

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 28 2013

Appeal from Georgetown County

CLERK OF COURT

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY MCCONNELL,

APPELLANT

APPELLATE CASE NO. 2013-000683

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
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

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Cases

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by advising appellant that he could appeal his guilty plea, since this constituted a promise or hope that this Court could vacate the guilty plea if it was not satisfied with some aspect of the lower court plea, and thereby made this an impermissible conditional guilty plea under *State v O'Leary*?

STATEMENT OF THE CASE

During the September 2012 term of General Sessions, a Georgetown County Grand Jury indicted appellant for three counts of ill treatment of animals. R. * On March 18, 2013, appellant appeared before the Honorable Larry B. Hyman, Jr. to enter a guilty plea to two counts of ill treatment of animals. The third count was dismissed upon appellant's guilty plea. Tr. 9, ll. 18-23. There was no recommendation from the state. Ronald William Hazzard represented appellant. Richard D. Todd was the Assistant Solicitor. Tr. 1.

At the conclusion of the guilty plea proceeding, Judge Hyman sentenced appellant to five years, the maximum amount, for each count of ill treatment of animals and ordered the sentences to be served consecutively. Judge Hyman also ordered appellant to pay a five thousand dollar fine for each count and to pay restitution in the amount of one thousand eight hundred seventy-two dollars and forty cents to Saint Frances Animal Shelter, who cared for one of the animals that survived. Tr. 24, l. 18 – 25, l. 3. Defense counsel stipulated to the amount of restitution. Tr. 17, ll. 2-10.

This appeal follows.

ARGUMENT

The court erred by advising appellant that he could appeal his guilty plea, since this constituted a promise or hope that this Court could vacate the guilty plea if it was not satisfied with some aspect of the lower court plea, and thereby made this an impermissible conditional guilty plea under *State v O'Leary*.

Relevant Facts

At the beginning of the proceeding, appellant stated that he wished to enter a plea of guilty and waive his constitutional right to a jury trial. Tr. 5, ll. 4-10. "I say I was guilty from day one." Tr. 6, l. 24. Appellant agreed with his attorney that he believed that there was sufficient evidence to convince a jury of his guilt beyond a reasonable doubt. Tr. 7, ll. 9-15. Appellant also agreed with the facts as stated by the solicitor and again admitted that he was guilty of those acts. Tr. 11, ll. 17-23. He informed the judge that he was neither promised anything nor threatened nor coerced and admitted that he was pleading guilty freely and voluntarily. Tr. 11, l. 24 – 12, l. 17.

The following colloquy then took place on the record:

The Court: Mr. McConnell, I want to advise you that you have the right to appeal this plea so long as you file a notice of intent to appeal within the next ten days. If you fail to file a notice of intent to appeal within the next ten days you will have waived any rights of appeal that you might have had. Do you understand?

Appellant: Yes, sir.

The Court: All right, now, Mr. McConnell, I know that you don't know how to do that or where to do it, but Mr. Hazzard does know and Mr. Hazzard is available to help you get that started. Should you appeal there would be an attorney, if you could not afford one an

attorney appointed to handle your appeal without cost to you. Do you understand that?

Appellant: Yes, sir.

Tr. 13, l. 20 – 14, l. 8.

After this thorough advisement of appellant's right to appeal, the judge accepted appellant's guilty plea and determined that it was freely, voluntarily, knowingly, and intelligently made. Tr. 14, ll. 10-12.

Discussion

By informing appellant he could appeal the results of his guilty plea, the judge allowed appellant to enter into an impermissible conditional guilty plea. Guilty pleas in South Carolina are unconditional, and holding out a promise of hope that this Court could nullify or modify the trial court's plea was improper.

In State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186 (1990), the defendant pled guilty to driving under suspension pursuant to S.C. Code § 56-1-460. The trial judge permitted the defendant to condition his guilty plea on the right to appeal the constitutionality of S.C. Code § 56-1-360 regarding notice to drivers whose licenses are suspended.

The Supreme Court held this was reversible error because a defendant cannot attempt to condition his guilty plea upon a right to appeal an issue. The Court noted that it held in State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982) that guilty pleas are unconditional and, if a person attempts to attach **any condition**, the trial court must direct a plea of not guilty.

Here, the judge advised appellant of his right to appeal his guilty plea within ten days and that if appellant did not know how or where to file a notice of intent to appeal that his counsel would assist him. The judge went on further to say that if appellant could not

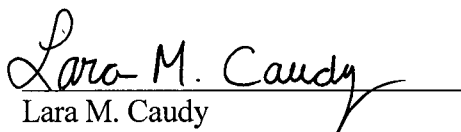
afford to hire an attorney to represent him on appeal that one would be appointed without cost to him.

Such advisement improperly offers a defendant a false hope that this Court may grant relief even though there is not any objection or legal issue to decide. Respectfully, a guilty plea defendant should be informed the guilty plea is unconditional, final, and a full acceptance of responsibility.

CONCLUSION

Appellant's guilty plea should be vacated and this case remanded to the Georgetown County Court of General Sessions for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of August, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY MCCONNELL,

APPELLANT

APPELLATE CASE NO. 2013-000683

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bobby McConnell states:

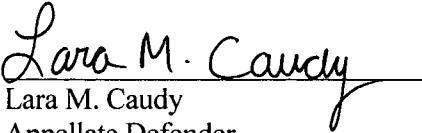
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's guilty plea before Judge Larry B. Hyman, Jr., which was held on March 18, 2013, 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 guilty plea.

WHEREFORE, she asks the Court to relieve her as counsel for Bobby McConnell.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of August, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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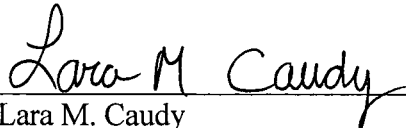
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments;
- (2) Guilty plea transcript dated March 18, 2013.

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

August 28th, 2013



Lara M. Caudy
Appellate Defender

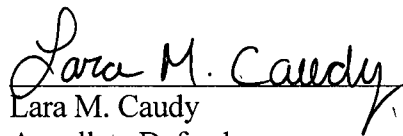
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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."

August 28, 2013


Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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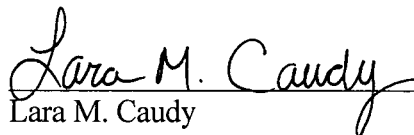
V.

BOBBY MCCONNELL,

APPELLANT

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 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 and Record on Appeal have been served on Bobby McConnell, #354808 at Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 28th day of August, 2013.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of August, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.