

FORM 4
NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT OF
GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of General Sessions

Maité Murphy, Circuit Court Judge

Case No. 2017-GS-06-20

The State,

Respondent,

v.

Jeremy James Thomas,

Appellant.

NOTICE OF APPEAL
AND
EXPLANATION PURSUANT TO 203(d)(1)(B)(iv), SCRAP

Jeremy James Thomas appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Maité Murphy on February 7, 2017. This appeal is taken from the order of the Honorable Maité Murphy, filed May 19, 2017, which denied appellant's motion for reconsideration. Appellant received written notice of entry of this order on May 19, 2017.

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Pursuant to 203(d)(1)(B)(iv), SCRAP, Mr. Thomas's appeal will be upon the following bases: (1) Mr. Thomas was denied his right to step back and continue plea negotiations, when Judge Murphy could not accept the **negotiated** sentence of 15 years for Criminal Sexual Conduct with a Minor in the 2nd Degree; (2) Mr. Thomas's guilty plea was rendered involuntary; (3) Mr. Thomas received a sentence above that which was negotiated at the time of plea; (4) Mr. Thomas received a new sentence above that which was negotiated, contemporaneously to Judge Murphy denying Mr. Thomas's Motion for Reconsideration.

FACTS

Mr. Thomas came before Judge Maité Murphy on February 7, 2017, on a **negotiated** guilty plea to Criminal Sexual Conduct with a Minor in the 2nd Degree, for a negotiated 15 years. Judge Murphy confirmed that Mr. Thomas could step back if she was unable to accept the negotiated 15 year sentence. See Exhibit 1 and Transcript requested (to be provided when received). Later, Judge Murphy accepted Mr. Thomas's plea; however, upon hearing from the victim's family and upon sentencing, Judge Murphy imposed an illegal 30 year sentence, suspended to the service of 15 years, plus 5 years probation. See Exhibit 2. This was in violation of South Carolina Code of Laws Section 16-3-655(D)(3); CSC with a Minor, 2nd degree, carries a maximum sentence of 20 years. Judge Murphy never gave Mr. Thomas an opportunity to step back, after she announced her sentence. See Transcript.

On February 13, 2017, Mr. Thomas filed a Motion to Reconsider, which had the full consent and cooperation of Deputy Solicitor David Miller of the Second Circuit Solicitor's Office. See Exhibit 3. Multiple correspondence were exchanged between Judge Murphy's office, Dep. Sol. Miller and the undersigned. See Exhibits 4. Ultimately, Judge Murphy declined to reduce the sentence to that which was negotiated, and Judge Murphy declined to allow Mr. Thomas to step back and attempt further negotiations. Judge Murphy signed and filed an Order Amending Sentence and Denying [Mr. Thomas's] Motion to Reconsider on May 16 and May 19, 2017, respectively, imposing a modified 20 year sentence, suspended upon the service of 15 years, plus 5 years probation. See Exhibit 5.

LAW

A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). However, once a defendant enters a guilty plea, whether to allow withdrawal of the plea is left to the sound discretion of the trial judge. State v. Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982); State v. Rosier, 312 S.C. 145, 439 S.E.2d 307 (Ct.App.1993).

“When a defendant agrees to [a] plea bargain, the [State] takes on certain obligations. If those obligations are not met, the defendant is entitled to seek a remedy which might in some cases be rescission of the agreement, allowing him to take back the consideration he has furnished, i.e., to withdraw his plea.”

Puckett v. United States, 556 U.S. 129, 137, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009). The Due Process Clause is not implicated until the defendant enters his guilty plea, and that plea is accepted by the court. See Mabry v. Johnson, 467 U.S. 504, 507, 104 S.Ct. 2543, 81 L.Ed.2d 437 (1984). Therefore, if the defendant enters into a negotiated plea agreement prior to the court’s acceptance of his guilty plea, that agreement is a mere executory promise that, standing alone, has no constitutional significance, as it binds neither the government nor the defendant. Id.; Reed v. Becka, 333 S.C. 676, 685–87, 511 S.E.2d 396, 401–02 (Ct. App.1999) (citations omitted). Only after the court accepts the defendant’s guilty plea will the negotiated plea agreement become operative. Reed, 333 S.C. at 687, 511 S.E.2d at 402 (citation omitted). A plea is rendered involuntary by the judge deviating from the recommendation. See Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, (2000) (citing Brooks v. State, 325 S.C. 269, 272, 481 S.E.2d 712, 713 (1997)).

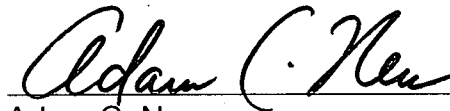
When a negotiated sentence is presented to a Court for consideration, and the Court refuses the negotiated sentence, three options are available to the parties. First, the Court can announce a sentence that it feels is appropriate under the circumstances. At that point, all parties can agree to Court’s sentence and proceed with the plea. Second, if either the State or the Defense does not agree to the Court’s

proposed sentence, the Defendant's plea should be withdrawn. Thereafter, the parties are free to engage in further negotiations that may be acceptable to the Court, or, the parties may elect to present the original negotiated agreement to another Judge for consideration.

Here, Judge Murphy denied Mr. Thomas's right to step back and continue negotiations; rendered his guilty plea involuntary; sentenced him to an original sentence outside the statutory maximum; presumably upon the court's own motion, later sentenced Mr. Thomas to a term above that which had been negotiated again failing to allow him the opportunity to withdraw his plea; and misstated the legal definition of Criminal Sexual Conduct with a Minor in the 2nd Degree. For those reasons, Judge Murphy's acceptance of the guilty plea and sentence should be reversed, and Mr. Thomas should be allowed to withdraw his guilty plea and continue negotiations.

Dated this 24th day of May, 2017, in Bamberg, South Carolina.

BY:



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1916-1991

May 23, 2017

The Honorable Jenny Abbott Kitchings
S. C. Court of Appeals Clerk of Court
P. O. Box 11629
Columbia, SC 29211-1629

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SC Court of Appeals

Re: State v. Jeremy Thomas
Case No. 2017-GS-06-20

Dear Ms. Kitchings:

Enclosed is a Notice of Appeal, Certificate of Service for filing. The same has been served upon opposing counsel by copy of this letter and is being contemporaneously filed with the Barnwell County Clerk of Court, pursuant to Rule 203, SCRAP. Moreover, the same is being served on the Office of Appellate Defense, as this was an appointed case for the purposes of trial only. Please return a clocked copy in the enclosed stamped, self-addressed envelope.


Sincerely,

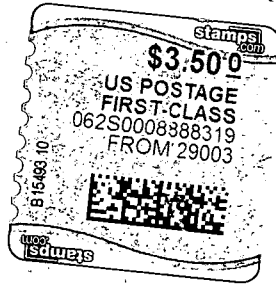


Adam C. Ness

Enclosure

CC: David Miller, Esq.
&
Office of Appellate Defense

P.S. - The transcript has been requested.




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Honorable Jenny Abbott Kitchings
S. C. Court of Appeals Clerk of Court
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