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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Keesley., Circuit Court Judge

RECEIVED

FEB 23 2017

SC Court of Appeals

Warrant Nos.: 2015A3210201252, 53 54, 56, 57, 58, and 59

The State Respondent,

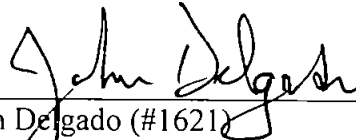
v.

Fritz Neiger,Appellant.

MOTION TO FILE BELATED NOTICE OF INTENT TO APPEAL

COMES NOW, Appellant, Fritz Neiger, by and through his attorney John Delgado respectfully requesting this Court to grant Appellant's belated Notice of Intent to Appeal. On October 21, 2017 Appellant requested the undersigned appeal nearly one month after his conviction and sentence. (See Exhibit A.) Mr. Delgado requested the trial transcript which he received on January 13, 2017. After reviewing the transcript Mr. Delgado filed an Initial *Anders* Brief with this Court on February 16, 2017. (See Exhibit B). Appellant moves this Court to accept his belated Notice of Intent to Appeal for the reasons set forth above.

Respectfully Submitted,

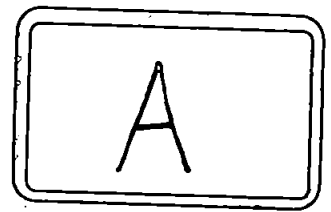


John Delgado (#1621)
Bluestein, Nichols, Thompson & Delgado LLC
1614 Taylor Street
Columbia, SC 29201
(803) 779-7599
jdelgado@bntdlaw.com

February 21, 2017
Columbia, SC



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW



October 26, 2016

Mr. Fritz Neiger
SCDC # 02211144
Kirkland Correction Institution
4344 Broad River Road
Columbia, SC 29210

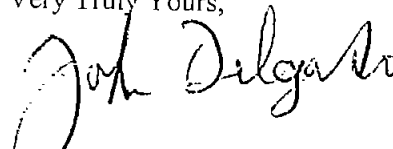
Dear Fritz:

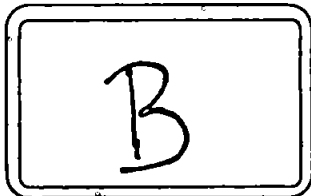
I have received and answered a text from your friend, Ms. Clark, as well as I have received your recent letter on October 21st. Both the text from Ms. Clark and your letter went to the same point: you want to appeal the sentence you received. I did not, repeat not, know this as you did not say that to me nor did you write me before your October 21st letter requesting that I do so. I will do so now and will request a copy of the sentencing plea before Judge Keesley in Lexington County.

While the statutory period of 10 days has elapsed for the appeal as I did not know that you wished to do so, the courts will allow an appeal out of time. I will now begin that process but it will take a longer period of time than you would think reasonable. It may well take me six months to obtain the transcript of the proceedings of Wednesday, August 24th. Then there is the very real problem that I do not believe there is any good faith basis for appealing your sentence- I would think quite clearly that the guilty plea transcript will show that the court asked you if you were pleading guilty freely and voluntarily and that you knew how much time you were facing and, further, that there had been no promises made to you about what sentence may be imposed. I, too, believe that you got more time than deserved but that alone will not reverse the voluntariness of the proceedings. After I obtain the transcript I will review it and send you a copy. If I determine that there is no good faith basis for an appeal I will write the Court of Appeals and tell them that. You will have an opportunity to contest my opinion and you have the right, at the proper time, to ask for an appeal.

In any event, I will start the process and I will be back in touch with you as soon as I have the transcript.

Very Truly Yours,


John



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
In the Court of General Sessions

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

FRITZ NEIGER,

APPELLANT.

INITIAL BRIEF AND
PETITION TO BE RELIEVED AS COUNSEL

Attorney for Appellant:

John Delgado
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jdelgado@bntdlaw.com

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Cases

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State v. Johnson, 159 S.C. 165, 156 S.E. 353 (1930).....3

State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (2006).....3

STATEMENT OF ISSUE ON APPEAL

Was the guilty plea rendered involuntary when the sentencing judge incorrectly was told by the state that there were 1.6 Million images involved rather than 16,000 and that this influenced the court's sentence of 15 years?

STATEMENT OF THE CASE

The defendant plead guilty to ten different indictments (2016GS-26054, 55, 56, 57, 58 and 2015A32101254, 55, 56, 57, 58, 59) alleging Sexual Exploitation of a Minor in both the third degree and second degree in the General Sessions Court of Lexington County before the Honorable William P. Keesley on August 25th, 2016. He was sentenced to 15 years' incarceration. The defendant filed a timely *Notice of Intent to Appeal* on August 31, 2016. This appeal follows.

ARGUMENT

The guilty plea was rendered involuntary when the court failed to ascertain whether the correct number of images allegedly viewed and/or distributed by the defendant numbered 1.6 Million or 16,000, thereby encouraging and underscoring the sentence of 15 years.

Fritz Neiger entered his plea to ten different counts of Criminal Exploitation of a Minor in both the second and third degree. During the plea colloquy he took specific issue with the estimated number of images he had allegedly sent or distributed. This error as he alleged was in the magnitude of one hundred times more.

THE DEFENDANT: I think the only thing I would dispute is there's a difference between 16,000 and 1.6 million. It was 16,000, not 1.6 million. I'd like to have somebody verify that besides those people because I know the difference between a million and a thousand. I ain't proud of that, but it was 16,000, not 1.6 million.

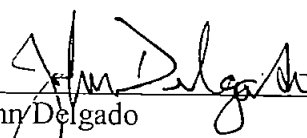
Transcript of Record. p. 21, lls. 17-23.

It would rationally follow especially based on the emphasis that the State placed on the scope of the alleged crimes that the court would have been negatively impressed by this numerical mis-focus and that the sentence given by the court was thereby affected. It is true that the generic rule in South Carolina is that the Supreme Court has no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by statute. State v. Cunningham, 253 S.C. 388, 171 S.E.2d 159 (1969). However, in State v. Johnson, the South Carolina Supreme Court created an exception to this rule by stating "the length of a prison sentence rests in the sound discretion of the trial court, in absence of partiality, prejudice, oppression or corrupt motive." 159 S.C. 165, 156 S.E. 353 (1930); see, also; State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (2006). In the present case the judge was prejudiced by the prosecution's statement that the investigators found 1, 619, 742 sexually-explicit images of children on the defendant's computer. See Transcript of Record. p. 14, lls. 21-25. In reality the defendant only admits to 16,000 images. This drastic error prejudiced the judge and resulted in the defendant being sentenced to 15 years.

CONCLUSION

Based on the above argument, Neiger's sentence and conviction should be reversed and the case remanded for trial.

Respectfully Submitted,



John Delgado
Attorney for Appellant

February 16, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
In the Court of General Sessions

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRITZ NEIGER,

APPELLANT.

PETITION TO BE RELIEVED AS COUNSEL

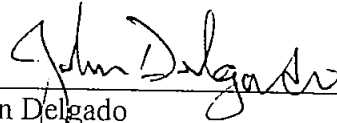
Counsel for Fritz Neiger states:

- 1.) He represents the Appellant, Fritz Neiger.
- 2.) He has reviewed the record of appellant's guilty plea on August 25, 2016, held before Circuit Court Judge William P. Keesley, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
- 3.) This appeal is without merit because the rule in South Carolina is that the South Carolina Supreme Court has no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by statute. State v. Cunningham, 253 S.C. 388, 171 S.E.2d 159 (1969). In the present case Judge Keesley had the ability to sentence the defendant to one hundred (100) years. The fifteen (15) year sentence imposed is within the limites prescribed by statute.

- 4.) He, has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967) briefed the arguable legal issue which arose during the course of the proceeding.

WHEREFORE, he asks the court to relieve him as counsel for Fritz Neiger.

Respectfully Submitted,



John Delgado
Attorney for Appellant

February 16, 2017

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William P. Keesley, Circuit Court Judge

THE STATE,

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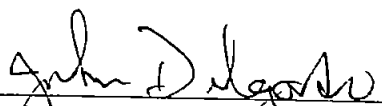
DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in Record on Appeal:

(1) Guilty Plea Transcript

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

[Signature on Following Page]


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February 16, 2017

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THE STATE,

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PROOF OF SERVICE

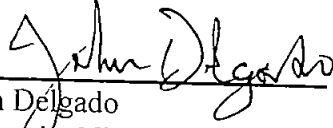
I certify that I have served the Initial Brief and Petition to Be Relieved as Counsel by depositing a copy of it in the United States Mail, postage prepaid, on February 16, 2017, addressed to the following persons on record:

Mr. Fritz Neiger
SCDC #00369513
Kershaw Correctional Institution
4848 Gold Mine Highway
Kershaw, SC 29067

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Assistant Solicitor
5th Circuit Solicitor's Office
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February 16, 2017



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