

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Lancaster County
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2013-000441

THE STATE,RESPONDENT

v.

RICO GREEN.....APPELLANT.

FINAL BRIEF OF RESPONDENT

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JAN 22 2014

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Was there error in the plea court's acceptance of Appellant's guilty plea where no condition or qualification was reserved or attached to the plea rendering it conditional.

STATEMENT OF THE CASE

Appellant was indicted at the November 2011 term of the Lancaster County grand jury for trafficking crack cocaine, second offense, trafficking in cocaine base, and possession of a firearm during the commission of a violent crime. Appellant entered guilty pleas to the two trafficking charges before the Honorable Brooks P. Goldsmith on February 11, 2011. He was sentenced to two ten year terms of imprisonment, concurrent. This appeal follows.

ARGUMENT

There was no error in the plea court's acceptance of Appellant's guilty plea where no condition or qualification was reserved or attached to the plea rendering it conditional.

Appellant argues that his guilty plea was conditional when he appealed his guilty plea to preserve an issue raised at a motion hearing prior to electing to plead guilty. Respondent submits that the filing of a notice of appeal following the guilty plea and sentencing, without more, did not convert Appellant's unconditional plea into a conditional one.

The record before this Court reflects that Appellant appeared before Judge Goldsmith on February 11, 2013, and, pursuant to a favorable plea agreement, entered guilty pleas to trafficking cocaine base ten to twenty-eight grams, second offense, and trafficking cocaine ten to twenty-eight grams, second offense. Also pursuant to agreement, the State recommended a sentence of ten to fifteen years. (R. p. 45). Appellant's attorney informed the plea court that he explained the charges, possible punishments and constitutional rights to Appellant and that it was counsel's opinion that Appellant understood the discussions. (R. p. 45). Appellant concurred. (R. p. 49 – 50). It was counsel's opinion that Appellant would likely be convicted if he proceeded to trial. (R. p. 45). Appellant informed the plea court that he has been in and out of prison and was last incarcerated when he "pleaded out to drugs." (R. p. 46). Appellant told the plea court that he wanted to plead guilty and agreed with the factual basis supporting the indictments as disclosed by the prosecutor during the plea. (R. p. 47 - 49). When asked if he was guilty of the charges, Appellant twice responded, "Yes, sir, it was mine." (R. p. 49- 51). Appellant also informed the plea court that he wished to waive his right to a jury

trial and rights pertaining thereto and plead guilty. He further informed the plea court that his attorney explained everything to him satisfactorily. (R.p. 50). Appellant stated that he was pleading in the absence of threat, coercion, promise or reward and was pleading because he was guilty. (R. p. 51).

“To be valid, a guilty plea must be unconditional.” Easter v. State, 355 S.C. 79, 584 S.E.2d 117 (2003), citing State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001); see also State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (2004). Conditional guilty pleas are not recognized in South Carolina. State v. Truesdale, 296 S.C. 368, 296 S.E.2d 528 (1982); State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). Our South Carolina Supreme Court has stated that “[p]leas of guilty are unconditional and, if an accused attempts to attach any condition or qualification thereto, the trial court should direct a plea of not guilty.” *Id.* At 370, 296 S.E.2d at 529. The Court opined that the “basis for this rule is, of course, the settled doctrine that a guilty plea constitutes waiver of all prior claims of constitutional rights or deprivations thereof.” *Id.* The Court also opined that it is improper for a defendant to enter a plea while seeking to preserve the constitutional issues waived while entering the plea, and it is error for a plea court to accept a plea on those terms. *Id.* The South Carolina Supreme Court recognizes that a guilty plea “represents a break in the chain of events which has preceded it in the criminal process” and that a defendant may only attack the knowing and voluntary nature of a plea. State v. Rice, 401 S.C. 330, 737 S.E.2d 485 (2012), citing Tollet v. Henderson, 411 U.S. 258 (1973). If a conditional plea is accepted by the plea court, it will be vacated on appeal. State v. Downs, 361 S.C. at 141, 604 S.E.2d at 377.

Respondent submits that there was no error committed by the plea court in accepting Appellant's guilty plea. The plea colloquy reveals nothing to suggest that Appellant was attaching any qualification or condition to the court's acceptance of the guilty pleas or that he attempted to reserve the right to challenge or deny guilt. See State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). In fact, the record of the plea indicates that once the suppression motion was denied, Appellant felt that the guilty plea was the most advantageous manner to resolve the charges against him and to move on with his life. (R. pp. 51 – 53). The guilty pleas were knowingly and voluntarily entered with a full understanding that, by doing so, Appellant was waiving the right to challenge the pre-trial rulings and later admission of the evidence at a trial. (R. p. 49, lines 23 – p. 50, line 5).

Unlike in State v. Truesdale, 296 S.C. 368, 296 S.e.2d 528 (1982), and State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186 (1990), upon which Appellant relies, there were no equivocal or qualifying statements made before the plea judge accepted Appellant's pleas that would render the pleas conditional. Appellant certainly did not state that he was reserving the right to appeal the pre-trial ruling despite pleading guilty. Instead, he forthrightly and unequivocally acknowledged his guilt and indicated to the plea court that he wished to plead guilty and proceed with his sentence so that he could have a chance of returning later to his family. Unlike in State v. O'Leary, Appellant did not seek permission of the plea court to condition acceptance of his plea upon the right to appeal. The record before this Court is completely silent about any qualification or condition related to appeal. Appellant made absolutely no statement about appealing during the plea or sentencing. Appellant's claim for the first time on appeal that his plea was

conditional is without support in the record before this Court. The mere filing of a notice of appeal after the acceptance of the plea and sentencing does not render the plea conditional. See State v. Thrift, 378 S.C. 70, 661 S.E.2d 373 (2008), citing State v. Downs, 361 S.C. 141, 604 S.E.2d 377 (2004). If that were the case, hundreds of pleas would be rendered conditional because the defendant exercised the statutory right to appeal.

The filing of the notice of appeal does not relate back to the plea proceedings and make conditional that which was not so at the time the plea was accepted. Like sentencing, an appeal, in and of itself, is a separate issue from guilt, is a subsequent phase of the criminal process and does not make a unconditional plea conditional without the defendant expressly attempting to reserve the right to appeal an issue during the guilty plea proceeding. See Easter v. State, 355 S.C. at 79, 584 S.E.2d at 117; In re Johnny Lee W, 371 S.C. 217, 638 S.E.2d 682 (2006). That did not occur in this case. The issue is without merit. Appellant's convictions and sentences must be affirmed.

CONCLUSION

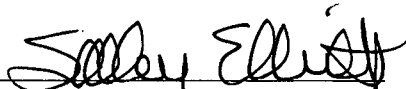
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
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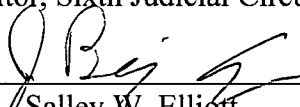
CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent complies with Rule
211(b), SCACR.

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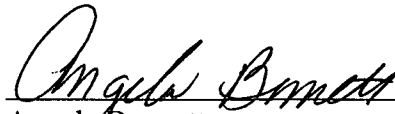
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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 22nd day of January, 2014.



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