

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 12 2014

SC Court of Appeals

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ROBERT BISHOP,

APPELLANT

APPELLATE CASE NO. 2014-001616

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy 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

TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT

The trial judge erred in failing to hold a restitution hearing in order to calculate the proper amount owed to the business company in question before ordering appellant’s restitution payment.....5

CONCLUSION6

PETITION TO BE RELIEVED AS COUNSEL7

TABLE OF AUTHORITIES

Cases

State v. Fussell, 299 S.C. 162, 383 S.E.2d 1 (1989)..... 6

State v. Rhinehart, 312 S.C. 36, 430 S.E.2d 536 (1993)..... 6

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in failing to hold a restitution hearing in order to calculate the proper amount owed to the business company in question before ordering appellant's restitution payment.

STATEMENT OF THE CASE

Appellant Michael Robert Bishop was convicted of grand larceny per jury trial held during the July 2014 term of the Greenville County General Sessions Court before Judge C. Victor Pyle, Junior. Appellant was sentenced to imprisonment for a period of ten years. Timothy Sullivan represented appellant at trial and Assistant Solicitor Sloan Ellis appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in failing to hold a restitution hearing in order to calculate the proper amount owed to the business company in question before ordering appellant's restitution payment.

At trial, Cathy Smalley Oliver testified that she worked as a clerk at a check cashing company¹ in Greenville, South Carolina, on October 4, 2010, and that when she reported to her job there on that date, appellant, who was with her at the time, came into the store with her. Oliver stated that appellant was sitting near the safe while she prepared to open the store. Minutes later, Oliver noticed that appellant had left the store and that when she tried to call him, he was unavailable. The only other person in the store at that time was the bookkeeper who was present in the store on that day. Then, Oliver stated that she realized that money from the safe was missing so she reported the theft to her manager and the police were called immediately thereafter. Later, Oliver confronted appellant at his home about this, whereinafter he admitted to taking the money. R. 46, l. 14 – R. 57, l. 25. Betsy Sease, who is owner and manager of the company, testified that a total of \$32, 191. 82 had been taken from the safe. R. 75 lines 13 – 17; R. 73, lines 21-22.

At the sentencing phase of the case, the trial judge ordered appellant to make restitution in the amount of 32,000.00 in addition to his prison sentence. R. 113, l. 12 – 16.

In this case, however, the amount of restitution assigned to appellant by the trial judge differed from the amount lost by the company by \$191.82. As a rule, if a trial

¹ Any Kind Checks Cashed Incorporated.

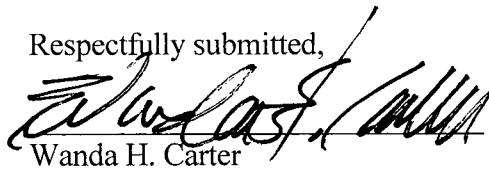
judge orders restitution, then a hearing must be held in order to determine the loss in order to present on the record a factual basis to justify the amount of restitution owed. State v. Fussell, 299 S.C. 162, 383 S.E.2d 1 (1989). See also in Fussell where the Court held it was error to assign a restitution payment amount without a determination of that amount via a hearing. Compare the case of State v. Rhinehart, 312 S.C. 36, 430 S.E.2d 536 (1993), where the Court held it was error for the judge to order payment of an unspecified amount of restitution to be paid by the defendant based on a figure determined by the solicitor only.

In the case at bar, the trial judge ordered appellant to pay restitution in an amount of loss that was different from the company's loss submitted at trial. Therefore, in order to protect appellant's interests by avoiding another or an additional amount owed assigned to him at a later date, the actual amount of restitution should have been made clear per an evidentiary hearing into the matter.

CONCLUSION

Based on the argument above, appellant requests a remand for a restitution hearing in order to accurately resolve the amount of restitution owed in the case.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of November, 2014.

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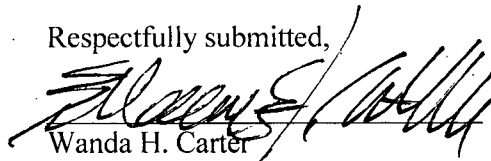
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Robert Bishop 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 C. Victor Pyle, Jr., which was held on July 17, 2014, 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 Michael Robert Bishop.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 12th day of November, 2014.

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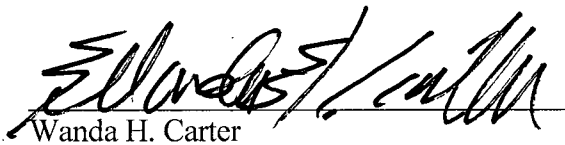
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

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

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

November 12th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

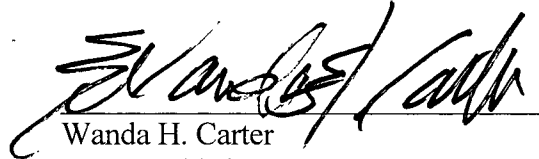
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 12, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

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Division of Appellate Defense
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Columbia, South Carolina 29211-1589

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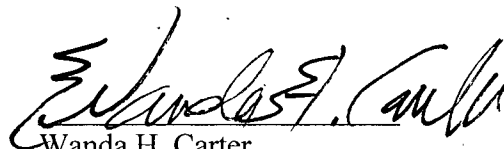
V.

MICHAEL ROBERT BISHOP,

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CERTIFICATE OF SERVICE

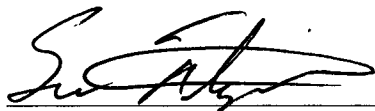
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Michael Robert Bishop, #163177 at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 12th day of November, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of November, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022