

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Oconee County

R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

ERIC ANDERSON,

APPELLANT

Appellate Case No. 2011-203393  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

ROBERT M. DUDEK  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

RECORDED

NOV 28 2012

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the judge instructing appellant that he had ten days “to appeal whatever sentence I give you” made appellant’s guilty plea a conditional plea since the plea court told appellant he would receive appellate review of his sentence that in fact did not exist?

STATEMENT OF THE CASE

Appellant, Eric Bruce Anderson, was indicted by the Oconee County Grand Jury for criminal sexual conduct with a minor in the first degree and committing a lewd act upon a minor. R. 28-33. He appeared on November 10, 2011 before the Honorable R. Lawton McIntosh. Wilson Burr represented appellant. Lindsey S. Simmons was the assistant solicitor. R. 1.

Appellant pled "straight-up" -- without a recommendation -- to criminal sexual conduct with a minor in the first degree and committing a lewd act upon a child. R. 3, ll. 4-13. At the conclusion of the guilty plea proceeding, Judge McIntosh sentenced appellant to thirty years imprisonment for criminal sexual conduct with a minor in the first degree, and he imposed a five year consecutive sentence for committing a lewd act upon a minor. R. 25, ll. 18-25.

This appeal follows.

## ARGUMENT

The judge instructing appellant that he had ten days “to appeal whatever sentence I give you” made appellant’s guilty plea a conditional plea since the plea court told appellant he would receive appellate review of his sentence that in fact did not exist.

### **Relevant Facts**

Appellant was thirty-five years old at the time of the guilty plea. R. 4, ll. 6-7. Appellant said he was completely satisfied with his lawyer, and that his lawyer had done everything he requested of him. R. 9, ll. 15-22.

Dr. Donna Schwartz-Watts testified she evaluated appellant three times in this case. R. 17, l. 21 – 18, l. 2. Dr. Schwartz-Watts noted appellant came forward on his own and confessed to the crimes “to get this off of his conscience.” “He was overjoyed” to admit the crimes occurred. R. 18, l. 3 – 19, l. 7.

Dr. Schwartz-Watts told the judge appellant had been sexually abused as a child, and that he now realized he became “very sexualized” because he was abused. Appellant had reported the abuse to his mother when he was five-years-old so Dr. Schwartz-Watts related that the reports of abuse were credible. R. 19, l. 8 – 22, l. 14.

After hearing from the prosecution, and then the defense in the case in mitigation, the plea judge told appellant: “Mr. Anderson, you will have ten days to appeal whatever sentence I give you. I’m gonna put that on the record.” R. 25, ll. 14-16. The judge then imposed the maximum sentence for criminal sexual conduct with a minor in the first degree (thirty years) and imposed a consecutive sentence (5 years) for the lewd act charge. R. 25, ll. 14-25.

## **Discussion**

In the case of In re Johnny Lee W., 371 S.C. 217, 638 S.E.2d 682 (2006), the state conceded that the appellant's guilty plea was conditional where he attempted to reserve the right to challenge the constitutionality of the disturbing a school statute on vagueness grounds. The Supreme Court noted that a trial court may not accept a conditional plea. See State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982).

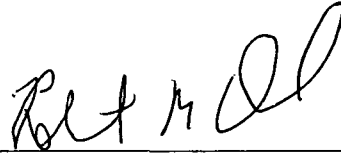
Here, it is clear appellant did appeal his guilty plea which means he ratified, at a minimum, the condition placed upon his guilty plea that an appellate court would review the "fairness" or "constitutionality" of the imposed sentence. This gave appellant false hope that his guilty plea would be vacated because the sentence was "incorrect" or "inappropriate" for the crimes. For that reason this case is not any different than State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001), and State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186 (1990) wherein the defendants impermissibly had legal issues allegedly preserved at the same time they were pleading guilty.

Appellant's guilty plea should be vacated as an impermissible conditional plea since the plea judge guaranteed appellate review of the sentence he imposed.

CONCLUSION

Appellant's guilty plea should be vacated as an impermissible conditional plea.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Dudek", written in a cursive style.

---

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of November, 2012.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Oconee County

R. Lawton McIntosh, Circuit Court Judge

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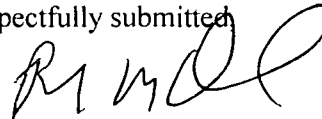
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eric Anderson states:

1. He is Chief 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 guilty plea before Judge R. Lawton McIntosh, which was held on November 11, 2011, 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 Eric Anderson.

Respectfully submitted



Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of November, 2012.

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Appeal from Oconee County

R. Lawton McIntosh, Circuit Court Judge  
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THE STATE,

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V.

ERIC ANDERSON,

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
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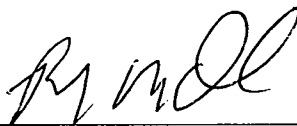
Appellant proposes the following be included in the Record on Appeal:

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- (1) True-billed indictments;
- (2) Guilty Plea Transcript

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

November 28th, 2012



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Robert M. Dudek  
Chief Appellate Defender

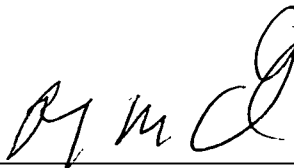
South Carolina Commission on Indigent Defense  
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PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

Attorney for Appellant

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 28<sup>th</sup>, 2012



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Robert M. Dudek  
Chief Appellate Defender

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Columbia, South Carolina 29211-1589

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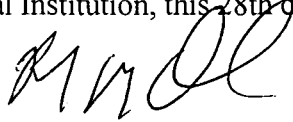
APPELLANT

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CERTIFICATE OF SERVICE

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The undersigned attorney 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 Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Eric Anderson, #348651 at Lee Correctional Institution, this 28th day of November, 2012.




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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 28th day of November, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 2, 2013 .

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