

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

RECEIVED

JUL 06 2017

SC Court of Appeals

IN THE MATTER OF THE CARE AND
TREATMENT OF HERMAN LEE ARCHIE,

APPELLANT

APPELLATE CASE NO 2016-002128

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT

The trial court erred in admitting the indictments because they were irrelevant and the State failed to prove the factual allegations were determined by appellant’s guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).3

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL.....7

TABLE OF AUTHORITIES

Cases

North Carolina v. Alford, 400 U.S. 25 (1970)..... 3, 5

State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) 4

State v. Herndon, 403 S.C. 84, 742 S.E.2d 375 (2013) 5

Statutes

S.C. Code Ann. § 44-48-10..... 3

S.C. Code Ann. § 44-48-30(1)(a)..... 4

S.C. Code Ann. § 44-48-30(2)..... 4

2

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting the indictments because they were irrelevant and the State failed to prove the factual allegations were determined by appellant's guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970)?

STATEMENT OF THE CASE

On October 10, 2016, appellant was tried before the Honorable John C. Hayes, III, and a jury pursuant to the South Carolina Sexually Violent Predator Act. R. 1. James G. Bogle represented the State. R. 1. Anna R. Good represented appellant. R. 1. The jury found appellant was a sexually violent predator. R. 185, ll. 2 – 15. Judge Hayes issued an Order committing appellant to the custody of the Department of Mental Health. R. 204.

ARGUMENT

The trial court erred in admitting the indictments because they were irrelevant and the State failed to prove the factual allegations were determined by appellant's guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

The State sought appellant's commitment pursuant to the Sexually Violent Predator Act (the "Act"), S.C. Code Ann. §§ 44-48-10, *et seq.* R. 39, ll. 9 – 18. The State's sole witness was Dr. Amy Swan ("Swan"). R. 44, ll. 22 – 21. Dr. Swan opined that appellant met the definition of a sexually violent predator under the Act. R. 77, l. 19 – 80, l. 1.

Through Dr. Swan, the State sought the admission of two indictments for lewd act and one indictment for third-degree criminal sexual conduct with a minor. R. 53, l. 9 – 54, l. 23. Appellant pled guilty to the three charges pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). R. 67, l. 19 – 68, l. 15. Dr. Swan explained her understanding that under these *Alford* pleas, appellant never admitted that he committed the crimes alleged in the indictments. R. 68, ll. 7 – 15.

Appellant objected to the admission of the indictments. R. 54, l. 24 – 55, l. 16. Appellant stated no objection to the admission of the sentencing sheets because the State needed to prove the fact that appellant had the predicate convictions, but argued that the indictments were inadmissible because they contained "facts that may or may not have been determined. And they're not relevant as the conviction sheets would be in." R. 54, l. 24 – 55, l. 16.

The State argued the indictments were "very relevant" because they described "the exact crime by name, by date, by location, and by the victim, that the respondent was convicted of." R. 55, ll. 18 – 22. The State further argued, "You can't have one without the other to understand what the crime is." R. 55, ll. 24 – 25.

Judge Hayes overruled the objection. R. 56, ll. 1 – 6. Judge Hayes ruled the indictments were admissible because the form language on the sentencing sheets read “in disposition of the said indictment comes now the defendant.” R. 56, ll. 1 – 6. When the jury returned to the courtroom, the State entered the indictments into evidence. R. 56, ll. 13 – 21. R. 193 – 202.

The trial court erred in admitting the indictments. The indictments were not relevant to the elements the State was required to prove. Under the Act, the State is required to prove only the fact of conviction, not the facts underlying the conviction. S.C. Code Ann. § 44-48-30(1)(a). The Act defines a “sexually violent predator” as a person who “has been convicted of a sexually violent offense.” Id. The Act defines “sexually violent offense” with a list of qualifying crimes. S.C. Code Ann. § 44-48-30(2).

It was undisputed that appellant’s prior convictions met this element of the statute. R. 42, l. 23 – 43, l. 5. Defense counsel told the jury in her opening statement that the State had to prove prior convictions, but then stated, “I’ll go ahead and tell you right now that’s not gonna be an issue in this case because everybody agrees that he has these prior convictions.” R. 42, l. 23 – 43, l. 5. Appellant then argued to the trial court that only the sentencing sheets were necessary to prove the element of the qualifying convictions. R. 54, l. 24 – 55, l. 16.

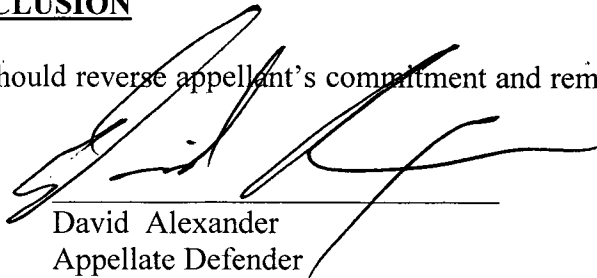
An indictment is only “a notice document.” State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005). It is only meant to “apprise[] the defendant of the elements of the offense that is intended to be charged.” Id. In criminal trials, the jury is instructed at the beginning of the case that indictments are not evidence. In guilty pleas, the solicitor gives facts to support the basis of the plea to the court and does not merely read the indictment. The State wholly failed to prove what facts were given to the plea court when appellant pled guilty.

Furthermore, appellant pled guilty under Alford. While Alford pleas are treated like guilty pleas for criminal cases and probation hearings, such pleas cannot form the basis for admission of indictments in SVP cases, which are separate civil matters. See, generally State v. Herndon, 403 S.C. 84, 742 S.E.2d 375 (2013). Appellant only admitted that the State had sufficient proof to convict him and not that he was guilty. Under an Alford plea, the fact of conviction (the sentencing sheets) adequately shows that appellant admitted the State could convict him of the offense charged.

Admission of the irrelevant allegations contained in the indictments prejudiced appellant. The indictments were used to bolster the testimony of Dr. Swan. The indictments contain the signature of a third party—the solicitor—and the file stamp of the clerk of court. R. 193 – 202. They also state the finding of a grand jury. R. 193 – 202. To lay jurors, these indictments could very well seem conclusive regarding the highly prejudicial allegations contained therein and been construed as another jury’s ratification of Dr. Swan’s testimony. Admission of the indictments was irrelevant, especially given appellant’s Alford pleas, and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's commitment and remand this case for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of July, 2017.

STATE OF SOUTH CAROLINA

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Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

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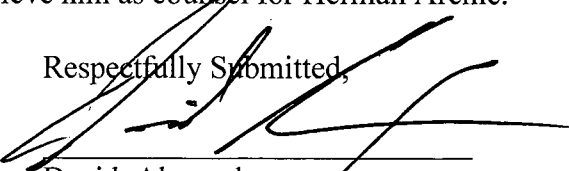
SC Court of Appeals

Counsel for Herman Archie 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 John C. Hayes, which was held on October 10-11, 2016, 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 Herman Archie.

Respectfully Submitted,

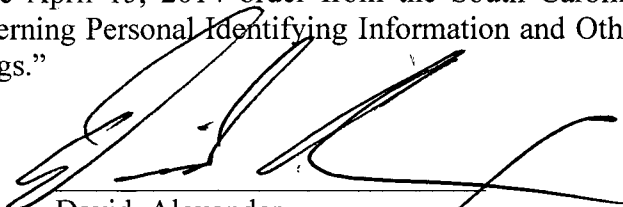

David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of July, 2017.

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."

July 6, 2017.



David Alexander
Appellate Defender

South Carolina Commission on Indigent
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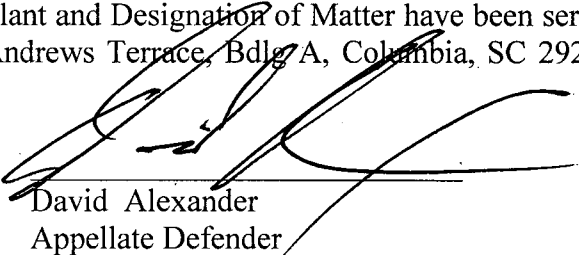
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Herman Archie at Correct Care, 1700 St. Andrews Terrace, Bldg A, Columbia, SC 29210, this 6th day of July, 2017.


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of July, 2017.

Wanda Pender (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023

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SC Court of Appeals