

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Marion County

Honorable William H. Seals, Circuit Court Judge

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THE STATE,

RESPONDENT,

v,

LINDELL DAVIS

APPELLANT

APPELLATE CASE NO: 2015-002448

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PRO-SE ANDERS BRIEF

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Lindell Davis  
386 Redemption Way  
McCormick, S.C. 29899

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**STATEMENT OF ISSUE ON APPEAL**

The Defendant was deprived of his fundamental constitutional right to testify at trial.

**STATEMENT OF THE CASE**

Appellant was indicted at the November 2014 term of the Marion County grand jury for the offense of criminal sexual conduct with a minor in the second degree, and criminal solicitation of a minor. R187-188. His case was called to trial on November 16, 2015, before the Honorable William H. Seals Jr. and a jury. Hank Anderson represented appellant. David Richardson and Lauren Hummel were the assistant solicitors.

At the conclusion of the trial on November 17, 2015, the jury found appellant guilty on both counts. Tr, 183, 11.17-24. Judge Seals sentenced appellant to fifteen years imprisonment for criminal sexual conduct with a minor in the second degree and eight years, concurrent, on the solicitation conviction. Tr. 185, 11 10-13. The Court never warn defendant of his right to testify.

Pro-se brief follows:

## ARGUMENT

The Defendant was deprived of his fundamental constitutional right to testify at trial.

The right to testify is deemed so fundamental a constitutional right that the defendant only may waive it. Rock v. Arkansas, 483 U.S. 44, 51-53 (1987) quoting Teague 908 F.2d at 759; Galowski 891 F.2d at 636, Martinez 843 F.2d at 756.

State v. Wright, 785 S.E.2d 479, 489 (Court of Appeal 2016) The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth and Sixth and Fourteenth Amendment. ROCK V. ARKANSAS 483 U.S. 44, 51-52, 107 S.Ct. 2204, 97 L.Ed 2d 37 (1987). This is one of the rights that are essential to due process of law in a fair adversary process *Id* at 51, 107 S.Ct. 2704 (quoting Faretta v. California, 422 U.S. 806, 819 n. 15, 95 S.Ct. 2525, 45 L.Ed 2d 562 (1975)).

The right may, in appropriate cases, bow to accommodate other legitimate interest in the criminal trial process. But restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purpose they are designed to served. *Id* quoting Rock 483 U.S. at 56, 107S.Ct. 2704.

In this case there is no waning by the Court. Passos-Paternine v. United States, 12 F.Supp 2d 231, 240 (O.P.R.

1998)(recongining that the right to testify can be ascribed to defense counsel's conduct, the deprivation, complained of is not effective assistance but the right to testify, and the right to testify itsel is constitutionally protected. Rossignal v. State, 153 Idaho, 700, 274 P. 3 1, 7 (Ct. App. 2012).

The issue of the failure of a defendant to testify may be viewed either as a claim of ineffective assiwstance of counsel or as a claim of a deprivation of a constitutional right. The ultimate decision whether to testify rest with the defendant. Joelson 7 F.3d at 177 citing Edwards 897 F.2d at 446-47.

**CONCLUSION**

By reason of the foregoing argument, appellant conviction should be reversed, and this case remanded to Marion County Court of General Sessiona for a new trial.

Lindell Davis

Lindell Davis, Pro-se

STATE OF SOUTH CAROLINA  
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THE STATE

Respondent

v,

LINDELL DAVIS

Appellant

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SC Court of Appeals

The undersigned hereby certifies that a true copy of the Pro-se Anders Brief in the above referenced case has been served on South Carolina Court of Appeals, Kenneth A. Richstad, Clerk, P.O. Box 11629, Columbia, SC 29211 this 3 day of April 2017 by depositing same in the U.S. mail.

b

*Lindell Davis*  
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Sworn to and Subscribed to Before Me  
This 03 day of April 2017

*J. C. Franklin*  
Notary Public for South Carolina  
My Commission Expires 12-16-2019

Lindell Davis 366196  
~~366106 FIA-168~~ FIA-168  
~~mccf~~  
~~386 Redemption~~

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