

STATE OF SOUTH CAROLINA
In The Court of Appeals

Certiorari to Spartanburg County
Honorable R. Ferrell Cothran, Circuit Court Judge

CHUCK EDWARD MCCULLOUGH,

Petitioner (PRO SE)

v.

STATE OF SOUTH CAROLINA,

Respondent

Appellate case no: 2016-001416

MOTION TO AMEND PRO SE BRIEF

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SC Court of Appeals

Now comes, Petitioner, Chuck Edward McCullough # 311608 (PROSE) before the South Carolina Court of Appeals with a "Motion to Amend Pro Se Brief" filed on March 1 2017. McCullough request to Amend his argument on page 3 (Argument I.) with respect. After further Due Diligence and his parole hearing more evidence has come to light that weights on the prejudicial effect of his conviction. NOTE: Beginning at the end of last paragraph on page 3 of brief.

ARGUMENT I. (AMENDED)

The gist of this argument seems to be that it wasn't addressed in the "Order of Dismissal". Petitioner points out that the PCR court actually gave a ruling on the issue in the courtroom. Beginning at (App 144 L.1- App 146 L.14) His ruling on (App 144 L.13- App 145 L.5) is erroneous, because the fact that the trial judge had to give McCullough a minimum ten years is error. (App 145 L.25). The fact that McCullough's only prior drug offenses are Poss of Meth he is eligible for a suspended sentence ... meaning no mandatory minimum. The state agreed with the judge that the issue is clearly prejudice. (App 146 L.25- App. 147 L.1).

This is clearly judicial misconduct (abuse of discretion), and Ineffective Assistance of Counsel. Counsel clearly failed to object and correct it. Due Process requires that a defendant get a fair trial. Prior to accepting a guilty plea, a court "Must" inform the defendant of the penalties or punishment that may be imposed including the range of punishment that is permissible under the law. 21 AM. Jur. ad § 601, State v. Nesbitt 411 S.C. 194, 768 S.E.2d 67 (2015), Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) Correct law. incorrect law ~~invalidates~~ the plea.

When everyone involved is in ignorance of the law then the conviction cannot stand. The prejudicial effect that the erroneous conviction bears upon McCullough, is that he went up for parole Dec. 13, 2017. He was denied parole because the Parole Board's fact findings were that he had a violent offense and his record showed violent intent. McCullough's sentence sheet is attached. It is marked violent, serious offense. It is incorrect. After successfully attacking SCDC in light of Bolin v. SCDC opinion no. 5361 that his conviction was misclassified. SCDC corrected his sentence to Non-violent because of his only prior Poss. Meth convictions. (see Appellate case number: 17-ALJ-04-0217-AP). This court should also.

Until the court remands this case for resentencing or new trial. McCullough will continue to experience the embarrassment of denial from the Parole Board and will continue to bring this case to court. It should be distasteful to Justice and McCullough's sentence shall be corrected to uphold the Constitution of the United States and the States Constitution. McCullough's position is for the Court to uphold the un-challenged convictions and vacate the Manufacturing 3rd offense.

Request is made the Court of Appeals GRANT this motion.

This 3 day of January 2018.

S/ Chuck McCullough
Chuck Edward McCullough # 311608
Petitioner

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. Chuck Edward McCullough

INDICTMENT/CASE#: 2011GS4202413
A/W#: M752939
Date of Offense: 3/17/2011
S.C. Code §: 3200
CDR Code #: 3200

AKA:
Race: Sex: M Age: 36
DOB: SS#:
Address:
City, State, Zip: 29336
DL#: SID#:

SENTENCE SHEET

Handwritten signature/initials

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Drugs / Manufacture of methamphetamine, 3rd (10-30 years and/or \$0-\$0,000) (NPNS)

in violation of § 3200 of the S.C. Code of Laws, bearing CDR Code # 3200
NON-VIOLENT VIOLENT SERIOUS MGSST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: SPIVEY, SCOTT DANIEL SC Bar# 79868 Defendant
Attorney for Defendant P/7 [Signature] SC Bar# 6057

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 504 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$

Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-296 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$8.40, TOTAL \$288.40

PTUP days/hours Public Service Employment JAN 05 2018

Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning

Substance Abuse Counseling Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund

Other: A.T.O. write in DOC

Appointed PD or appointed other counsel, § 47.12 requires \$300 be paid to Clerk during probation

Presiding Judge Judge Code: 2132 Sentence Date: 8/12

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

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Petitioner (PRO SE)

v.

STATE OF SOUTH CAROLINA

Respondant.

Appellate Case NO: 2016-061416

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true copy of "Motion to Amend PRO SE Brief" with attachment has been served upon the South Carolina Court of Appeals, Clerk of Court, at P.O. Box 11629, Columbia, S.C. 29211 by depositing Motion in the United States Mail, postage prepaid, on this 3 day of January 2018.

S/ Chuck E. McCullough

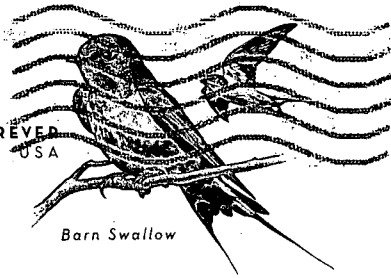
Chuck Edward McCullough # 311608
Petitioner (PRO SE)

Subscribed and Sworn before me
this 3 day of January 2018.
Cheryl R. [Signature]
Notary Public for South Carolina
My Commission Expires: Jan 27, 2025

Chuck Edward McCullough #31608
Kershaw, C.I.
4848 Goldmine Highway
Kershaw, S.C. 29067

COLUMBIA SC 290

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USA



Barn Swallow

The South Carolina Court of Appeals
Jenny Kitchings / Clerk of Court
P.O. Box 11629
Columbia, S.C. 29211

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