STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDALL MATTHEW SIMPSON,

APPELLANT

APPELLATE CASE NO 2017-001576

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in finding that Appellant's plea was freely, voluntarily, and intelligently made, where Appellant pled guilty the day his trial was set to begin, where the court refused to grant a continuance, and where the court indicated that Appellant's trial would commence following the denial of Appellant's motion to relieve his counsel?

STATEMENT OF THE CASE

An Anderson County grand jury indicted Appellant for two counts of murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime during its February 2017 term of court. On May 15, 2017, Appellant appeared before the Honorable R. Scott Sprouse. Lucas C. Marchant served as the Assistant Solicitor, and Gregory L. Cole, Jr. represented Appellant. Appellant pled guilty to murder, attempted armed robbery, possession of a weapon during the commission of a violent crime, and voluntary manslaughter. R. 8, ll. 1 – 13. Judge Sprouse sentenced Appellant to thirty years on the murder charge, fifteen years consecutive on the attempted arm robbery charge, five years consecutive on the possession of a weapon during the commission of a violent crime, and twenty years, concurrent, on the voluntary manslaughter charge. R. 22, l. 14 – R. 23, l. 2.

Following sentencing, on or about May 16, 2017, Appellant filed a Motion for Reconsideration of Sentence. R. 25 – 26. This motion was denied by way of a written order signed on or about July 11, 2017. R. 27.

This appeal follows.

ARGUMENT

The trial court erred in finding that Appellant's plea was freely, voluntarily, and intelligently made, where Appellant pled guilty the day his trial was set to begin, where the court refused to grant a continuance, and where the court indicated that Appellant's trial would commence following the denial of Appellant's motion to relieve his counsel.

Background

At the outset of what was scheduled to be Appellant's trial, he indicated that he wished to relieve counsel and potentially hire another attorney. R. 3, ll. 14 – 19. Speaking to the court, he suggested that counsel did not have his "best interest in mind." R. 4, ll. 6 – 24. Appellant complained that he had been in the county jail for over a year. Id. During that seventeen month span, he only saw his attorney twice, even after sending letters. Id. Appellant was surprised to learn that his case was being called to for trial; he learned that fact from watching television. Id.

The trial court notified Appellant that the trial was proceeding and that "relieving your attorney is not grounds for a continuance of your trial." R. 4, l. 15 – R. 5, l. 7. After speaking with counsel off the record, Appellant pled guilty. There was no recommendation from the State. R. 7, ll. 11 – 16. Appellant pled guilty to murder, attempted armed robbery, possession of a weapon during the commission of a violent crime, and the lesser included offense of voluntary manslaughter. R. 8, ll. 1 – 13. Following a colloquy, Judge Sprouse found a factual basis for the plea and found that it was freely, voluntarily, and intelligently made. R. 16, ll. 11 – 14.

The facts giving rise to Appellant's arrest and subsequent plea as alleged by the assistant solicitor were as follows:

On or about January 9, 2016, Appellant, Tabitha Roberts, Brandon Davis, Wesley Malmister, and Casey Waddell entered the home of Justin Ray Williams. R. 12, l. 11 – R. 15, l. 4. The State claimed that this was an attempted robbery and that Appellant was armed. Id. Upon entering Williams' home, Williams fired at Waddell. Id. Appellant supposedly fired back. Id. Williams and Waddell passed away.

Discussion

The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 164, 27 L.Ed.2d 162 (1970); see Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969); Machibroda v. United States, 368 U.S. 487, 493, 82 S.Ct. 510, 513, 7 L.Ed.2d 473 (1962). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving. Id. Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id.

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Id. at 434-435, 405 S.E.2d at 392. Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976).

Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). See, e.g., Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge).

> That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. He thus stands as a witness against himself and he is shielded by the Fifth Amendment from being compelled to do so—hence the minimum requirement that his plea be the voluntary expression of his own choice. But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial—a waiver of his right to trial before a jury or a judge. Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.

Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 1468–69, 25 L. Ed. 2d 747 (1970)

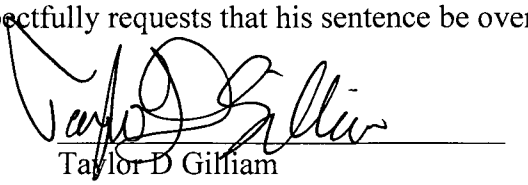
Appellant was not prepared to plead guilty. In the middle of Judge Sprouse's colloquy, Appellant made it known that he was unaware of what a most serious offense was. R. 11, ll. 2 – 25. Only after it was suggested by the assistant solicitor that this notion be explained to him did the trial court clarify that "these convictions are classified as violent and most serious, which [gave Appellant] the possibility of receiving a life sentence." Id. Prior to that explanation, counsel for Appellant had not "been over what a most serious offense" was with his attorney. Id. A second conversation was held off the record so that counsel could explain this concept. Id.

However, at this time, Appellant had already pled guilty. R. 8, ll. 1 – 13. Without the knowledge of what a most serious offense was or how it affected him, he pled guilty to four serious charges. There is no indication that Appellant was aware that he could retract his plea.

The trial judge in Appellant's case was scheduled to select a jury at 2:30 p.m. on the day of Appellant's plea. R. 3, ll. 11 – 12. Appellant was forced to choose between going to trial with an attorney he distrusted and pleading guilty on the advice of the same. His choice to plead guilty was involuntary, and his guilty plea and resulting sentences should be overturned.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that his sentence be overturned.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of April, 2018.

STATE OF SOUTH CAROLINA

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Honorable R. Scott Sprouse, Circuit Court Judge

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RANDALL MATTHEW SIMPSON,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randall Matthew Simpson 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 R. Scott Sprouse, which was held on May 15, 2017, 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 Randall Matthew Simpson.

Respectfully Submitted,

Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of April, 2018.

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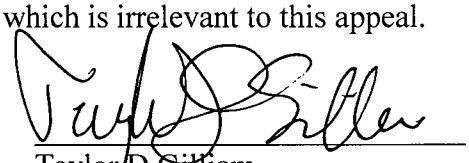
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment(s);
(2) Guilty plea transcript dated May 15, 2017
(3) Motion for Reconsideration of Sentence
(4) Order Denying Defendant's Motion for Reconsideration

I certify that this designation contains no matter which is irrelevant to this appeal.

April 18, 2018



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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."

April 18, 2018.

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Appellate Defender

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