

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2016-000269

RECEIVED
MAR 03 2016
SC Court of Appeals

THE STATE,

Respondent,

vs.

ALPHONSO MORGAN, JR.,

Appellant.

**RESPONSE TO APPELLANT'S SUPPLEMENTAL STATEMENT
OF APPELLATE DEFENSE PURSUANT
TO RULE 203(d)(1)(B)(iv)**

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

I.

In November of 2013, Appellant Alphonso Morgan, Jr. was arrested following an investigation into a shooting that resulted in a death. In May of 2015, the Greenwood County Grand Jury indicted Appellant for one count of murder. Prior to trial, Appellant sought immunity from criminal prosecution pursuant to S.C. Code Ann. § 16-11-450, and a hearing on the immunity issue was commenced in the Greenwood County Court of General Sessions in February of 2016 with the Honorable Eugene C. Griffith, Jr., circuit court judge, presiding. At the conclusion of the hearing, Judge Griffith denied Appellant's request for immunity.

Thereafter, on February 5, 2016, Appellant entered a guilty plea to the lesser offense of voluntary manslaughter. Appellant then filed a timely notice of appeal.

II.

On February 17, 2016, this Court sent a letter to Appellant requesting a written explanation demonstrating an issue exists that can properly be reviewed on appeal in light of the fact Appellant entered a guilty plea. Thereafter, on March 1, 2016, Appellant filed a supplemental statement of appellate defense pursuant to Rule 203(d)(1)(B)(iv), SCACR. In his supplemental statement, Appellant acknowledged he entered a guilty plea following the denial of his pre-trial request for immunity from prosecution. Nonetheless, Appellant contends his guilty plea was void ab initio based on his claim of immunity from prosecution and, for that reason, maintains his appeal should be permitted despite the fact he pled guilty subsequent to the issuance of the pre-trial ruling he is now seeking to challenge on appeal.

III.

As our Supreme Court has stated, “[a] plea of guilty is a confession of guilt, made in a formal manner and has the same effect in law as a verdict of guilty and authorizes the imposition of the punishment prescribed by law.” Sanders v. Leake, 254 S.C. 444, 447, 175 S.E.2d 796, 797 (1970); see Boykin v. Alabama, 395 U.S. 238, 242 (1969) (“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.”). Significantly, a knowing and voluntary guilty plea has been recognized in our state to constitute a waiver of all non-jurisdictional defects and defenses, including claims of constitutional violations.¹ State v.

¹ Notably, guilty pleas in South Carolina cannot be conditioned to preserve potential defenses for appellate review. See In re Johnny Lee W., 371 S.C. 217, 220, 638 S.E.2d 682, 684 (2006) (“A trial court may not accept a conditional guilty plea.”); see also State v. Truesdale, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982) (“Pleas of guilty are unconditional, and if an accused attempts to attach any condition or qualification thereto, the trial court

Snowdon, 371 S.C. 331, 333, 638 S.E.2d 91, 92 (Ct. App. 2006); see Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (finding entry of a guilty plea generally constitutes a waiver of non-jurisdictional defects and defenses). Thus, by entering a guilty plea, a criminal defendant in South Carolina admits all the elements of the charged offense, waives any defenses that defendant may have had, and leaves only issues related to the sufficiency of the indictment open for review. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000).

IV.

In the case sub judice, Appellant admittedly and without contest pled guilty following the denial of his pre-trial motion seeking immunity from prosecution. By doing so, Appellant admitted his guilt for the crime of voluntary manslaughter and waived any defenses he may have had, including his claim of immunity from prosecution. See Snowdon, 371 S.C. at 333, 638 S.E.2d at 92 (“Generally, a knowing and voluntary guilty plea waives all non-jurisdictional defects and defenses, including claims of constitutional violations. . . . Having pled guilty to breach of peace, Snowdon has waived any objection he may have had, and cannot, therefore, assert constitutionally based violations attendant to his initial arrest and the legal consequences flowing therefrom.”). As a result, there is no legal basis upon which Appellant can pursue an appeal in his case, and he has failed to identify any authority in his supplemental statement to this Court that would permit his appeal to go forward under the circumstances. See Rule 203 (d)(1)(B)(iv), SCACR (“If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on

should direct a plea of not guilty. The basis for this rule is, of course, the settled doctrine that a guilty plea constitutes *waiver* of all prior claims of constitutional rights or deprivations thereof.” (citations omitted))

that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. **If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed.**" (emphasis added and footnote omitted)). Accordingly, Appellant's notice of appeal should be dismissed.

WHEREFORE, Respondent prays that this Court will dismiss Appellant's notice of appeal seeking to appeal the denial of a pre-trial ruling after Appellant subsequently entered a guilty plea; and grant 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

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March 3, 2016

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IN THE COURT OF APPEALS

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Response to Appellant's Supplemental Statement of Appellate Defense Pursuant to Rule 203(d)(1)(B)(iv) on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

W. Townes Jones, IV, Esquire
116 Court Ave. W.
Greenwood, SC 29646

James W. Bannister, Esquire
Bannister, Wyatt & Stalvey, LLC
Post Office Box 10007
Greenwood, SC 29603

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 3rd day of March, 2016.



ANNE A. MUELLER
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211



ALAN WILSON
ATTORNEY GENERAL

March 3, 2016

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MAR 03 2016

SC Court of Appeals

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

RE: State v. Alphonso Morgan, Jr. – Appellate Case No. 2016-000269

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Response to Appellant's Supplemental Statement of Appellate Defense Pursuant to Rule 203(d)(1)(B)(iv), along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar No. 76901

MRF/
Enclosures

cc: W. Townes Jones, IV, Esquire
James W. Bannister, Esquire
Robert M. Dudek, Esquire
Victim Services