

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

 ORIGINAL

\_\_\_\_\_  
Appeal from Charleston County

Honorable William Jeffrey Young, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

APR 12 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN CLEVELAND, JR.,

APPELLANT

APPELLATE CASE NO 2016-001978  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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(803) 734-1330

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge erred in improperly trying appellant in his absence at trial.

## STATEMENT OF THE CASE

Appellant John Cleveland was convicted of failure to register as a sex offender (third offense) during a jury trial held in his absence at the October 2015 term of the Charleston County General Sessions Court before Judge William J. Young. Robert Gailliard represented appellant at trial. Assistant Solicitors Scott Maynor and Ted Corvey appeared on behalf of the state. A sealed sentence was imposed. On July 18, 2016, the sealed sentence was published by Judge Deadra L. Jefferson. Appellant was sentenced to imprisonment for a period of five years. Shirene Hansotia represented appellant at the sentencing proceeding and Assistant Solicitor Ted Corvey appeared on behalf of the state at trial at that time. A reconsideration motion hearing was held in the case on September 16, 2016, before Judge William J. Young. Shirene Hansotia and Solicitor Corvey both appeared for that hearing also.

Appellant appealed his trial court conviction and sentence. This brief follows.

## ARGUMENT

The trial judge erred in improperly trying appellant in his absence at trial.

In 1987, appellant was convicted of second degree criminal sexual conduct with a minor. Tr. 49, l. 21 – p. 50, l. 2. On October 15, 2015, appellant was convicted of failing to register as a sex offender.

At trial, Robert J. Brown, who was in charge of investigating sex offender registry matters for Charleston County testified that petitioner failed to register in December, 2013 as required and that he did not register in January, 2014 either. On January 26, 2014, Brown issued a warrant issued against appellant for this violation. Tr. 51, l. 20 – p. 75, l. 17.

Prior to trial, the trial judge noted that appellant was not present for trial. The solicitor presented the bail proceeding form signed by appellant noting that his failure to appear for trial would result in a trial in his absence. Also, the solicitor presented a letter dated September 11, 2015, sent to appellant and counsel advising that the trial would be held during the week of October 13-15, 2015. Tr. 33, l. 2 – p. 34, l. 11. Before proceeding with appellant's trial in his absence, the trial judge made the following findings:

[Trial counsel]...stated he talked to [appellant], informing [appellant] to be here today....As the trial judge, I spoke with [appellant] yesterday and told him to be here today or we would try the case in his absence, so I find that the defendant had adequate knowledge ...absolute knowledge to be here today. Tr. 34, l. 12-19.

In State v. Ravenell, 387 S.C. 449, 692 S.E.2d 554 (2010), the Court held that a defendant may voluntarily waive his right to be present at trial and be tried in his absence upon a trial judge's finding that the defendant received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend court. A

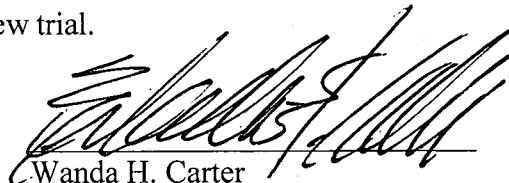
trial judge must determine if a criminal defendant voluntarily waived his right to be present at trial by making a finding on the record that the defendant received notice of his right to be present and was warned he or she would be tried in his absence should he fail to appear. State v. Ravenell, supra.

In the case at bar, the trial judge made a finding that appellant had “knowledge” of this right in question rather than a finding that he indeed received “notice” of his right to be present at trial. The error in referring to appellant’s “knowledge” rather than “notice” regarding his right to be present at trial meant that appellant was improperly tried in his absence. Also, the bailiff did not call three times in the courtroom to check as to whether petitioner was present for his trial. See State v. Ravenell, supra.

The Sixth Amendment guarantees every accused the right to be present at every stage of his trial. Illinois v. Allen. The trial judge improperly tried appellant in his absence.

### **CONCLUSION**

Based on the foregoing argument, appellant’s conviction and sentence should be reversed and his case remanded to the lower court for a new trial.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of April, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Cleveland states that:

1. She is Deputy Chief 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 trial before Judge William Jeffrey Young, which was held on September 16, 2016, 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 trial.

WHEREFORE, She asks the Court to relieve her as counsel for John Cleveland.

Respectfully Submitted,

  
Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR APPELLANT

This 12th day of April, 2017.

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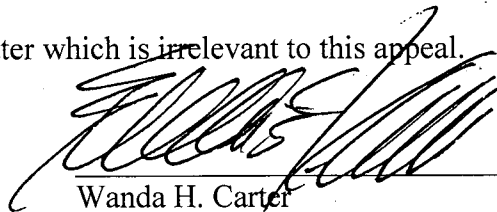
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

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

- (1) Entire Transcript dated October 13-15, 2015
- (2) Entire Transcript dated July 18, 2016
- (3) Entire Transcript dated September 16, 2016
- (4) True-billed indictment:

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

April 12, 2017



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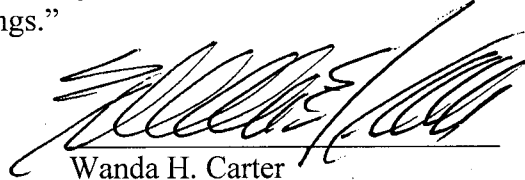
APR 12 2017

CERTIFICATE OF COUNSEL

SC Court of Appeals

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."

April 12, 2017.



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