

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
Honorable William H. Seals, Circuit Court Judge

Appeal case no. 2015-002448

The State.....Respondent

v.

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SC Court of Appeals

Lindell Davis.....

AMENDMENT TO
MOTION FOR RECONSIDERATION

Lindell Davis

Lindell Davis, # 366106
386 Redemption Way
McCormick, SC 29899

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.

Waiver of the Criminal Defendant'S Right to testify;
constitutional implication

The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth and Sixth and Fourteenth Amendments. Rock v. Arkansas, 483 U.S. 44-51-52, 107 S.Ct. 2204, 97 LEd2d 37 (1987). It 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 LEd2d 562 (1975)). However, the right to present testimony is not without limitations. State v. Rivera, 741 S.E.2d 634, 703 (2013). The right may, in appropriate cases, how 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.

Next, regarding the state's argument that appellant's claim is not a trial court error and therefore not reviewable on direct appeal, we acknowledge there is no absolute rule as to whether a denial of the right to testify is properly analyzed as a constitutional error on direct appeal or as an ineffective

assistance of counsel claim in the context of a PCR proceeding. In this case there was no warning by the court. Passos-Paternine v. United States, 12 F.Supp 2d 231, 240 (OPR 1998) (Recognizing that the right to testify, exist independently of the right to counsel and stating regardless of whether the denial of 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 itself is constitutionally protected). Rossignal v. State, 152 Idaho 700, 274 p.3d1, 7(Ct app. 2012).

The issue of the failure of a defendant to testify may be viewed either as a claim of ineffective assistance of counsel or as a claim of a deprivation constitutional right ... " The appropriate inquiry depends on how the claim is pled and argued ... "

Dated

March 5, 2018



Lindell Davis

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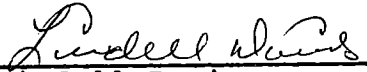
THE STATE.....RESPONDENT

v.

Lindell Davis.....Appellant

PROOF OF SERVICE

The undersigned hereby certify that he mailed Amendment to Motion for Reconsideration to S.C. Court of Appeals, Jenny A. Kitchings, P.O. Box 11629, Columbia, SC 29201 and S.C. Attorney General, Alan Wilson, Esquire, P.O. Box 11549, Columbia, S.C. 29201 this 5th day of March 2018 by depositing the same in the U.S. mail.



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386 Redemption Way
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