

State of South Carolina
In the Supreme Court

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SC SUPREME COURT

Appellate Case # 2015-002434

Joshua Monroe
Petitioner

v.

State of South Carolina
Respondent

Petitioner's Response in
Consideration of Appeal

statement of Issue on Appeal

Did the sentencing Judge err by sentencing the Defendant and replacing the original trial Judge who took the Defendants plea and waiver of rights?

Did the plea Judge err by not officially having the judgement entered into the record?

Statement of the Case

On 11/18/10 Joshua Monroe went in front of Judge Nicholson in Charleston County to enter a plea concerning cases: 2008-GS-10-08109, 08111, 08120, 08123, 08144, 08145, 08149.

Judge Nicholson informed the defendant of his rights following Boykin and a plea was entered under Alford for 3 of the charges and guilty for the remaining 3 charges. Judge Nicholson deferred sentencing to a later date.

On 2/3/11 the Defendant, Monroe, was sentenced by Judge R. Young at a hearing that included the sentencing of his two co-defendants (Larkin and Mulligan).

Facts

The plea accepted by Judge Nicholson on 11/18/10 was never officially entered as a judgement by the Clerk of Court. The defendants plea and sentencing were officially entered by the clerk on 2/3/11 after the hearing held by Judge Young. Judge Young didnt initiate a Boykin type colloquy with Monroe informing him of his rights or waiver to his rights. Nor did he familiarize himself properly with the case as he made no mention of Monroes' Alford Plea or any benefits derived through pleading under Alford.

Arguments

The initial error comes by way of Judge Nicholson's judgement having not been entered officially into the record. S.C. Code of Laws Ann. 14-260 (d) states;

The clerk of court shall officially sign all judgements and state the time when each is signed and entered. Rule 58 of the S.C. Rules of Civ. Pro. states; Every judgement shall be set forth on a separate document. A judgement is effective only when so set forth and entered on record. Entry of judgement should not be delayed for the taxing costs. In this case the judgement of Judge Nicholson was not officially entered by the Clerk. The sentencing sheets do not reflect the signature of acceptance of the clerk's filing. What the record does reflect is that the clerk only accepted the judgement of the sentencing hearing with Judge Young. This is reflected by the clerk's signature and totaling of tax/court fees. If the judgement of the original Judge, Mr. Nicholson, was not officially entered in the record it should not

be accepted in the timeline of events leading up to the sentencing of Monroe. Therefore the Boykin style colloquy between Judge Nicholson and Monroe and the acceptance of Monroe's plea were not official and should have been done again by Judge Young when he took jurisdiction over the case. This of course would lead to the second question of this case. Was it error for Judge Young to preside over the sentencing of Monroe after Judge Nicholson took the initial plea? South Carolina has never discussed this type of situation when it concerns a plea. It has however discussed this scenario in trial situations allowing for a different judge to sentence a person previously convicted by a different presiding judge. State v Knotts 70 SC 400 Though SC has not discussed this scenario in situations regarding plea and sentencing, nearly every other state has and the majority consensus seems to move toward reversible error. The majority view is, whether replacing the original judge with a substitute judge

is proper or constitutes reversible error depends on various factors such as the stage of the proceeding at which the substitution occurs, the type of actions taken by the substitute, the existence of and compliance with a statute authorizing substitution, and whether the defendant objected to the substitution.

Most surrounding states go further by stating that substitution is only valid if by reason of death, sickness, or another disability afflicting the original judge. See *Kelley v State* (1994 Fla App D1) 637 So 2d 972, *Commonwealth v Trapp* 396 Mass 202, 485 NE 2d 162, *Durden v People* 192 IH 493, *State v Davis* 564 SW 2d 876, *State v Jones* 6 Ariz App 26, 429 P2d 518, *State v Gossett* 11 Wash App 864, 527 P2d 91, *People v Eckert* 16 Cal 110, *Lawley v State* (Fla App D1) 377 So 2d 824, *State v Voelkers* (Iowa App) 547 NW 2d 625 Court held

that it was reversible error for judge other than trial judge to pass sentence on defendant where there was no emergency. If SC were to apply the scenarios of this case as they are viewed regroundly and Federally. The facts presented would warrant a reversal or at minimum a resentencing. Even in SC's only case referencing the substitution of judges it is deemed the substitute judge must at a minimum familiarize himself with the case. See Knotts 70 SC 400. It is apparent in this case that did not happen. Judge Young made no mention of Monroes Alford pleas and also makes no mention of any benefit of Monroe pleading under Alford as was mentioned by Judge Nicholson. (Trns Pg 23 Ln 9-12) In fact it seems Judge Young is under the impression that he took Monroes plea previously (Trns Pg 47 Ln 8-12) when in fact he did not. The sentencing sheets of each judge also reflect the unfamiliarity

of Judge Young with the case. Judge Nicholson is aware of the Alford pleas and signifies it on the paperwork. Judge Young does not. In fact Judge Young sentences Monroe as if he pleaded in the same manner as the co-defendants and therefore gave him no benefit of pleading Alford as was mentioned by Judge Nicholson. These deficiencies are compounded by the initial failure to properly enter the judgement of Judge Nicholson into the record. Which can not be taken as harmless error because that omission directly effects the constitutional rights of the petitioner Monroe in multiple ways. One example being that Judge Young should have taken the plea of Monroe to reestablish the record

and in doing so should have had a Boykin style colloquy with Monroe pertaining to his rights and waivers.

The presented case is one in which the State of South Carolina can address the issue of substitution of Judges regarding pleas and sentencing and therefore clarify the law and for opinion of the people of South Carolina.

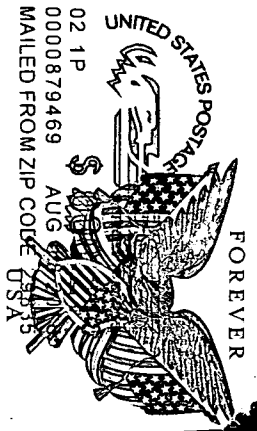
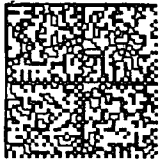
The petitioner does not believe the gravity of such a decision should be fully addressed or left to the merits of a Pro Se brief and would ask the Court to deny counsels petition to be relieved and furthermore instruct counsel to fully address the potentialities of the errors that have been addressed here to.

Conclusion

For the reasons argued above, Appellant Joshua Monroe respectfully requests this Court deny Counsels Anders Brief/Petition to be Relieved and upon favorable review of the facts reverse his guilty plea and sentence and remand to the lower court for a new trial.

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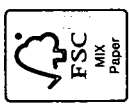
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