

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of General Sessions
Perry M. Buckner, Circuit Court Judge

Docket No. 2015-GS-25-00428-433, 435-6, 438-9
2018-GS-25-00189
Appellate Case No. 2018-001100

State of South Carolina , Respondent
v.
Jessie Matthew Gibbens , Appellant

NOTICE OF APPEAL-AMENDED

RECEIVED
JAN 24 2019
SC Court of Appeals

In compliance with SCACR 201, the Appellant has a right to Appeal his guilty plea and convictions handed down on May 31, 2018 in the Court of Hampton General Sessions.

This Appeal shall be filed within ten (10) days after the denial or post-trial motions as mandated by SCACR 203, with Notice given to the appropriate parties as set forth in the Proof of Service.

The initial Appeal was filed and served in time and this Amended Appeal is a response to a letter from the Appellate Court dated December 11th for an "explanation" of the Appeal.

I THE FIRST ISSUE ON APPEAL IS WHETHER THE JUDGE AND/OR THE DEFENSE ATTORNEY TOOK INTO CONSIDERATION THE MENTAL ILLNESS OF THE APPELLANT AND WHETHER IT WAS ADEQUATELY INVESTIGATED AT THE TIME OF THE CRIME OR ADJUDICATED AT THE TIME OF SENTENCING. THIS CAN ALSO BE ADDRESSED AS INEFFECTIVE ASSISTANCE OF COUNSEL.

NO.

ARGUMENT: There was evidence of mental illness in this case of ADHD, depression, anxiety, PTSD and TBI. Accordingly, the judge and/or the defense attorney were obligated to consider any mitigating circumstances during or before the Sentencing phase and whether at during the Guilt phase *Guilty But Mentally Ill* might be applicable or a *Not Guilty by Reason of Insanity* guilty plea.

This issue was not raised at the Trial Court.

GBMI and NGBRI are both types of pleas allowed under SC law.
SC Code Section 16-3-20 and its applicability to mitigating Attempted Murder convictions.
Sentencing hearing transcript page 10-11.
February 5, 2018 Guilt phase transcript not available at this time.

II THE SECOND ISSUE IS WHETHER THE DEFENSE ATTORNEY AND/OR JUDGE SHOULD OF INQUIRED AS TO THE *CRIMINAL RESPONSIBILTY* OF THE DEFENDANT. THIS CAN ALSO BE ADDRESSED AS INEFFECTIVE ASSISTANCE OF COUNSEL.

YES.

ARGUMENT: The evidence in this case, including the testimony of the Defendant at the hearings included statements from the Defendant that on the day of the crime spree. "I had no ability to make any reasonable decisions or judgments." The test for criminal responsibility relates to the time of the alleged offense.

State vs. Drew Monahan 616 S.E. 2nd 422, (S. Ct. SC 2005) Test for criminal responsibility.
Sentencing transcript page 40.
February 5, 2018 Guilt phase transcript not available at this time.

III THE THIRD ISSUE IS WHETHER THE DEFENSE ATTORNEY SHOULD OF MADE A MOTION FOR A RE-SENTENCING AND/OR A NEW TRIAL AFTER THE JUDGE HANDED-DOWN THE 30 YEAR SENTENCE. THIS CAN ALSO BE ADDRESSED AS INEFFECTIVE ASSISTANCE OF COUNSEL.

YES.

ARGUMENT: The Defense had asked for a sentence of no more than 15 years. They brought no witnesses that were trained in the field of mental illness other than some military vets who spoke about PTSD and how that probably applied to the Appellant.

The Motion for a Re-sentencing Hearing or a New Trial was not raised at the Trial Court

SC Code Section allows Motions for Re-sentencing and New Trial to be made within 10 days as the Judge instructed at the beginning of the hearing to Appeal the Sentence . See Sentencing transcript page 18.

State v. Robert South 310 S.C. 504, 427 S.E.2d 666 (S Ct of SC 1993.)

IV THE FOURTH ISSUE IS WHETHER THE DEFENSE ATTORNEY PRESENTED SUFFICIENT EVIDENCE OF THE LAW OF HEAT OF PASSION AND COMMITTED ERROR WHEN SPEAKING DURING EITHER THE GUILT OR SENTENCING PHASE. THIS CAN ALSO BE ADDRESSED AS INEFFECTIVE ASSISTANCE OF COUNSEL.

YES, ERROR.

Some evidence of this was raised at the Sentencing hearing but the attorney said "the law does not recognize that as legal provocation."

Sentencing transcript page 46.

Law of heat of passion is recognized in the State of SC.

February 5, 2018 Guilty Plea transcript not available at this tiem.

December 21, 2018

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PROOF OF SERVICE

I certify that I have served the *Amended Notice of Appeal* on the following persons by copying each party listed below on December 21, 2018.

Jenny A. Kitchings
Clerk of Court of Appeals
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Columbia, SC 29211

Honorable Mylinda Nettles
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January 17, 2019

Jenny A. Kitchings
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina vs. Jessie Gibbens
Appellate Case No.: 2018-001100
Appeal from Hampton County, South Carolina

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SC Court of Appeals

Dear Clerk of Court:

I am in receipt of your letter dated January 8, 2019 where you say that I need to file an **EXPLANATION** within ten (10) days.

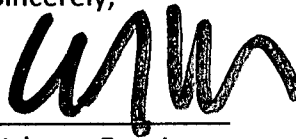
I did this already after your first letter dated December 11th 2018.
[See copy of my cover letter dated December 21st 2018]

Please find another one (1) original (in case you have mis-placed the December 21st original) and one (1) copy for filing in your Appeals Court.

Please mail me the copy in the self-enclosed envelope.

Thank you for your consideration in this matter.

Sincerely,



Eric J. Erickson, Esquire
ATTORNEY FOR THE APPELLANT

EJE/ts

cc:

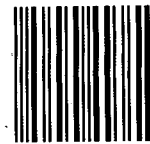
J. Benjamin Aplin Esq. P.O. Box 11549 Columbia, SC 29211
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