

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Benjamin H. Culbertson, Circuit Court Judge

AMY RENEE LANE,

RECEIVED

JUL 12 2017

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002403

BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Appellant was improperly sentenced because of misinformation presented to the plea judge by the solicitor at sentencing regarding appellant's role as the mastermind behind the armed robbery in the case because this untrue statement yielded a prejudicial mischaracterization that surely impacted the plea judge in a negative manner and surely affected his calculation of appellant's sentence.

STATEMENT OF THE CASE

Petitioner Amy Renee Lane pled guilty to armed robbery during the November 2014 term of the Richland County General Sessions Court before Judge Edgar W. Dickson and was sentenced to imprisonment for a period of ten years. App. 1-21. Michael Culler represented appellant at the plea proceeding, and Assistant Solicitor Ashley Cornwell appeared on behalf of the state. Petitioner appealed, but the appeal was dismissed.

On June 5, 2015, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 23-29. On October 29, 2015, the respondent filed a return and partial motion to dismiss requesting that a hearing be held in response to petitioner's PCR action. App. 30-35.

A PCR hearing was convened on May 16, 2016, at the Orangeburg County Courthouse before Judge Benjamin H. Culbertson. App. 37-66. Petitioner was present at the hearing and represented by Jonathan D. Waller, and Assistant Attorney J. Clayton Mitchell, III, appeared on behalf of the state.

On October 27, 2016, Judge Culbertson issued an Order of Dismissal on the ineffective assistance of counsel allegations, but granted relief on petitioner's request for a belated direct appeal in the case. App. 68-75.

Petitioner appealed Judge Culbertson's Order of Dismissal. This petition follows.

ARGUMENT

Appellant was improperly sentenced because of misinformation presented to the plea judge by the solicitor at sentencing regarding appellant's role as the mastermind behind the armed robbery in the case because this untrue statement yielded a prejudicial mischaracterization that surely impacted the plea judge in a negative manner and surely affected his calculation of appellant's sentence.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. On January 10, 2014, Allen Keith was working at Water's Edge Rentals and had been speaking with appellant, whom he believed was a customer, when a man later identified as Michael Gleaton approached while holding a gun and asked for all his money. Gleaton took the money from the cash drawer and fled in a get-a-way car driver by Jessica Rudd. The solicitor stated that the father of one of appellant's children's father advised police that "[appellant] was responsible for the planning and execution of the armed robbery" and "that [appellant] confirmed that plan" [...and that] "the three of them would split the money." App. 12, l. 23 – p. 13, l. 17. The solicitor stated that appellant was "the mastermind of this plan [and] provided the weapon" used in the crime. App. 14, l. 3-7.

When appellant spoke at the plea proceeding, she told the plea judge that she didn't give anyone a gun, and that she has never had a gun in her life, and that she was not the mastermind of the plan, but rather it was Jessica's plan. App. 15, l. 15-23; App. 16, l. 18-25.

Also, note that trial counsel objected to the portrayal of appellant as the mastermind behind the crime. App. 20, l. 1-8.

Although the mastermind mischaracterization was addressed; nonetheless, this was prejudicial information that most likely remained a factor that was considered at appellant's sentencing.

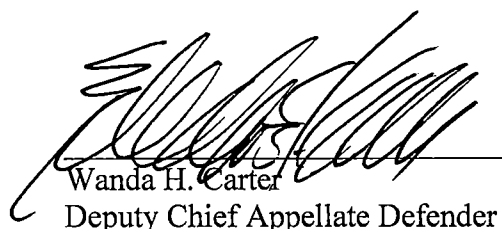
A sentencing judge should know all material facts, including any information material to punishment and the defendant's prior record. State v. Franklin, 276 S.C. 240, 226 S.E. 2d 896 (1976). However, the assertion that appellant was the mastermind behind the robbery was untrue and prejudicial. In Franklin, the Court held that a sentencing judge must not act on surmise or suspicions. Therefore, the solicitor's presentation of this untruth and misinformation in question meant that there was a probability that the trial judge might have acted upon such a suspicion while entertaining what sentence to impose in the case.

Compare the case of Robinson v. State, 380 S.C. 201, 699 S.E.2d 588 (2008), where the Court reversed due to the trial judge's use of the defendant's uncounseled magistrate court's drug conviction of possession of marijuana to enhance his subsequent trafficking in crack cocaine sentence. Similarly, see United States v. Tucker, 404 U.S. 443 (1972), where the Court reversed a sentencing judge's sentence because the sentence was based upon misinformation of constitutional magnitude because the trial judge considered the defendant's prior unconstitutional convictions in determining his sentence. Compare the remand in State v. Rich, 269 S.C. 701; 239 S.E. 2d 731 (1977), where the trial judge misapprehended petitioner's list of offenses by considering a charge that was discharged (assault and battery with intent to ravish) in order to enhance that defendant's assault and battery with intent to ravish conviction, and by considering another charge (indecent exposure) where no disposition had been entered. This was prejudicial because the trial judge in Rich referenced the defendant as a "habitual sex offender." Note that both Courts in Rich and Franklin cited to the holding in Townsend v. Burke, 334 U.S. 736 (1948), where the United States

Supreme Court held that due process at sentencing is violated if a trial judge sentences the defendant “on the basis of assumptions concerning his criminal record which were materially untrue.” In the case at bar, appellant received an unfair sentencing hearing via misinformation raised about the mastermind behind the committed crime untruth because this was an untrue mischaracterization of appellant, which in turn violated her Fourteenth Amendment to Due Process right at sentencing.

CONCLUSION

Based on the foregoing argument, appellant requests that her case be remanded for a new sentencing hearing.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of July, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

AMY RENEE LANE,

PETITIONER

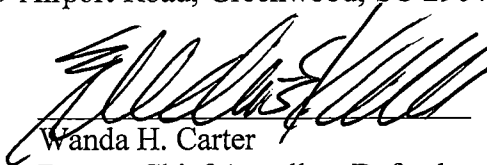
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CERTIFICATE OF SERVICE

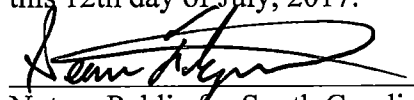
The undersigned hereby certifies that a true copy of the Brief of Appellant Pursuant to White v. State in the above referenced case has been served upon Ruston Neely, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Appellant Pursuant to White v. State have been served on Amy Renee Lane, #362247, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 12th day of July, 2017.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of July, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022