

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lexington County

Honorable William P. Keesley, Circuit Court Judge

RECEIVED

JAN 24 2017

SC Court of Appeals
RESPONDENT,

THE STATE,

v.

SARA ELIZABETH HODSON,

APPELLANT

APPELLATE CASE NO 2016-000644

ANDERS BRIEF OF APPELLANT

JOHN H. STROM
Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL..... 3

STATEMENT OF THE CASE..... 4

ARGUMENT 5

CONCLUSION 9

PETITION TO BE RELIEVED AS COUNSEL..... 10

TABLE OF AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

The trial court abused its discretion in refusing to allow Appellant to withdraw her *Alford*¹ plea to unlawful conduct towards a child and to aiding and abetting homicide by child abuse where, after Appellant entered her plea, her co-defendant husband stated in letters written to her that he was prepared to testify that she was not present when Minor 1 ingested a fatal amount of methamphetamine.

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970).

STATEMENT OF THE CASE

On September 14, 2015, the Lexington County Grand Jury indicted Appellant Sara Hodson for two counts of unlawful conduct towards a child; one count of homicide by child abuse; and one count of possession of methamphetamine. R. 4, ll. 3-11; R. 113 - 116.

On November 3, 2015, Appellant entered an *Alford*² plea to one count of unlawful conduct towards a child and one count of aiding and abetting homicide by child abuse before the Honorable Doyet A. Early, III. R. 22, ll. 10-17. Deon O'Neil represented Appellant, and Assistant Solicitors Sutania Radlein and Suzanne Mayes represented the State.

On February 5, 2016, Appellant filed a motion to withdraw her guilty plea. R. 24 - 29. On March 14, 2016, Judge Early heard arguments on Appellant's motion. R. 32 - 54. Judge Early denied Appellant's motion to withdraw her guilty plea. R. 48, l. 18 - 52, l. 19.

On March 23, 2016, the Honorable William P. Keesley sentenced Appellant to twenty years of imprisonment. R. 108, l. 3 - 109, l. 6. Appellant's husband, Jordan Hodson, was also sentenced to twenty years. *Id.*

² *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970).

ARGUMENT

The trial court abused its discretion in refusing to allow Appellant to withdraw her an *Alford* plea to unlawful conduct towards a child and to aiding and abetting homicide by child abuse where, after Appellant entered her plea, her co-defendant husband stated in letters written to her that he was prepared to testify that she was the not present when Minor 1 ingested a fatal amount of methamphetamine.

Relevant Facts

On December 11, 2012, Appellant and her husband, Jordan Hodson, took their youngest daughter, Minor 1, to a local physician. R. 70, l. 1-9. Upon examining the child, the physician called EMS. Minor 1, then two and half months old, was placed on life support as soon as she reached Lexington Medical Center. R. 16, l. 12 - 18, l. 24. She died of septic shock caused by the failure of her gastrointestinal tract. The State averred at Appellant's sentencing hearing that the gastrointestinal failure was likely caused or aggravated by exposure to methamphetamine. R. 25, ll. 6 - 25.

The State further stated that autopsy results showed that Minor 1 had a stomach perforation, broken ribs, a broken tibia, and an untreated skin infection in her groin. R. 6, l. 7 - 7, l. 9. Assistant Solicitor Mayes concluded that Minor 1 "suffered from complete medical neglect." *Id.* Appellant and Jordan Hobson were Minor 1's caretakers.

The Hobsons also had three older children. One of the older children, age 8, tested positive for methamphetamine as did both Jordan and Appellant. In the course of their investigation, police discovered that Appellant and Jordan Hodson both purchased large quantities of pseudoephedrine the day before Minor 1 died. R. 41, l. 13 - 43, l. 3.

In a written statement to police, Appellant admitted that, on the night before she died, Minor 1 was with the Hodsons when they visited a meth cook. R. 67, l. 1 - 70, l. 9. Appellant also admitted to giving the meth cook pseudoephedrine in exchange for methamphetamine. *Id.* When interrogated, the meth cook confirmed that the Hodsons visited him. *Id.*

Alford Plea Proceedings and Sentencings

On October 23, 2015, Jordan Hodson pled under *Alford* to aiding and abetting homicide by child abuse and unlawful conduct toward a child. R. 3, ll. 3-18. On November 3, 2015, Appellant entered an *Alford* plea to one count of aiding and abetting homicide by child abuse and one count of unlawful conduct towards a child. R. 4, l. 3 - 14, l. 14.

On January 20, 2016, Jordan wrote Appellant a letter stating that he knew Appellant was not “with me cooking meth [with the meth cook] that night! Your weren’t!” R. 26 - 29. Based on this letter, Appellant moved to vacate her *Alford* plea. R. 24 - 25.

Judge Early convened a hearing on Appellant’s motion. Defense counsel argued that Appellant should be allowed to withdraw her plea because her husband’s letter constituted new discovered evidence that changed her calculation as to whether to admit that the State could likely prove her guilt beyond a reasonable doubt. R. 36, l. 5 - 39, l. 4.

In opposing the motion, the State averred that whether Appellant was with Jordan Hodson cooking methamphetamine on the night before their daughter died was not a material fact impacting guilt or innocence. The State contended that the degree of neglect, Appellant’s role as Minor 1’s caretaker, and Appellant’s positive test for methamphetamine would establish - independently of her whereabouts on the night before Minor 1’s death - that Appellant was responsible for aiding and abetting homicide by child abuse. R. 39, l. 20 - 43, l. 3.

Judge Early denied Appellant’s motion to vacate her *Alford* plea. R. 48, l. 8 - 52, l. 19. In addition to the arguments at the hearing, the court referenced the colloquy it conducted with Appellant prior to accepting the *Alford* plea. *Id.* Specifically, the court stated that it had explained to Appellant that an *Alford* plea was - for all intents and purposes - a guilty plea and that Appellant had admitted to the charges and accepted the State’s recitation of the facts under oath. *Id.* The court

concluded that there was no reason to allow Appellant to withdraw from the plea and denied Appellant's motion. *Id.*

Discussion

The South Carolina Supreme Court has held that the difference between a valid plea and an invalid guilty plea “lies in the knowing and voluntary nature of the plea.” *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009); *see also Brady v. United States*, 397 U.S. 742, 758 (1970) (holding that “[g]uilty pleas are no more foolproof than full trials to the court or jury [w]e take great precautions against unsound results.”

The withdrawal of a guilty plea is generally within the sound discretion of the trial judge. *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Lopez*, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct.App.2002).

In an *Alford* plea a defendant “voluntarily and knowingly [consents] to the imposition of a prison sentence even if he is unwilling or unable to admit he participated in the acts constituting the crime. *State v. Herdon*, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013) *citing United States v. Morrow*, 914 F.2d 608, 611 (4th. Cir. 1990). By contrast, a guilty plea is “a solemn, judicial admission of the truth of the charges against an individual.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) *citing Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621 (1977).

A guilty plea is a confession of guilt. An *Alford* plea is a concession that the State has evidence that would likely convince a jury of the defendant's guilt beyond a reasonable doubt. *Alford*, 400 U.S. at 37, 91 S.Ct. at 167 (finding no constitutional violation where defendant, represented and advised by competent counsel, intelligently concluded that he should plead guilty to second-degree murder because strong evidence of guilt negated his claim of innocence and provided

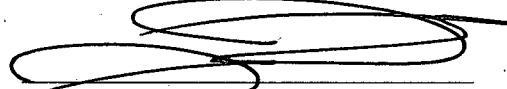
strong factual basis for pleading guilty.). An *Alford* plea is an admission to the strength of the State's case, not an admission to the truth of the underlying charges.

Here the plea court committed an abuse of discretion in denying Appellant's motion to withdraw her *Alford* plea. R. 48, 1. 8 - 53, 1. 19. In pleading pursuant to *Alford*, Appellant was admitting that the State had sufficient evidence against her to convict her. She was not admitting guilt.

Her husband came forward, stating that Appellant was not involved in cooking and consuming methamphetamine during the key period of time when Minor 1 ingested a fatal amount of methamphetamine. R. 26 - 29. Accordingly, Appellant should have been allowed to withdraw her *Alford* plea because the new evidence significantly changed the nature of the prosecution's evidence. Therefore, the trial court abused its discretion in refusing to allow Appellant to withdraw her *Alford* plea.

CONCLUSION

By reason of the foregoing argument, this Court should reverse Appellant's conviction and remand her case back to the Lexington County Court of General Sessions for a new trial.



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of January, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SARA ELIZABETH HODSON,

APPELLANT

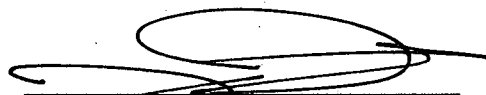
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sara E. Hodson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on March 14, 2016 (Hearing to withdraw guilty plea - Heard in Aiken County), and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 trial.

WHEREFORE, He asks the Court to relieve him as counsel for Sara E. Hodson.

Respectfully Submitted,



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

This 24th day of January, 2017.

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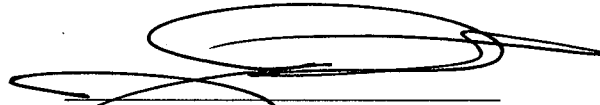
JAN 24 2017

SC Court of Appeals

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."

January 24, 2017.



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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) *Alford* Plea Transcript (November 3, 2015);
- (3) Defendant's Motion to Withdraw Plea;
- (4) Letters from Jordan Hodson to Appellant;
- (5) State's Response to Motion to Withdraw Plea;
- (6) Hearing on Defendant's Motion to Withdraw Plea (March 14, 2016);
- (7) Sentencing Hearing (March 23, 2016); and
- (8) Statement of Basis for Appeal from Guilty Plea Pursuant to Rule.

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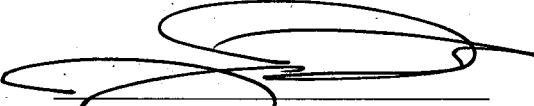
JAN 24 2017

(Certification Page Follows)

SC Court of Appeals

I certify that this designation contains no matter which is irrelevant to this appeal.

January 24, 2017



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