



ALAN WILSON
ATTORNEY GENERAL

December 29, 2016

RECEIVED

DEC 29 2016

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: Alexander X. Ruiz v. State of South Carolina
2015-CP-42-3801

Dear Mr. Shearouse:

Enclosed are the following:

1. Notice of Appeal
2. Proof of Service of the notice of appeal on the Respondent
3. A copy of the order which is to be challenged on appeal.
4. A letter ordering the PCR transcript from the court reporter

Sincerely,

Alicia A. Olive
Assistant Attorney General

AAO/ah
Enclosures

cc: Susannah C. Ross, Esquire
The Honorable M. Hope Blackley, Clerk of Court of Spartanburg County
The Honorable Barry J. Barnette, Seventh Circuit Solicitor
SCCID, Division of Appellate Defense
Vincent J. Barton, Esquire
Trisha Allen, Victims Services

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

RECEIVED

DEC 29 2016

S.C. SUPREME COURT

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No. 2015-CP-42-3801

ALEXANDER RUIZ, #363295,

Respondent,

v.

STATE OF SOUTH CAROLINA

Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable Frank R. Addy's order dated November 22, 2016 and filed November 29, 2016 granting post-conviction relief to the Respondent. The State received notice of entry of the order on November 29, 2016. A copy of the order on appeal is attached to this notice.



Alicia A. Olive
Assistant Attorney General
South Carolina Bar No. 102089
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

December 29, 2016

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL TO SPARTANBURG COUNTY
COURT OF COMMON PLEAS

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No. 2015-CP-42-3801

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DEC 29 2016

S.C. SUPREME COURT

ALEXANDER RUIZ, #363295,

Respondent,

v.


STATE OF SOUTH CAROLINA

Petitioner.

PROOF OF SERVICE

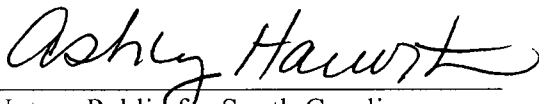
I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on December 29, 2016, to Susannah C. Ross, Esquire, his attorney of record, to the address below.

Ms. Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601



Alicia A. Olive
Assistant Attorney General

SWORN to before me this 29th day of December, 2016.



Notary Public for South Carolina.

My Commission Expires: 3-18-2023

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Alexander Ruiz, #363295)
) Applicant,)
 v.)
)
 State of South Carolina,)
) Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2015-CP-42-3801

**ORDER GRANTING PETITION FOR
 POST-CONVICTION RELIEF**

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 M. HOPE BLANKLEY
 SPARTANBURG

This matter is before me by way of Application for post-conviction relief PCR filed August 25, 2015. A hearing was held November 7, 2016. Susannah Ross represented Mr. Ruiz and Alicia Olive was present on behalf of the State. Testimony was presented by the Applicant, Alexander Ruiz, and defense counsel for his probation revocation hearing, Claire Hall, Esq. Before me was the transcript of the March 6, 2015, probation violation hearing, court documents, revocation documents and sentencing sheets.

Mr. Ruiz pled guilty to burglary second degree, non-violent, on December 13, 2012, and received a Youthful Offender Act (YOA) sentence not to exceed five years, suspended on service of ninety-seven (97) days and three years of probation. The sentencing sheet also reflects that the judge also ordered a suspended shock incarceration. At that time, Mr. Ruiz was twenty-two (22) years old. On March 6, 2015, Ms. Hall represented Mr. Ruiz at a probation revocation hearing before Judge Derham Cole. It is readily apparent from the testimony and the hearing transcript that Ms. Hall specifically requested an active YOA sentence rather than shock incarceration, and Judge Cole obliged revoking the suspended YOA sentence. Mr. Ruiz testified that Ms. Hall told him he would serve a six to twelve month sentence. Ms. Hall did not contest his assertion, agreeing that though she had no independent recollection of the representation, she

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may have misadvised Mr. Ruiz of the sentence he would receive. Ms. Hall did not appeal or request the sentence be amended.

According to the South Carolina Department of Corrections Classification Report and Mr. Ruiz's testimony, Mr. Ruiz is serving a three to four years imprisonment with a projected parole date of March 15, 2018, and a projected max-out date of March 6, 2019. Rather than serving the ninety days required through the shock incarceration program that was ordered by the plea judge or the six to nine months of the normal active YOA sentence, Mr. Ruiz received a three to four year sentence. Reading the plain meaning of the YOA statute, it looks that Mr. Ruiz would not fall under Sec. 24-19-10(d)(iv) and was legally sentenced as a youthful offender under Sec. 24-19-10(d)(ii) being over seventeen and under twenty-five at the time of his conviction of a non-violent, class D offense carrying under fifteen years. However, SCDC categorized a YOA sentence for burglary second, non-violent, as an illegal one from 2010 when the statutory definition of Youthful Offender was amended until April of 2016 when the statute was again amended specifically allowing non-violent burglary second degree under the YOA Sec. 24-19-10(d)(iii) & (iv). By Mr. Ruiz's 2015 probation violation hearing date it was known that the South Carolina Department of Corrections classified a YOA for the charge burglary second degree as an illegal sentence under Sec. 24-19-10 of the South Carolina Code triggering the three to four year mandatory sentence.

As appointed counsel for his probation violation hearing, Ms. Hall was under an obligation to understand the law and how SCDC was interpreting the sentence for YOA revocations with burglary second charges. She should have been aware of the dangers of revoking a suspended YOA on a burglary charge and made the sentencing judge aware of the outcome of a revocation. She was obligated to correctly advise her client of the sentence he



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M. HOPE BLAKEY
SCDC

faced. Ms. Hall did not ask for the shock incarceration that would be likely for a revocation of a suspended shock sentence, and instead unwittingly requested a sentence that would trigger the three to four year mandatory sentence. Then she misadvised her client on the sentence he would receive. In South Carolina all persons charged with probation violations have a right to effective assistance of counsel. Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 621 (1986). I find that counsel's conduct in this matter was deficient resulting in substantially greater term of imprisonment clearly prejudicial to Mr. Ruiz.

I further find Mr. Ruiz's sentence was unjust and fundamentally unfair in violation of the Due Process Clause of the V and XIV Amendments of the United States Constitution and Article I, Section III of the South Carolina Constitution. Under the plain meaning of the YOA statute, Mr. Ruiz would not fall under Sec. 24-19-10(d)(iv) and was legally sentenced as a youthful offender under Sec. 24-19-10(d)(ii) being over seventeen and under twenty-five at the time of his plea to a non-violent, class D offense carrying under fifteen years. SCDC's interpretation of Sec. 24-19-10 giving Mr. Ruiz a mandatory three to four year, day for day sentence, for burglary second, non-violent, is fundamentally unfair and arbitrary. A penal statute must be strictly construed against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 276, 273, 403 S.E.2d 660, 662 (1991). Such interpretation would require Mr. Ruiz receive the normal sentence for a YOA revocation. Furthermore, the 2016 amendment allowing non-violent burglary second degree under the YOA Sec. 24-19-10(d)(iii) & (iv) suggests an effort on the part of legislature to correct an unintended result. Given that statutory construction should ascertain and give effect to the intent of the legislature, this again supports that Mr. Ruiz was the recipient of an unintended sentence and should receive the normal sentence for a YOA revocation. See Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). I find that Mr. Ruiz is entitled

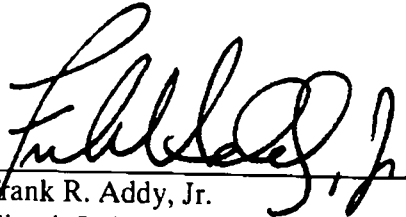


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CLERK OF COURT
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to another probation revocation with consideration of the above.

THUS, IT IS THE ORDER OF THIS COURT that Mr. Ruiz's case remanded for re-hearing on his probation revocation matter within thirty days. If the State chooses to appeal this Order, I retain jurisdiction to address the appeal bond.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Judge, Seventh Judicial Circuit

November 22, 2016
Greenwood, South Carolina.

SECRETARY OF THE COURT
2016 NOV 29 AM 8:49
M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

November 29, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Alexander V. Ruiz
Applicant # *363295*

7TH JUDICIAL CIRCUIT

CASE# *2015CPA-3801*

Shree
VS
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Form-4 & Order*
In this action dated *11-22-2014* on *11-29-14*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ashley Hearneth
Alicia Oliver
Sherman Ross

11-29-14
(Date)

Donna Seif
(Signature)