

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALLEN STONE,

APPELLANT

Appellate Case No. 2012-211944

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in accepting appellant's guilty plea without inquiring into whether he understood that the plea would waive his privilege against self-incrimination and the right to confront his accusers.

STATEMENT OF THE CASE

Appellant Allen F. Stone pled guilty to an enhanced property offense,¹ third or subsequent conviction, during the October 2011 term of the Charleston County General Sessions Court before Judge Thomas L. Hughston. Appellant was sentenced to imprisonment for a period of three years. Martha Kent Runey represented appellant at the plea proceeding.

Appellant appealed. This brief follows.

¹ The state alleged appellant stole cooper from an At&T light pole in Charleston, South Carolina.

ARGUMENT

The lower court erred in accepting appellant's guilty plea without inquiring into whether he understood that the plea would waive his privilege against self-incrimination and the right to confront his accusers.

At the plea proceeding, the trial judge explained the consequences of pleading guilty as follows:

The Court: Yeah. All right. Well, stealing the copper from the AT&T off the pole, because of your prior record, which includes at least two prior property crime convictions, means if you plead guilty or if you're found guilty after trial on this charge, that I could sentence you to up to ten years in the penitentiary. You understand that?

Appellant: Yes, Sir.

The Court: But you don't have to plead guilty to anything. You have an absolute right to a jury trial. Would you like to have a jury trial?

Appellant: No, sir.

The Court: How do you wish to plead, guilty or not?

Appellant: I'm guilty.

R. p. 4, l. 17-p. 5, l. 12.

Appellant could not have known that his guilty plea would have waived his privilege against self-incrimination and the right to confront his accusers because the trial judge did not inform him of the same during the plea proceeding. The trial judge only stated that a plea would waive his right to a trial by jury.

A guilty plea is valid only if given voluntarily and intelligently. Boykin v. Alabama, 395 U.S. 238, 90 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Lopiano v. State, 270 S. C. 563, 243 S.E.2d 448 (1978); State v. Peeler, 277 S.C. 97, 283 S.E.2d 826 (1981). A defendant must understand that several constitutional rights are waived when a plea of guilty is entered. See, Boykin v. Alabama, supra. First, a guilty plea waives a defendant's right to his privilege against self-incrimination as guaranteed under the Fifth Amendment and applicable to the states under the Fourteenth

Amendment. See, Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964). Also, a guilty plea waives a defendant's Sixth Amendment right to a trial by jury. See, Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 144, 20 L.Ed.2d 491 (1968). Finally, a guilty plea waives a defendant's Sixth Amendment right to confront his accusers. See, Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). Both of these Sixth Amendment rights are also applicable to the states under the Fourteenth Amendment.

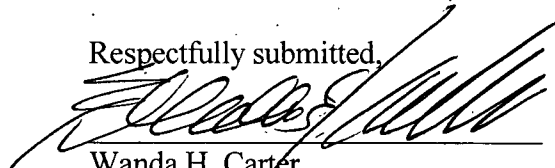
Although a plea is not invalidated by a court's refusal to specifically inform the accused of the rights that are waived upon entering a plea of guilty, (See, White v. Strickland, 263 S.C. 226, 209 S.E.2d 436 1974)), the language from the transcript of a guilty plea proceeding must support a finding that a plea of guilty was voluntarily given within the meaning of Boykin v. Alabama, supra. Compare, Tucker v. State, 258 S.C. 572, 190 S.E.2d 23 (1972); Moore v. State, 256 S.C. 298, 180 S.E.2d 540 (1971); White v. Strickland, supra.

Appellant did not waive the privilege against self-incrimination or the right to confront his accusers because the record did not establish that he was informed of this information prior to entering his plea. Hence, appellant's plea was not given voluntarily and intelligently and thus in violation of Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the lower court for a new proceeding.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 28th day of November, 2012.

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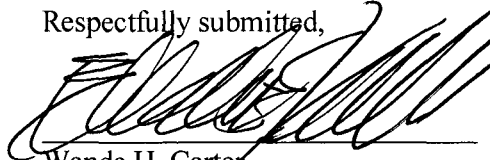
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Allen Stone states:

1. She is Deputy Chief 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 trial before Judge Thomas L. Hughston, Jr., which was held on October 27, 2011, 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 Allen Stone.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of November, 2012.

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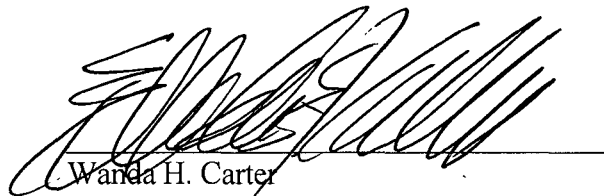
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Guilty Plea Transcript

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

November 28th, 2012



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1343

Attorney for Appellant

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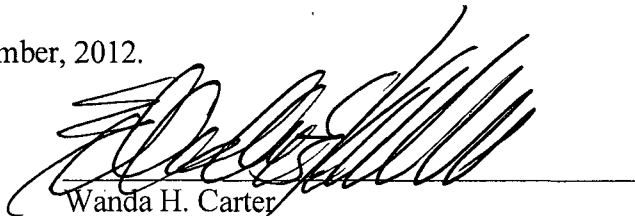
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CERTIFICATE OF SERVICE

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 P.O. Box 50666, Columbia, SC; and on Allen Stone, #267003 at Kershaw Correctional Institution, this 28th day of November, 2012.



Wanda H. Carter
Deputy 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: November 16, 2022.