

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

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OCT - 9 2013

The Honorable Edger W. Dickson, Circuit Court Judge

Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

PHILLIP WATTS,

APPELLANT

APPELLATE CASE NO. 2012-213513

BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Did the judge err in accepting pleas of guilty but mentally ill when there was no evidence of mental illness and the lack of capacity to conform as required by S.C. Code §17-24-20(D)?

STATEMENT OF THE CASE

In May of 2008, the York County Grand Jury indicted Watts for armed robbery, two counts of possession of a weapon during the commission of a violent crime, three counts of assault and battery with intent to kill, two counts of kidnapping and attempted armed robbery, indictments #2008-GS-46-2086, 2086(A), 2087, 2088, 2089, 2090, 2090(A), 2091, 2092. On April 27, 2009, Watts appeared before the Honorable Lee S. Alford and pled guilty but mentally ill to all of the charges. Attorney Douglas Gay represented Watts at the guilty plea. Attorneys Kevin Brackett and Willy Thompson prosecuted the case on behalf of the State. Judge Alford sentenced Watts to seven consecutive life sentences. The direct appeal was not perfected.

On September 17, 2010, Watts filed an application for post conviction relief, 2010-CP-46-3969. On November 10, 2011, the State filed a return and motion to dismiss all claims except the belated appeal claim. On October 9, 2012, an evidentiary hearing was held before the Honorable Edgar W. Dickson. Attorney Leah Moody represented Watts at the hearing. Attorney Rutledge Johnson was present on behalf of the State. In a written order filed November 5, 2012, Judge Dickson dismissed the application but granted a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). This brief and a separately filed petition for writ of certiorari follow.

ARGUMENT

The judge erred in accepting pleas of guilty but mentally ill when there was no evidence of mental illness and the lack of capacity to conform as required by S.C. Code §17-24-20(D).

Watts pled guilty but mentally ill to armed robbery, two counts of possession of a weapon during the commission of a violent crime, three counts of assault and battery with intent to kill, two counts of kidnapping and attempted armed robbery, indictments #2008-GS-46-2086, 2086(A), 2087, 2088, 2089, 2090, 2090(A), 2091, 2092. (App. p. 5, lines 9-13; p. 6, lines 19-21; p. 13, lines 5-11; pp. 64-72). Watts was sentenced to seven consecutive life sentences. Plea counsel told the judge, “His mother could tell you he’s a different person when he’s on his medication. He didn’t have the medication to take with him to get the medication, and that is more or less the basis for our plea today, that the solicitor has agreed not to contest that Mr. Watts is guilty but mentally ill.” (App. p. 32, lines 17-22). Counsel briefly outlined Watts’ experience with medications while he was in a juvenile program and his inability to obtain medications from the Catawba Mental Health Center. (App. p. 31, line 9 – p. 32, 33, lines 1-20). Plea counsel did not, however, offer any expert or lay testimony in regard to capacity to distinguish right from wrong or capacity to conform. The judge failed to make a finding that Watts was mentally ill and lacked the capacity to conform his conduct rendering him guilty but mentally ill. The judge erred in accepting the pleas of guilty but mentally ill.

S.C. Code §17-24-20 provides:

(A) A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

(B) To return a verdict of “guilty but mentally ill” the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that

the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A).

(C) The verdict of guilty but mentally ill may be rendered only during the phase of a trial which determines guilt or innocence and is not a form of verdict which may be rendered in the penalty phase.

(D) A court may not accept a plea of guilty but mentally ill unless, after a hearing, the court makes a finding upon the record that the defendant proved by a preponderance of the evidence that when he committed the crime he was mentally ill as provided in Section 17-24-20(A).

The statute requires that in order to accept a guilty but mentally ill plea the trial court must make a finding that at the time of the offense the defendant was mentally ill and lacked the capacity to conform his conduct rendering him guilty but mentally ill. The trial court failed to make the requisite finding. There is no evidence in the record that Watts was guilty but mentally ill.

In State v. Lewis, 328 S.C. 273, 280, 494 S.E.2d 115, 118 (1997), the South Carolina Supreme Court, in deciding if the trial court properly refused to charge insanity as a defense, wrote, "Since there was no evidence appellant was unable to distinguish between right and wrong or unable to recognize his actions as wrong at the time of the offense, there was no evidence of insanity and the trial judge properly refused appellant's request to charge insanity." If Watts had proceeded to trial and requested a charge on guilty but mentally ill, the trial court would have properly denied that request as there was no evidence that at the time of the offenses Watts was mentally ill and lacked the capacity to conform his conduct.

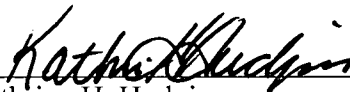
The guilty but mentally ill statute requires a finding by the trial court that at the time of the offense the defendant was mentally ill and lacked the capacity to conform his

conduct. The trial court in the present case failed to make the requisite finding. There is no evidence in the record to support a finding that Watts was guilty but mentally ill. The trial court's failure to make a finding constitutes an error of law requiring reversal.

CONCLUSION

Based on the above argument Watts' convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,



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This 9th day of October, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
John C. Few, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

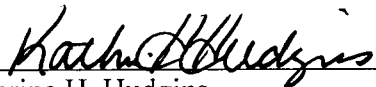
PHILLIP WATTS,

APPELLANT

APPELLATE CASE NO. 2012-213513

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Brief of Appellant pursuant to White v. State in the above referenced case has been served upon J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also served upon Mr. Phillip Watts #307234 Perry Correctional Institution, 430 Oaklawn Road Pelzer, SC 29669 this 9th day of October, 2013.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.