

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

BRANDON A. DAVIS,

APPELLANT

Appellate Case No. 2011-204147

Prose BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred by failing to advise appellant of the crucial elements of the offenses to which he pled?

STATEMENT OF THE CASE

Appellant Brandon Alexander Davis was indicted by the York County grand jury on August 18, 2011 for the following offenses that arose out of two separate incidents: (1) one count of murder; (2) three counts of attempted murder; (3) two counts of armed robbery; (4) one count of criminal conspiracy; and (5) four counts of possession of a firearm during the commission of a violent crime. Tr. pg. (4) lines (4-23). His case proceeded to a guilty plea hearing before the Honorable Lee S. Alford on November 3, 2011. Dean O'Neil (counsel) represented appellant, while Kevin Brackett and Jenny Desch represented the state.

The negotiated plea offer was for appellant to plead guilty to (1) one count of voluntary manslaughter; (2) three counts of attempted murder; (3) two counts of armed robbery; (4) one count of criminal conspiracy; and (5) two counts of possession of a firearm during the commission of a violent crime. In return, the state agreed upon a sentencing range of 25 to 40 years, and to dismiss certain accompanying charges. Tr. pg. (5) lines (1-19), Tr. pg. (10) lines (21-25). Appellant plead guilty to the charges; after hearing the facts presented by the state, the plea court accepted appellants guilty pleas as freely and voluntarily made. However, sentencing was deferred to a later date. P. 16, lines 15-23; P. 17 lines 12-13.

On November 30, 2011, Appellant's case is reconvened before Judge Alford for sentencing. Counsel again represented appellant, while Kevin Brackett and Jenny Desch again represented the state. After hearing the facts of the case by the state, as well as comments by the victims, appellant, and appellant's family, the plea court stated the following:

Mr. Davis, it's hard for me to believe that you're only (17) years old, and you're in here on these kind of charges. You know, that disturbs me greatly, it really does, that these were committed when you were 16 and 17. It disturbs me. I just don't know how you're capable of that at your age. I just don't understand that. I think I do understand it in a sense, but I fully believe he doesn't need to be out in general society. I really don't. And it's a shame, it's a real shame at his age, and I hate it because of that. The fact of the matter is someone who can do these kinds of things without any kind of provocation or whatever, just shooting people for no reason whatsoever, who is innocent and in cold blood, you know, deserves the maximum punishment I think that the court can give. P. 28, line 21-P. 29, line 2; P. 29, line 25-P. 30, line 7.

The trial court subsequently imposed the following sentences of incarceration upon appellant: (30) years for (1) one count of voluntary manslaughter, (5) years consecutive for (1) one count of possession of a firearm during the commission of a crime, (5) years consecutive for (1) count of attempted murder, (30) years concurrent for the remaining (2) two counts of attempted murder, (5) years concurrent for the remaining count of possession of a weapon during the commission of a crime, (30) years concurrent for each of the (2) two armed robberies, and (5) years concurrent for (1) one count of criminal conspiracy. P. 30, line 13 - P. 32, line 13; P. 51 - P. 58; P. 61 - P. 62; P. 65 - P. 60; P. 69 - P. 70; P. 73; P. 76; P. 79. Counsel timely filed notice of appeal on November 30, 2011. P. 52 - P. 54. This appeal follows.

ARGUMENT

The plea court reversibly erred in the plea hearing by failing to advise appellant that "heat of passion" was a crucial element of voluntary manslaughter, that "malice aforethought" was a crucial element of attempted murder, and "use of a deadly weapon" was a crucial element of armed robbery which makes his guilty pleas involuntary and unintelligently entered.

The plea court reversibly erred in the plea hearing by failing to advise appellant of the crucial elements of voluntary manslaughter, attempted murder, and armed robbery which makes his guilty pleas to the offenses involuntarily and unintelligently entered. Entering a guilty plea results in a waiver of several constitutional rights, and therefore, the due process clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by appellants. (U.S.C.A. Const. Amends. 5, 6) To find a guilty plea is voluntarily and knowingly entered into, the record must establish the appellant had a full understanding of the consequences of his plea and the charges against him. See *Boykin v. Alabama*, 395 U.S. 238, 243-44, 89 S.Ct. 1709, 1712 (1969).

In *Boykin* the United States Supreme Court held that before a court can accept a guilty plea, a criminal appellant "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". Also see *Pittman v. State*, 337 S.C. 597, 599, 524 S.E. 2d 623, 624 (1999). The Fourteenth Amendment Due Process Clause requires that a plea of guilty be knowingly and voluntarily entered because it involves a waiver of a number of the constitutional rights. "Gaddy v. Linahan, 180 F.2d. 935, 943 (11th Cir. 1956). A plea of guilty "cannot support a judgment of guilt unless it was voluntarily in a constitutional sense". *Henderson v. Morgan*, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 2257, 49 L.Ed. 2d 1028 (1976).

As the Supreme Court has plainly instructed, the voluntariness requirement is not satisfied unless the appellant receives real notice of the true nature of the charged crime. Clearly the plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the appellant received 'real notice' of the true nature of the charges against him, the first and most universally recognized requirement of due process' id. at 645, 96 S.Ct. at 2257-58 (quoting *Smith v. O'Grady*, 312 U.S. 329, 334, 61 S.Ct. 572, 574, 85 L.Ed. 859 (1941)). A defendant does not receive "real notice" of the nature of the charge against him unless he is informed of the elements of the charged offense. The Supreme Court also holds that the appellant receives "real notice" of the

Charge when he has been informed of both the nature of the charge to which he is pleading guilty and its elements. This is so because a plea of guilty represents, in essence, an admission as to each and every element of the offense.

In the present case, there is no evidence in the record that the appellant was advised of the crucial elements of voluntary manslaughter, attempted murder or armed robbery prior to the plea court accepting the guilty pleas. See plea hearing Tr. pg. 1-18. There is also no evidence in the record of the plea court reading the appellant the indictments as to the offenses so there is no way the appellant had a full understanding of the nature of the charges against him. *Giaddy*, 780 F.2d at 943-44; See also *Stano v. Dugger*, 921 F.2d 1125, 1142 (11th Cir. 1991) (en banc) (recognizing that prior to entering a guilty plea, the appellant must receive information on "the nature of the offenses and the elements of the crime"). At the very least, due process requires that the defendant, prior to tendering a plea of guilty receive a description of the "critical elements" of the charge offense. *Giaddy*, 780 F.2d at 945.

In this way, the plea court erred by accepting the appellant's guilty pleas without advising the appellant of the crucial elements of the offenses to which he plead. *Burkin v. Alabama*, 395 U.S. 238, 243-244, 295 Ct. 1709, 1712 (1969). Accordingly, Appellant respectfully requests this Court to vacate his guilty pleas of voluntary manslaughter (3) three counts of attempted murder, (2) two counts of armed robbery (2) two counts of possession of a weapon during the commission of a violent crime and criminal conspiracy and request that a new trial/hearing be granted.

CONCLUSION

For the foregoing reasons, Appellant Brandon Davis respectfully requests vacation of his guilty pleas, and request a new trial/hearing granted.

Respectfully Submitted,

x Brandon Davis

This 25th day of February, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Brandon A. Davis #348800
APPELLANT

v.
State Of South Carolina
RESPONDENT

Certificate Of Service

I Brandon A. Davis #348800 do hereby certify that a true copy of the statement of basis pursuant to Rule 203(D)(1)(B) in the above referenced case has been served upon the South Carolina Court of Appeals by hand delivering a copy to Broad River Correctional Institution mail room personnel on February 25th 2013, postage prepaid and addressed to the following:

South Carolina Court of Appeal
P.O. Box 11629
Columbia, SC. 29211

Sworn and Subscribed before me
this 25th day of February 2013

Eugene Kutt

Signed,

Brandon Davis #348800

Brandon A. Davis #348800
4460 Broad River Rd.
Columbia, S.C. 29210

Notary Public For South Carolina

My commission expires Apr. 4, 2016



The South Carolina Court of Appeals

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February 05, 2013

Brandon Alexander Davis #348800
Broad River Correctional Institution
4460 Broad River Road
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Re: The State v. Davis, Brandon A.
Appellate Case No. 2011-204147

Dear Appellant:

Your counsel has filed a brief indicating that this appeal is without merit and moves to be relieved as your counsel. *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L.E.2d 493 (1967). The records in this office reflect counsel has served you with a copy of the brief and record on appeal.

You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* brief addressing any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* brief or the expiration of forty-five (45) days, this appeal will be submitted to the Court for its consideration.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Salley W. Elliott
Breen Richard Stevens

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SC Court of Appeals

Ms. Kitchings

Feb 27th

Enclosed is a True copy of
my pro-se Brief Also enclosed is
a copy of a letter that your courts
wrote me

Peace & Respect

x Brandon
Davis