt instruction as a means to gain an acquittal for the defendant and an attack on police who were trying to "keep drugs off our streets." The Liberte Court reversed and held that:

In our view, the argument was calculated to appeal to the jury's passions and prejudices by playing on the jury's fear of the impact of drugs on our society. The argument invited the jury to convict the Defendants, even if the evidence did not prove their guilt beyond a reasonable doubt, in order to keep the streets safe from the scourge of drugs. Such an appeal is clearly improper.

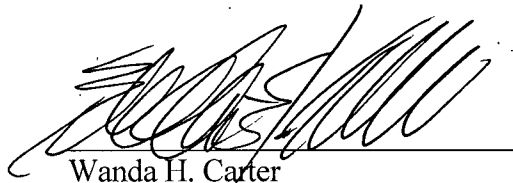
Similarly, the information given by the solicitor in this case and the views espoused by the solicitor regarding appellant constituted prejudicial and irrelevant information at

appellant's sentencing, which in turn deprived appellant of his right to a fair sentencing proceeding.

CONCLUSION

Based on the foregoing argument, appellant requests that the Court vacate his sentence and remand the case for a new sentencing proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of January, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN R. ALLISON,

APPELLANT

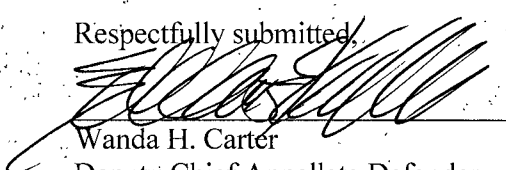
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Steven Ranslow Allison states:

1. She is Deputy Chief 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 trial before Judge Roger L. Couch, which was held on October 14, 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 trial.

WHEREFORE, she asks the Court to relieve her as counsel for Steven Ranslow Allison.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of January, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN R. ALLISON,

APPELLANT

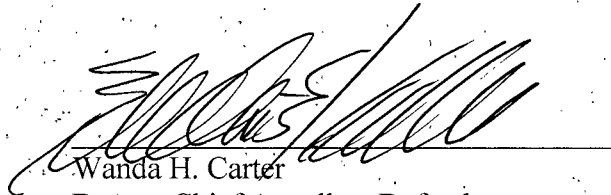
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial Transcript
- (2) True-billed indictment;

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

January 22nd, 2015



Wanda H. Carter
Deputy Chief Appellate Defender

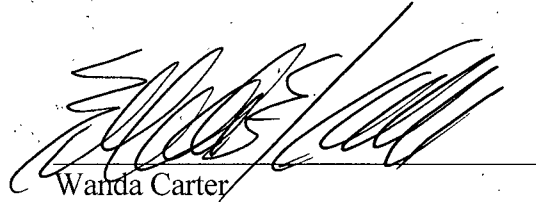
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 22, 2015



Wanda Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED

JAN 22 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

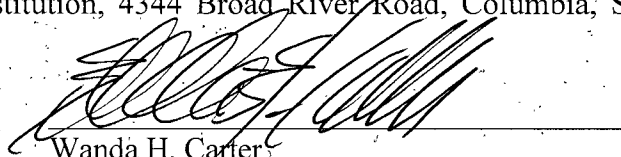
V.

STEVEN R. ALLISON,

APPELLANT

CERTIFICATE OF SERVICE

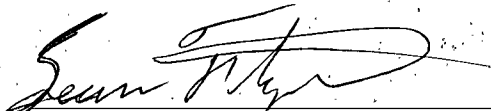
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Steven Ranslow Allison, #293718 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 22nd day of January, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of January, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

RECEIVED

JAN 22 2015

SC Court of Appeals