

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED
AUG 12 2016
SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

RION BEATY,

APPELLANT.

APPELLATE CASE NO. 2016-000492

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did Appellant voluntarily, knowingly and intelligently plead guilty to armed robbery and kidnapping when the trial judge incorrectly advised Appellant of the recidivist consequences of pleading guilty?

STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Appellant on October 18, 2012 for kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime. App. 114-119. Appellant pled guilty as indicted on April 22, 2013 before the Honorable J. Ernest Kinard, Jr. App. 1. Assistant Solicitor Benjamin T. Shelton appeared on behalf of the state, and Donald C. Colongeli represented Appellant. App. 2. Appellant was sentenced by Judge Kinard to fifteen years' imprisonment for kidnapping, fifteen years concurrent for armed robbery, and five years concurrent for the weapons offense. App. 24, ll. 1-4.

The Court of Appeals dismissed Appellant's appeal by order filed July 8, 2013 because counsel failed to timely file the notice of appeal. App. 105.

On June 23, 2014, Appellant filed an application for post-conviction relief (PCR). App. 27-34. The state filed a return to this application dated August 28, 2015. App. 35-40. An evidentiary hearing was convened on October 20, 2015 before the Honorable Roger L. Couch. App. 41. Assistant Attorney General J. Rutledge Johnson represented the state, and James K. Falk represented Appellant. App. 42. By order filed February 19, 2016, Judge Couch granted Appellant a belated direct appeal. However, Judge Couch denied Appellant's remaining PCR allegations. App. 91-98.

This brief of appellant follows.

ARGUMENT

Appellant did not voluntarily, knowingly and intelligently plead guilty to armed robbery and kidnapping when the trial judge incorrectly advised Appellant of the recidivist consequences of pleading guilty.

“In general, a defendant's guilty plea is more than an admission of conduct; rather, it is a conviction that can deprive him of his liberty or other constitutionally protected interests.” State v. Nesbitt, 411 S.C. 194, 200, 768 S.E.2d 67, 70 (2015) (citing Mabry v. Johnson, 467 U.S. 504, 507 (1984) and Boykin v. Alabama, 395 U.S. 238, 242 (1969)). “Therefore, the entry of a guilty plea implicates the protections of the Due Process Clause of the federal and state constitutions.” Id. (citing U.S. Const. amend. XIV and S.C. Const. art. I, § 3). “Among these protections, the Due Process Clause requires that a defendant enter his guilty plea voluntarily, knowingly, and intelligently.” Id. (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000)). “Thus, prior to receiving a defendant's guilty plea, the court must advise the defendant of ‘the nature and crucial elements of the charges, the consequences of the plea [including any maximum and minimum penalties for the crimes], and the constitutional rights he is waiving’ by pleading guilty.” Id. (quoting Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001)) (alterations in original).

Here, the court failed to properly advise Appellant of the recidivist consequences of pleading guilty to armed robbery and kidnapping in violation of his due process rights. Armed robbery and kidnapping both constitute a “most serious offense” under S.C. Code Ann. § 17-25-45(A), and could later be used to enhance Appellant’s sentence if he is subsequently convicted of certain offenses. However, the trial judge told Appellant, “You’re picking up **two strikes** if you

plead to these charges.” App. 5, l. 24 – 6, l. 6 (emphasis added). However, this statement was incorrect.

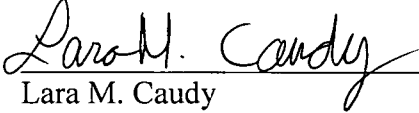
The state alleged during the plea hearing that Appellant robbed the South Beach General Store on Hilton Head Island and held the store manager at gunpoint. Because Appellant’s armed robbery and kidnapping offenses “arose from a single incident at the same time and at the same location,” **they constitute one offense**, as a matter of law, for purposes of S.C. Code Ann. § 17-25-50, and thus **one strike**. See Bryant v. State, 384 S.C. 525, 532, 683 S.E.2d 280, 284 (2009); Koon v. State, 372 S.C. 531, 643 S.E.2d 680 (2007); State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003) (*overruled in part by Bryant*, 384 S.C. 525, 529, 683 S.E.2d 280, 282).

The trial judge’s erroneous advice on the recidivist consequences of pleading guilty to armed robbery and kidnapping rendered Appellant’s guilty plea invalid. Consequently, Appellant did not knowingly and intelligently plead guilty as required by due process.

Respectfully, this Court should reverse Appellant’s convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of August, 2016.

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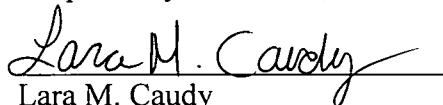
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rion Beaty states:

1. She is an 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 plea before Judge J. Ernest Kinard, Jr., which occurred on April 22, 2013, 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 Rion Beaty.

Respectfully Submitted,


Lara M. Caudy

Appellate Defender

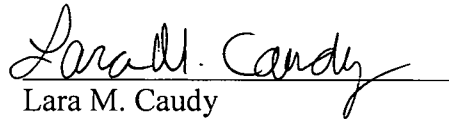
ATTORNEY FOR APPELLANT

This 12th day of August, 2016.

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."

August 12, 2016.

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in black ink and is positioned above a horizontal line.

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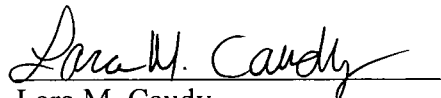
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CERTIFICATE OF SERVICE

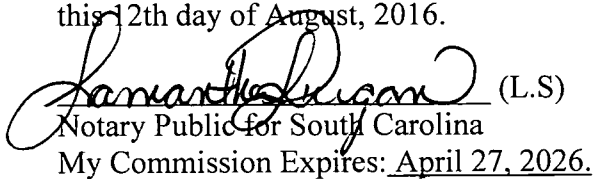
The undersigned certifies that a true copy of the Anders Brief of Appellant in the above referenced case has been served upon J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant has been served upon Rion Beaty, #337153, at Ridgeland Correctional Institution, P.O. Box 2039, Ridgeland, SC 29936, this 12th day of August, 2016.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of August, 2016.



(L.S)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.