

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

Respondent,

v.

JONATHAN CANNIMORE, JR.,

Appellant.

APPELLATE CASE NO 2018-001177

ANDERS BRIEF OF APPELLANT

RECEIVED
FEB 13 2019
SC Court of Appeals

JENNIFER E. ROBERTS
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the plea judge erred by not considering mitigation raised by the defense regarding Appellant's mental deficiencies when he sentenced Appellant to thirteen years' imprisonment as recommended by the State?

STATEMENT OF THE CASE

In 2017, the Horry County Grand Jury indicted Jonathan Cannimore, Jr. (Appellant) for carjacking. R. 23. On June 11, 2018, Appellant pled guilty under *North Carolina v. Alford*¹ before the Honorable Benjamin H. Culbertson. R. 9, lines 1–6; R. 20, lines 19–20. Ralph W. Wilson, Jr., represented Appellant at the plea proceeding. R. 1. Assistant Solicitor Joshua D. Holford prosecuted the case. R. 1. Judge Culbertson sentenced Appellant to thirteen (13) years' imprisonment. R. 20, line 25–R. 21, line 3. Appellant filed a Notice of Appeal, and this appeal follows.

¹ 400 U.S. 25 (1970).

STANDARD OF REVIEW

“A trial judge generally has wide discretion in determining what sentence to impose.” *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). “It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come.” *Id.*

ARGUMENT

The plea judge erred by not considering mitigation raised by the defense regarding Appellant's mental deficiencies when he sentenced Appellant to thirteen years' imprisonment as recommended by the State.

Relevant Facts

Appellant was indicted for carjacking. On June 11, 2018, he pled guilty under *North Carolina v. Alford*. At the beginning of the plea proceeding, the plea judge asked if Appellant had received a competency evaluation, and plea counsel Wilson answered: "He has received one, Your Honor, and there are some issues that I'll disclose to the Court later, but he understands basically what's happening, Judge." R. 5, lines 3–7. When asked whether Appellant had been able to assist him in the preparation of his defense, plea counsel answered, "Yes, sir." R. 5, lines 8–10.

Later in the plea proceeding, plea counsel made the court aware that Appellant had filed a motion to put the State on notice that this was a duress case. R. 12, lines 6–8. Plea counsel related to the court that Appellant had been threatened and injured and held at gunpoint by his codefendant in order to gain his participation in the crime. R. 12, lines 10–24. Additionally, plea counsel informed the court that Appellant had been evaluated by a doctor and was found to have an IQ of 79 and had "the equivalency and did not get past, the seventh grade" R. 14, lines 3–12. Plea counsel told the court it had taken him "four or five months to get down to the meat of what really happened here because the conversation was, was elementary at best, Judge." R. 15, line 24–R.16, line 2.

The court accepted the plea under *North Carolina v. Alford*. R. 20, lines 19–24. The court followed the recommendation of the State without considering on the record any of the mitigating factors in its decision.

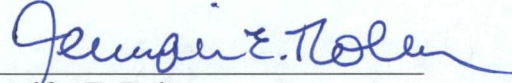
Discussion

“If justice is to be done, a sentencing judge should know all the material facts.” *State v. Franklin*, 267 S.C. 240, 245, 226 S.E.2d 896, 897 (1976). “Fair administration of justice demands that the judge will not act on surmise or suspicion but will impose sentences with insight and understanding.” *Id.* “Hence, the judge is required to listen and give serious consideration to any information material to punishment.” *Id.*

Although it is clear our Supreme Court requires the judge to listen and give serious consideration to any information material to punishment, it is apparent the judge here did not. Due to the judge not putting his considerations on the record, there is no way to know whether he acted “on surmise or suspicion” or imposed the sentence “with insight and understanding.” All that can be gathered by the reading of the record is that he went along with the recommendation of the State. The plea court erred by not considering the mitigating information presented.

CONCLUSION

Based on the above arguments, Appellant's sentence should be vacated.

A handwritten signature in blue ink, appearing to read "Jennifer E. Roberts", written over a horizontal line.

Jennifer E. Roberts
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of February, 2019.

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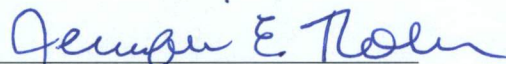
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Counsel for Jonathan Cannimore, Jr. states:

- (1) She is an 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 plea before the Honorable Benjamin H. Culbertson, which was held on June 11, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new hearing.
- (3) She has, pursuant to *Anders v. California*, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the hearing.

WHEREFORE, she asks the Court to relieve her as counsel for Jonathan Cannimore, Jr.

Respectfully Submitted,



Jennifer E. Roberts
Appellate Defender

This 13th day of February, 2019.

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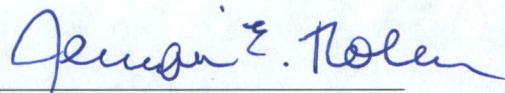
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Transcript dated June 11, 2018;
- (2) Indictment and sentence sheet.

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

February 13, 2019.



Jennifer E. Roberts
Appellate Defender

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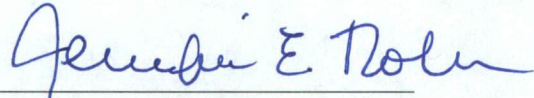
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CERTIFICATE OF COUNSEL

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."

February 13, 2019.



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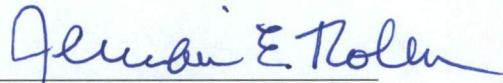
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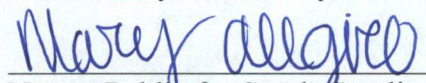
CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on Jonathan Cannimore, Jr., #376736, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 13th day of February, 2019.



Jennifer E. Roberts
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of February, 2019.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.