

ORIGINAL

RECEIVED

NOV 04 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WANDA E. PATTERSON,

APPELLANT

APPELLATE CASE NO. 2013-000062

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
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

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	7
PETITION TO BE RELIEVED AS COUNSEL	8

TABLE OF AUTHORITIES

Cases

<u>State v. Franklin</u> , 267 S.C. 240, 226 S.E.2d 896 (1976)	6
--	---

STATEMENT OF ISSUE ON APPEAL

Did the plea court err in allowing the solicitor to argue during sentencing about Appellant's alleged getaway while refusing to allow Appellant to rebut the solicitor's claims where the Appellant was only pleading to a charge of financial transaction card theft?

STATEMENT OF THE CASE

The Pickens County grand jury indicted Appellant Wanda Patterson on one count of financial transaction card theft. R. 21. On November 29, 2012, Appellant appeared before the Honorable G. Edward Welmaker for a plea hearing. Teal Johnson represented Appellant and Jenny Barwick represented the State. Tr. 1.

The court found a sufficient factual basis existed for Appellant's guilty plea. Tr. 9, l. 23 – Tr. 10, l. 3. The court sentenced Appellant to five years imprisonment suspended to twenty-eight months service with the remainder as probation. Tr. 16, ll. 1-9. On December 5, 2012, Appellant filed a motion to reconsider her sentence. The plea court denied the motion on December 19, 2012. R. 18.

ARGUMENT

THE PLEA COURT ERRED IN ALLOWING THE SOLICITOR TO ARGUE DURING SENTENCING ABOUT APPELLANT'S ALLEGED GETAWAY WHILE REFUSING TO ALLOW APPELLANT TO REBUT THE SOLICITOR'S CLAIMS.

STATEMENT OF FACTS

During Appellant's plea hearing for a charge of financial card transaction theft, the State alleged that on March 11, 2012, Appellant accosted in a grocery store parking lot a woman loading groceries in the rear of her vehicle. After briefly speaking to the woman, and as she walked away alongside the side of the vehicle, Appellant reached inside and grabbed the woman's wallet off of the driver's seat. The solicitor for the State added, "When the victim tried to get her wallet back, the Defendant got into her car and fled, almost dragging the victim with her vehicle." Tr. 6, ll. 16-25. In response, Appellant told the court, "I took the billfold out of her car, but there was no confrontation at all." Tr. 7, ll. 2-7.

After accepting Appellant's plea and for purposes of sentencing, the solicitor told the court that an unrelated witness said she observed the victim trying to get her wallet back, "but [Appellant] fled, almost dragging [the victim] with the vehicle." The solicitor also told the court that the victim gave the statement, "I reached in the window and I grabbed her, got her by the neck of her sweatshirt. She started driving off with me still holding on." Tr. 13, l. 24 – Tr. 14, l. 23. Counsel for Appellant responded that Appellant was pleading guilty to the financial transaction card theft and "adamantly den[ied] that [Appellant] dragged or intentionally dragged this victim –." The plea court interrupted counsel stating it was not considering that matter. Tr. 15, ll. 14-22.

DISCUSSION

The plea court erred in allowing the solicitor to argue during sentencing about Appellant's alleged getaway while refusing to allow Appellant to rebut the solicitor's claims. A court commits reversible error in imposing on a defendant a sentence that is the result of prejudice, oppression, or corrupt motive. *State v Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976).

If justice is to be done, a sentencing judge should know all the material facts. Fair administration of justice demands that the judge will not act on surmise or suspicion but will impose sentences with insight and understanding. Hence, the judge is required to listen and give serious consideration to any information material to punishment. If a defendant's record, as publicly disclosed, is incorrectly reported, defendant should have an opportunity to explain any discrepancy and inform the court concerning the alleged errors.

Id at 246, 226 S.E.2d at 897.

In this case, for purposes of the court's acceptance of the plea, the solicitor summarized the facts relating to the offense charged. However, she thereafter wrongly made claims beyond the crime charged, alleging that Appellant almost dragged the victim with her vehicle as she drove away. Not only was the information irrelevant to the charge at hand, but it was also unfairly prejudicial insofar as it was a naked claim without any evidentiary support about an act that Appellant ostensibly never actually did. Appellant brought the problem to the court's attention when she denied the allegation. Nevertheless, after accepting the plea, the court wrongly allowed the solicitor to revisit the allegations, *a fortiori* through hearsay from the victim and an anonymous informant. Indeed, the solicitor went further than she had previously and attempted to characterize Appellant as

violent and reckless by stating the victim said she grabbed Appellant's shirt and was still holding on when Appellant drove away. Because the court should have known the solicitor's diatribe was irrelevant to the proceedings and unfairly prejudicial, it should have interrupted and stricken the claims from the record. Instead, the court further erred by interrupting counsel for Appellant when she attempted to respond to the solicitor's claims.

The plea court wrongly heard information immaterial to Appellant's punishment. Further, the solicitor misleadingly reported Appellant's record, and Appellant was denied her entitlement to an opportunity to explain the inaccuracy. Accordingly, the plea court's sentence arose from oppression and prejudice, and this Court should remand for a new sentencing hearing.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court remand her case for a new sentencing hearing.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

V.

WANDA E. PATTERSON,

APPELLANT

APPELLATE CASE NO. 2013-000062

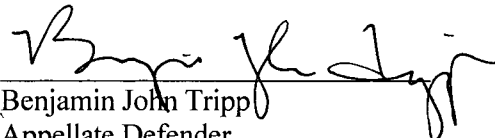
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Wanda E. Patterson states:

1. He is 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 trial before Judge G. Edward Welmaker, which was held on November 29, 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 trial.

WHEREFORE, he asks the Court to relieve him as counsel for Wanda E. Patterson.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of November, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WANDA E. PATTERSON,

APPELLANT

APPELLATE CASE NO. 2013-000062

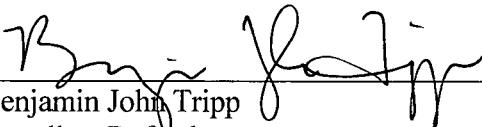
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Transcript of November 29, 2012;
- (3) Motion to Reconsider Sentence.

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

November 4, 2013



Benjamin John Tripp
Appellate Defender

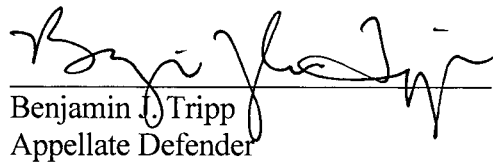
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

November 4, 2013


Benjamin J. Tripp
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED

NOV 04 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 04 2013

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

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

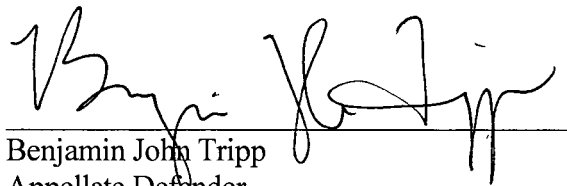
WANDA E. PATTERSON,

APPELLANT

APPELLATE CASE NO. 2013-000062

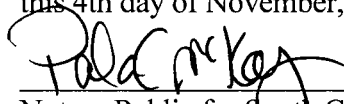
CERTIFICATE OF SERVICE

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 Wanda E. Patterson, #309578 at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 4th day of November, 2013.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of November, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.