

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Union County

Honorable Alison Renee Lee, Circuit Court Judge

ANTHONY DERONE RICHARDSON,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO 2017-002385

ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE

WANDA H. CARTER
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ATTORNEY FOR APPELLANT

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S.C. SUPREME COURT

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STATEMENT OF ISSUE ON APPEAL

The plea judge erred in accepting appellant's guilty pleas as knowingly and voluntarily entered because sentencing consequences had not been explained to him during the proceeding.

STATEMENT OF THE CASE

Petitioner Anthony Derone Richardson pled guilty to three counts of illegal distribution of recordings during the December 2011 term of the Union County General Sessions Court before John C. Hayes, III, and was sentenced to imprisonment for a period of one year, suspended to one year of probation. Joseph St. Pierre represented petitioner at the plea proceeding and Deputy Solicitor John Anthony appeared on behalf of the state. App. 1-8. Petitioner appealed, but his appeal was dismissed for failure to properly serve opposing counsel. See PCR Exhibit #1 at App. 57.

On March 6, 2013, petitioner filed a PCR application with the Union County Office of the Clerk of Court. App. 10-15. The respondent filed a Return and Motion to Dismiss dated April 18, 2013, requesting to dismiss due to petitioner's failure to state a PCR claim. App. 17-20.

On April 22, 2013, Judge Lee A. Alford filed a Conditional Order of Dismissal echoing the ground outlined in the Return and Motion to Dismiss filed by the respondent. App. 22-25. Nonetheless, a PCR hearing was convened in the case on November 18, 2014, at the Union County Courthouse before Judge Allison Renee Lee. Petitioner was present at the hearing and represented by Leah B. Moody, and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state. App. 27-56.

On September 22, 2017, Judge Letitia Verdin issued an Order granted petitioner's belated appeal request per White v. State, but dismissed the remaining allegations of ineffective assistance of counsel raised by petitioner in his PCR action. App. 60-65.

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

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Nesbitt, 411 S.C. 194, 199, 768 S.E.2d 67,70 (2015) (quoting State v. Jacobs, 393 S.C. 584, 586,713 S.E.2d 621, 622 (2011)).

ARGUMENT

The plea judge erred in accepting appellant's guilty pleas as knowingly and voluntarily entered because sentencing consequences had not been explained to him during the proceeding.

Petitioner pled guilty to three counts of illegal distribution of recordings and sentenced to one year's imprisonment, suspended to one year of probation. During the plea proceedings, the plea judge referred to the sentencing recommendation by the state for the PTUP sentencing, which would have meant the termination of his probation upon payment of fees. App. 4, l. 1-10, App. 5, l. 10-14. The colloquy regarding the issue of the state's PTUP recommendation follows:

THE COURT: How do you plead to these three charges?

APPELLANT: Guilty.

THE COURT: Of all three?

APPELLANT: Yes, Your Honor.

THE COURT: Other than the recommendation that was given to me a moment ago by the solicitor, has anyone made any other promise or threats to cause you today to enter your plea of guilt?

APPELLANT: No, Your Honor.

App. 5, l. 5-14.

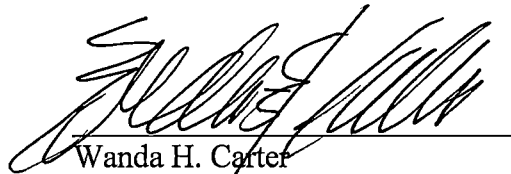
However, the trial judge failed to advise that he was not bound by the state's recommendation. As a rule, a trial judge is under no duty to accept the state's recommended sentence. State v. Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982). Appellant was not advised of this, which in essence was a sentencing consequence. Also, in order for a defendant to plead guilty, he must have full understanding of the sentencing consequences of his plea. State v. Hazel, 375 S.C. 392, 271 S.E.2d 602 (1980); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623

(1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995).

Here, appellant's pleas were given involuntarily because he was unaware of the sentencing consequences of his pleas.

CONCLUSION

Based on the foregoing argument, appellant's convictions and sentence should be reversed and his case remanded for a new legal proceeding.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of September, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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THE STATE,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Anthony Derone Richardson states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's plea proceeding before Judge John C. Hayes, III, which was held on December 5, 2011, and in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Anthony Derone Richardson.

Respectfully Submitted,



Wanda H. Carter

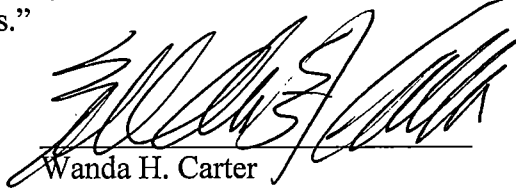
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of September, 2018.

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."

September 6, 2018.



Wanda H. Carter
Deputy Chief Appellate Defender

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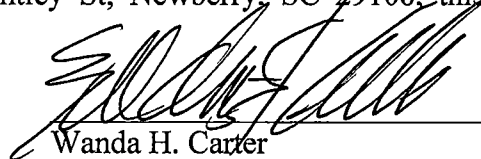
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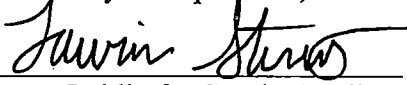
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant pursuant to White v. State has been served on Anthony Derone Richardson, at 521 Brantley St, Newberry, SC 29108, this 6th day of September 2018.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of September, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.