

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Calhoun County

Honorable R. Scott Sprouse, Circuit Court Judge

RECEIVED
JAN 14 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

MICHAEL ALEXANDER SEALS,

APPELLANT

APPELLATE CASE NO. 2018-000565

RETURN TO MOTION TO REMAND FOR
RECONSTRUCTION OF THE RECORD

Appellant opposes any remand to the circuit court. A remand would be a waste of time as the State has not shown the Court that any fact relevant to the issue raised on appeal would be discovered. The relevant facts of the appeal appear to be undisputed and the appeal is ready to be briefed by the State and decided by this Court.

The State agrees in its motion that appellant was tried in his absence and that this trial was a bench trial. The State appears to seek a remand solely for issue preservation reasons. Such a remand is wholly irrelevant. Based on counsel's investigation prior to filing the brief, counsel for appellant **concedes** that no one at appellant's *in absentia* trial ever raised any objection to the bench trial. Had counsel's investigation revealed

otherwise, appellant would likely be the one asking for a remand to foreclose the State's issue preservation argument. However, counsel had no good faith basis on which to ask for such a remand, which, in any event, likely would have been opposed by the State based on the fugitive disentitlement doctrine. Given this concession and a record showing no objection to the bench trial, appellant fails to see how the State can improve its case with a remand.

Therefore, a remand will achieve nothing but delay. The State, as is seen by the numerous citations and arguments in its motion, is more than capable of now briefing all of its issue preservation objections to appellant's conviction being reversed because of an obvious structural error. Appellant's contention on appeal is that the trial court erred in depriving appellant of his right to a trial by jury without an on-the-record knowing and voluntary waiver personally given by the accused. It appears from the State's motion that it is undisputed that such a waiver by appellant never occurred. If the State has information to the contrary, it should be required to provide such information in order to justify its request for a remand.

As is amply shown in appellant's brief by citations to the United States Supreme Court and other authorities—and is not challenged in the State's remand motion—lawyers cannot waive a client's right to a jury trial as a matter of law, so whether trial counsel purported to waive appellant's right is of no legal import. See, e.g., McCoy v. Louisiana, 138 S.Ct. 1500, 1508 (2018) (“Some decisions, however, are reserved for the client—notably, whether to plead guilty, **wave the right to a jury trial**, testify in one's own behalf, and forego an appeal.”).

5

This Court will either accept appellant's legal arguments and reach the obvious structural error, or it will accept the State's preservation arguments and avoid the issue, but a remand will accomplish nothing to either end but delay. Appellant has raised only a single issue on appeal and reconstruction of the entire trial record is unnecessary and a waste of time. The State's motion should be denied.

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

January 14, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Calhoun County

Honorable R. Scott Sprouse, Circuit Court Judge

RECEIVED
JAN 14 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

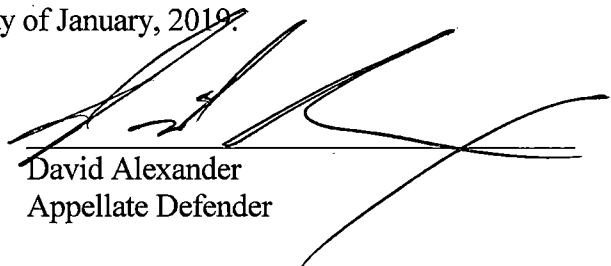
MICHAEL ALEXANDER SEALS,

APPELLANT

APPELLATE CASE NO. 2018-000565

CERTIFICATE OF SERVICE

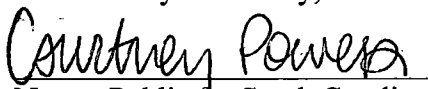
The undersigned attorney hereby certifies that a true copy of the Return to Motion to Remand for Reconstruction of the Record in the above referenced case has been served upon Mark R. Farthing Esquire, this 14th day of January, 2019.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of January, 2019.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 14, 2019

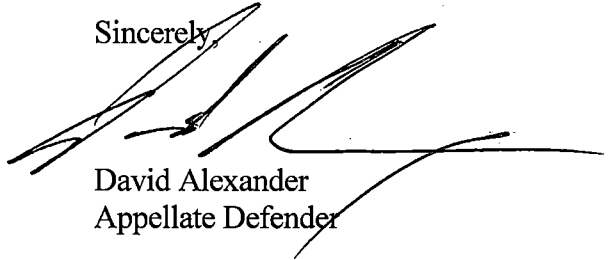
The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The State v. Michael Alexander Seals

Dear Ms. Kitchings:

Enclosed are an original and six copies of the Return to Motion for Reconstruction of the Record in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,



David Alexander
Appellate Defender

DAA/cp

cc: Mark R. Farthing, Esquire

RECEIVED
JAN 14 2019
SC Court of Appeals