

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

SEP 13 2013

SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MICHAEL WRIGHT,

APPELLANT

APPELLATE CASE NO. 2012-212455  
\_\_\_\_\_

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

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by instructing appellant he had the right to appeal, if he “met our Appellate Court rules,” since this promise of appellate review in certain situations made appellant’s guilty plea an impermissible conditional plea because appellant could have reasonably thought this Court could vacate his plea or lower his sentence if it found a technical deficiency or on the basis of fundamental fairness?

STATEMENT OF THE CASE

Appellant was indicted by the Pickens County Grand Jury for the offense of distribution of methamphetamines. R. 19. Appellant appeared on June 25, 2012 before the Honorable G. Edward Welmaker. Steven Alexander represented appellant. Baker Cleveland was the Assistant Solicitor. R. 1.

At the conclusion of the guilty plea proceeding Judge Welmaker sentenced appellant to twelve years imprisonment, suspended upon the service of fifty-seven months, and three years probation. R. 16, l. 22 – 17, l. 4.

This appeal follows.

## ARGUMENT

The court erred by instructing appellant he had the right to appeal, if he “met our Appellate Court rules,” since this promise of appellate review in certain situations made appellant’s guilty plea an impermissible conditional plea because appellant could have thought this Court could vacate his plea or lower his sentence.

### **Relevant Facts**

Defense counsel Alexander told the judge they were prepared to select a jury that afternoon and begin the trial the following day. However, Alexander said appellant wanted to retain other counsel, and conversed with the court about relieving him. R. 3, ll. 4-13.

The judge told appellant he had had time to obtain additional counsel and now “without any real reasons that I’ve heard” he understood appellant wanted to relieve Alexander and obtain alternative counsel. The judge then denied appellant’s motion to relieve Alexander and retain another attorney. R. 3, l. 14 – 5, l. 15.

Six minutes after the denial of this motion to relieve counsel appellant entered a guilty plea. R. 5, l. 16 – 7, l. 1. Appellant told the judge he had his own business which was Wright Brothers Heating and Air Conditioning. However, the business apparently was another casualty of the bad economy. R. 6, ll. 9-15. In addition, appellant told the judge that he had two daughters in college at Clemson. R. 5, l. 19 – 6, l. 15.

The solicitor said the state’s case against appellant was that appellant and a co-defendant had provided methamphetamines after a confidential informant made contact with the co-defendant about making a purchase. R. 7, l. 22 – 9, l. 2. After accepting appellant’s guilty plea the judge told appellant:

The law gives you a right, if you meet our Appellate Court rules, to appeal this proceeding within ten days,

and if you can't afford an attorney, one could be appointed for you. Do you understand that?

Defendant: Yes, sir.

R. 11, ll. 17-22. The judge then accepted appellant's plea and imposed sentence. R. 11, l. 23 – 17, l. 4.

### **Discussion**

As seen, appellant was hesitant to plead guilty, and wanted counsel with adequate time to prepare his defense. When the judge denied that motion, appellant pled guilty. The judge told appellant he could appeal if “met our Appellate Court rules.” There is no indication or reason to believe appellant had any idea what those guidelines were or involved. It is common knowledge among judges and criminal attorneys that most convicted defendants want a “time cut.”

The judge here was merely holding out the promise to appellant that his sentence could be reduced if this Court found it unfair, or his guilty plea could be vacated on some non-objected to technicality.

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 a conditional one where he attempted to reserve the right to challenge the constitutionality of the disturbing a school statute on vagueness grounds. The Supreme Court has ruled 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 acted upon, 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 the false hope

that his guilty plea could on some technicality unknown to the judge at the time and appellant too.

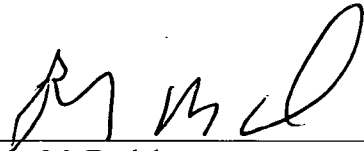
For that reason, this case is not different from State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001), and State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186 (1990) where the defendants impermissibly had legal issues allegedly preserved for appellate review at the same time they were pleading guilty.

Appellant's guilty plea should be vacated as an impermissible conditional plea since the plea judge assured appellant appellate review if he met certain requirements.

CONCLUSION

By reason of the foregoing argument appellant's guilty plea should be vacated and this case remanded to the Pickens Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M D', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of September, 2013.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Pickens County  
G. Edward Welmaker, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

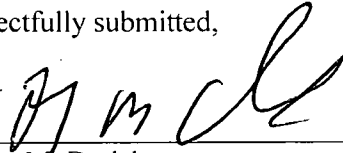
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Counsel for Michael Wright states:

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 G. Edward Welmaker, which was held on June 25, 2012, 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 guilty plea.

WHEREFORE, he asks the Court to relieve him as counsel for Michael Wright.

Respectfully submitted,

  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of September, 2013.

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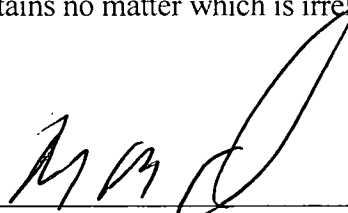
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

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

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

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

September 13th, 2013



\_\_\_\_\_  
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

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."

September 13, 2013



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Robert M. Dudek  
Chief Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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Post Office Box 11589  
Columbia, South Carolina 29211-1589

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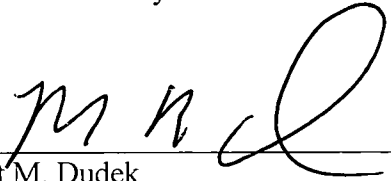
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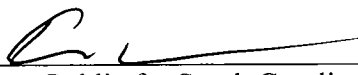
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

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 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 Michael Wright, #258872 at Livesay Pre-Release Center, this 13th day of September, 2013.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 13th day of September, 2013.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: August 21, 2023 .