

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

ORIGINAL

RECEIVED

FEB 01 2019

SC Court of Appeals

THE STATE,

RESPONDENT

V.

WILLIE JAMES MOORE,

APPELLANT

APPELLATE CASE NO. 2018-000164

ANDERS BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The court erred when it accepted appellant’s guilty plea to burglary where appellant did not remember entering the home due to the effects of prescription drugs, and the overall record shows appellant did not understand that burglary requires entry without consent since this resulted in a plea that was not knowingly, voluntarily, and intelligently entered.....4

Statement of facts4

Discussion.....5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL.....9

TABLE OF AUTHORITIES

Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000).....5, 7

Boykin v. Alabama, 395 U.S. 238 (1969)5, 7

In Interest of Arisha K.S., 331 S.C. 288, 501 S.E.2d 128 (Ct. App. 1998).....6

McCarthy v. United States, 394 U.S. 459 (1969)5

Rollison v. State, 346 S.C. 506, 552 S.E.2d 290 (2001)5

State v. Bradley, 263 S.C. 223, 209 S.E.2d 435 (1974).....6

State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011)3

State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976).....6

State v. Nesbitt, 411 S.C. 194, 768 S.E.2d 67 (2015).....3

STATEMENT OF ISSUE ON APPEAL

Whether the court erred when it accepted appellant's guilty plea to burglary where appellant did not remember entering the home due to the effects of prescription drugs, and the overall record shows appellant did not understand that burglary requires entry without consent since this resulted in a plea that was not knowingly, voluntarily, and intelligently entered?

STATEMENT OF THE CASE

On December 9, 2016, appellant was indicted by a Spartanburg County Grand Jury for first degree burglary. R. 32 – 33. On April 10, 2017, appellant pleaded guilty as indicted before the Honorable J. Derham Cole. R. 1. Spenser Smith and Jennifer Jordan appeared on behalf of the state. R. 1. Daniel McDonald, IV and Charles Snyder, III represented appellant. R. 1. The court accepted appellant's plea and the matter was adjourned until April 12, 2017, when the court pronounced its sentence. R. 22, ll. 1-2; R. 23, ll. 1-8.

Appellant was sentenced to eighteen years imprisonment. R. 34. On April 21, 2017, counsel filed a motion for reconsideration of the sentence. R. 30. On January 26, 2018, the court denied the motion without a hearing. R. 31.

This appeal 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 court erred when it accepted appellant's guilty plea to burglary where appellant did not remember entering the home due to the effects of prescription drugs, and the overall record shows appellant did not understand that burglary requires entry without consent since this resulted in a plea that was not knowingly, voluntarily, and intelligently entered.

Statement of facts

The state alleged appellant was committing a nighttime burglary when he was interrupted by the homeowner, and alleged he struck the homeowner with a Yeti cooler. R. 12, ll. 17-25; R. 13, ll. 5-6. The homeowner's stepson held appellant at gunpoint until police arrived. R. 13, ll. 7-9. Appellant had stolen jewelry in his backpack and pocket. App. 13, ll. 12-15.

Before accepting his guilty plea, the court asked appellant, "Do you agree or disagree with what [the solicitor has] told me about the facts?" and appellant said, "I disagree." R. 16, ll. 5-7. Appellant explained, "I was in the house but I don't—I just don't remember getting—going there." R. 16, ll. 16-17. The following exchange then took place:

THE COURT: Did you enter the house?

THE DEFENDANT: I guess I did. I—

THE COURT: Did you have consent?

THE DEFENDANT: No, sir.

THE COURT: Did you take something?

THE DEFENDANT: I don't remember.

THE COURT: Okay. Well, why? Why don't you remember?

THE DEFENDANT: I was on Xanax and eframazine [sic].

R. 16, ll. 18-25.

Appellant said, "I admit to being in the house, yes, sir, but I just don't remember how I got in or anything." R. 18, ll. 1-3. The court then went over the elements of burglary, and told appellant "the intent to commit a crime has to be developed before you enter the house." R. 18, ll. 10-11. "[E]ntering a house without an intent to commit a crime does not constitute burglary." R. 18, ll. 12-13.

The court asked appellant, "[Y]ou don't remember going into a dwelling with the intent to commit a crime and not having consent? You don't remember any of that." R. 19, ll. 6-8. Appellant answered, "I just don't remember that." R. 19, l. 9. The court asked appellant, "Do you have issues with your memory? Because that seems right strange and odd to me that you would remember everything except those things that make you guilty of a crime." R. 19, ll. 10-13. Appellant replied, "I don't disagree about taking the items, I mean, because I know that's what burglary consists of . . . I'm not disagreeing with, I mean, like some of the facts that make it a burglary, no, sir." R. 19, ll. 14-18.

Appellant eventually agreed that he did enter the residence with the intent to commit some crime. R. 19, l. 25 – 20, l. 3. The court accepted the guilty plea and sentenced appellant to eighteen years imprisonment. R. 22, ll. 1-2; R. 28, ll. 3-5.

Discussion

The court erred when it accepted appellant's guilty plea to burglary where he repeatedly said he did not remember entering the home, since entry with intent to commit a crime is a crucial element of burglary.

The record of a guilty plea must be sufficient to show the defendant "has a full understanding of what the plea connotes and of its consequence." *Boykin v. Alabama*, 395 U.S. 238, 244 (1969). See *McCarthy v. United States*, 394 U.S. 459, 466 (1969) ("because a guilty

plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts”).

Before a guilty plea may be accepted, it is required “that the defendant understand the nature and **crucial elements** of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” *Rollison v. State*, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001) (emphasis added). “[A] defendant entering a guilty plea must be aware of the nature and **crucial elements** of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) (emphasis in original).

Although he acknowledges that his counsel did not move to withdraw or otherwise timely object to the entry of his plea, appellant asserts that fundamental fairness weighs in favor of this Court finding the circuit court erred when it accepted his guilty plea given appellant’s repeated assertion that he did not remember going into the house, since entry with the intent to commit a crime is a crucial element of burglary.¹

In *State v. Lambert*, 266 S.C. 574, 579-80, 225 S.E.2d 340, 342 (1976), the South Carolina Supreme Court concluded Lambert’s guilty plea was voluntarily and intelligently given, despite his assertion that he was “so intoxicated that this negated the existence of the requisite element of intent.” The Court found the defendant’s in-court admissions “were sufficient evidence of felonious intent. He stated to the court that he broke into the home in the nighttime, removing an item. Under these unexplained circumstances, the inference of intent to enter and

¹ *Contra State v. Bradley*, 263 S.C. 223, 209 S.E.2d 435 (1974) (defendant who failed to assert at plea hearing that his guilty plea was involuntarily entered was precluded from consideration of such claim on appeal); *In Interest of Arisha K.S.*, 331 S.C. 288, 293-94, 501 S.E.2d 128, 131 (Ct. App. 1998) (juvenile precluded from prevailing on direct appeal claim that guilty plea was not knowingly and voluntarily entered where counsel did not object at plea hearing).

steal was present as proof of intent necessarily rests on inference from conduct.” *Id.* at 579, 225 S.E.2d at 342 (internal quotations omitted).

The Court explained in *Lambert* that, “At the time of his plea, [Lambert] did not contend that the condition of his intoxication was so extreme as to suspend all reason. The record amply supports the conclusion that he had the ability to form the specific intent to commit the crime.” *Id.* at 580, 225 S.E.2d at 342.

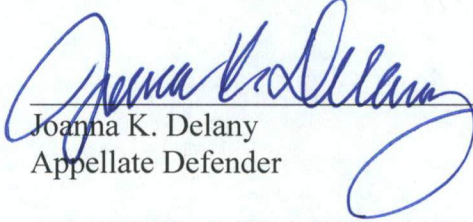
Here, unlike in *Lambert*, appellant told the plea judge the effects of the medication he had taken rendered him unable to remember going in the house, although he was arrested in the house in the act of taking items. Unlike in *Lambert*, appellant expressly told the court at the plea hearing that the medications he had taken the night of the offense had such an extreme effect as to suspend all reason. The record here does not support a conclusion that appellant had the ability to form the requisite criminal intent.

Moreover, appellant indicated to the court that he was unaware of the “crucial elements” of burglary. Appellant said, “I don’t disagree about taking the items, I mean, because I know that’s what burglary consists of.” R. 19, ll. 14-16.

Although the court attempted to educate appellant on the elements of burglary, the above statement by appellant following the court’s remarks shows his misunderstanding—appellant demonstrated that it was his erroneous understanding that a person need only commit larceny (take items) to be guilty of first degree burglary. Because the record shows appellant did not understand the “crucial elements” of the offense to which he pleaded guilty, the court erred when it accepted his plea, which was not knowingly, voluntarily, and intelligently tendered. *Anderson*, 342 S.C. at 57, 535 S.E.2d at 651; *Boykin v. Alabama*, 395 U.S. at 244.

CONCLUSION

By reason of the foregoing argument, appellant respectfully requests this Court vacate his guilty plea, and remand the case to the Spartanburg County general sessions court for a new trial.

A handwritten signature in blue ink, appearing to read "Joanna K. Delany", is written over a horizontal line. The signature is stylized and cursive.

Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of February, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT

V.

WILLIE JAMES MOORE,

APPELLANT

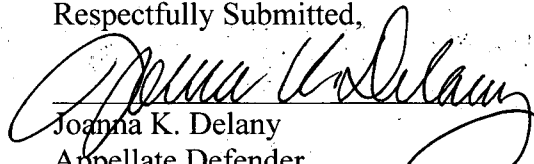
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Willie James Moore states:

1. She is 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 guilty plea before Judge J. Derham Cole, which was held on April 10 – 12, 2017, 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 Willie James Moore.

Respectfully Submitted,



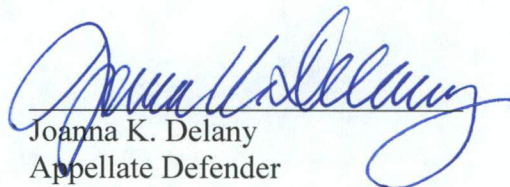
Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

This 1st day of February, 2019.

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."

February 1, 2019.


Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
FEB 01 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

RECEIVED
FEB 01 2019
SC Court of Appeals

THE STATE,

RESPONDENT

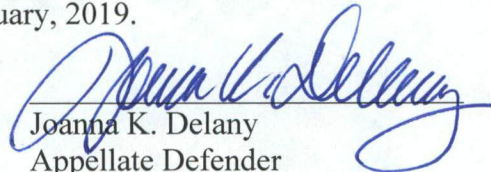
V.

WILLIE JAMES MOORE,

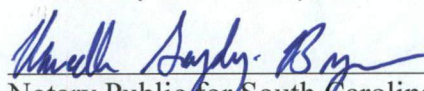
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Willie James Moore, 353950, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 1st day of February, 2019.


Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of February, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028