

RECEIVED
AUG 26 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Hon. J. Derham Cole, Circuit Court Judge

MR. WILLIE JAMES MOORE,

APPELLANT

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2018-000164

Appellant's
[Pro Se]

BRIEF ON THE MERITS

Mr. Willie James Moore
SCDC# 315016 (Mont. Unit)
Columbia, South Carolina 29210

Appellant, Pro se

Appellate Counsel on Record: Joanna K. Delany (Attorney for Appellant)

TABLE OF CONTENTS

Statement of Issues on Appeal 1

Statement of the Case 2

Standard of Review 3

Law/Analysis..... 4

Arguments

1. BECAUSE APPELLANT INAPPROPRIATELY WAIVE HIS CONSTITUTIONAL RIGHTS AND PLEAD GUILTY, BASED ON PROOF, THAT THE RECORD PLAINLY AND CLEARLY DISCLOSED THE INVOLUNTARY WAIVER OF [HIS] UNITED STATES CONSTITUTIONAL RIGHTS.....7

2. BECAUSE THE POTENTIAL FOR UNFAIR PREJUDICE FROM PROOF OF THE PRIOR CONVICTION TO ESTABLISH AN ELEMENT OF AN OFFENSE THE COURT ERRED WHEN IT ALLOWED SPILLOVER PREJUDICE, A GREAT RISK OF UNFAIR PREJUDICE TO THE DEFENSE IN THIS CASE.....9

3. BECAUSE IT IS ERROR TO ALLOW THE APPELLATE DEFENSE COUNSEL TO SUBMIT AND ANDERS BRIEF AND THEN TO WITHDRAW WHERE CERTIFICATION OF A MERITORIOUS ISSUE ON APPEAL DOES DRAW ATTENTION TO THE RECORD WHICH SUPPORTS THE APPEAL AND EVEN MORE SO ERRONEOUS TO ALLOW THE MOTION TO BE RELIEVED AS COUNSEL BEFORE THE COURT OF APPEALS MAKES ITS OWN EXAMINATION OF THE ENTIRE RECORD.....10

4. ACCUMULATION OF ERRORS CLAIM.....12

Conclusion.....13

Motion for Reconsideration.....12

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE LOWER COURT ERR WHEN INAPPROPRIATELY ACCEPTING A GUILTY PLEA, BASED ON PROOF, THAT THE RECORD PLAINLY AND CLEARLY DISCLOSED AN INVOLUNTARY WAIVER OF HIS UNITED STATES CONSTITUTIONAL RIGHTS?
2. WHETHER THE POTENTIAL FOR UNFAIR PREJUDICE FROM PROOF OF THE PRIOR CONVICTION USED TO ESTABLISH AN ELEMENT OF INNOCENCE CARRIES A GREAT RISK OF UNFAIR PREJUDICE TO THE DEFENSE WHEN THE COURT OF THE APPELLANTS GUILTY PLEA ERRED WHEN IT ALLOW SPILLOVER PREJUDICE IN THIS CASE?
3. WHETHER IT IS ERROR TO ALLOW THE APPELLATE DEFENSE COUNSEL TO SUBMIT AND ANDERS BRIEF AND THEN TO WITHDRAW WHERE CERTIFICATION OF A MERITORIOUS ISSUE ON APPEAL DOES DRAW ATTENTION TO THE RECORD WHICH SUPPORTS THE APPEAL AND EVEN MORE SO ERRONEOUS TO ALLOW THE MOTION TO BE RELIEVED AS COUNSEL BEFORE THE COURT OF APPEALS MAKES ITS OWN EXAMINATION OF THE ENTIRE RECORD?
4. WHETHER ACCUMULATION OF ERRORS CLAIM WARRANTS REVERSAL?

STATEMENT OF THE CASE

On October 2nd 2016, Appellant was arrested and charged with Burglary 1st Degree. On December 9th 2016, Appellant was indicted by a Spartanburg County grand jury for the 1st-degree Burglary. Appellant was then assigned Charles Snyder of the public defender office because of his indecency. Please note that the Appellant asserts that he never spoke with public defender Snyder.

In January 2017, Appellant was then assigned another public defender of that same office; a Mr. Daniel James MacDonald. Appellant claims that when he first spoke with Daniel James MacDonald, Esquire, who then advise him that the State wanted Appellant to plea to the charged crime of the Burglary in the 1st Degree. Appellant however, told Mr. MacDonald, that he was well aware that he was supposed to have due process rights which includes the preliminary hearing and certainly a bond hearing. Appellant states that Mr. McDonald met him one other time to tell him that he might be able to get him a bond fine, so that the Appellant could hire a private attorney for the said charge of Burglary in the 1st Degree.

Although Appellant believed that counselor MacDonald apparently would stand by his words when he alluded to Appellant that he would get him a bond in March 2017, unfortunately he didn't and when he did show up after the schedule bond hearing, only to tell Appellant that the State was ready for trial.

Appellant was taken to the Spartanburg County Judicial Court, initially for a trial or plea unbeknownst to him, and he then verbally and physically refused to go into the courtroom with Mr. McDonald, On April 10th 2017.

Appellant then involuntarily plead guilty as indicted before The Honorable J. Derham Cole, Circuit Court Judge. Spencer Smith and Jennifer Jordan appeared on behalf of the State. On Record was Daniel McDonald and Charles Schneider, both of the County Public Defender's Office representing Appellant.

Now at 12:30 p.m., Appellant was taken in the courtroom going that he could ask for a continuance to retain a paid attorney, the Court then gave the Appellant until 2:30 p.m., in order to obtain Counsel, he then was placed in the holding cell and at 2:30 p.m., Appellant was coerced to plea by the Court and the matter what adjourned until April 12th 2017. On that date the Court announce it sentence of 18 years imprisonment for the Burglary charge.

On April 21st 2017, plea counsel (MacDonald), filed a Motion for Reconsideration of the sentence of the Court, but on January 26th 2018, the Court denied the Motion after 8 months and without a hearing.

On Appeal Appellate Defender, Joanna K. Delany submitted a Brief with Merit and then on the next page stated the complete opposite of get original conclusion and then submitted a petition to be relieved as counsel, on February 01, 2019.

The South Carolina Court of Appeals notified the Appellant to allow him to submitted any thing of Record unto the Court, after (3) Motions for Enlargement of Time and certainly without any purposeful delay on the part of the Appellate this appeals follows:

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). "The State may only appeal a new trial order if, in

granting it, the trial judge committed an error of law." *State v. Smith*, 383 S.C. 159, 165, 679 S.E.2d 176, 180 (2009) (quoting *State v. Johnson*, 376 S.C. 8, 10, 654 S.E.2d 835, 836 (2007) (citing *State v. Des Champs*, 126 S.C. 416, 120 S.E.2d 491 (1923)) (quotations omitted). "A trial judge has the discretion to grant or deny a motion, and his decision will not be reversed absent a clear abuse of discretion." *Johnson*, 376 S.C. at 11, 654 S.E.2d at 836 (citing *State v. Simmons*, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983)).

LAW/ANALYSIS:

The Appellant argues the plea court abused its discretion by denying the Motion for Continuance, and then the results of the denial deprived Moore of Constitutionally adequate means to fix the matter.

The Appellant asserts his rights were violated because the plea court declined to find respectable means for Moore to seek counsel and his verbal statement, on the Record, clearly shows the fundamental errors against the plea bargain process pertaining to the elements of the charged crime which did caused a direct discovery violation as well as the lack of investigation.

I. Preservation

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001). Thus, on review, the appellate court is limited to determining whether the trial court abused its discretion. *Id.* at 6, 545 S.E.2d at 829. A trial court abuses its discretion when its ruling is unsupported by the evidence or controlled by an error of law. *State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct.App.2002). "In general, rulings on the admissibility of evidence are within the trial court's sound discretion and will not be disturbed on appeal

absent an abuse of that discretion resulting in prejudice to the complaining party.” State v. Halcomb, 382 S.C. 432, 443, 676 S.E.2d 149, 154 (Ct.App.2009).

Moore’s request for a continuance was preserved for Review because the lower court ruled in the motion by dismissing such. The South Carolina Court of Appeal should entertain this issue because the argument is preserved. "Our appellate courts have consistently found issues preserved for review when the issue was raised to and ruled upon by the trial court." State v. Cain, 419 S.C. 24, 33-34, 795 S.E.2d 846, 851 (2017). *See, e.g., State v. Williams*, 417 S.C. 209, 228 n.10, 789 S.E.2d 582, 592 n.10 (Ct. App. 2016) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." (quoting State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003))).

"While a party may not argue one ground at trial and another ground on appeal, State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989), we do not require a party to use the same language on appeal as it did at trial, Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011)." *Id.* at 33-34, 795 S.E.2d at 851. "A party may not argue one ground at trial and an alternate ground on appeal." Dunbar, 356 S.C. at 142, 587 S.E.2d at 694.

The plea court denied Moore's motion for a continuance for "the reasons discussed at the April 12, 2017 sentencing hearing." Therefore, whether the trial court erred as a matter of law by the totality of denying Moore’s motion for a continuance is preserved for appellate review.

II. Appealability

As a viable issue, "When determining whether an error of law exists, and therefore whether the State has the right to appeal, it is necessary to consider the merits of the case." *Id.* at 166, 679 S.E.2d at 180 (quoting Johnson, 376 S.C. at 11, 654 S.E.2d at 836).

Additionally, the statements that were made by Moore in open court was material to the defendant's guilt of the Burglary charge of 1st Degree. Therefore, this fine Court should find that the lower court committed a manifest abuse of discretion amounting to an error of law in denying the motion for a continuance. The lower court discretion is respected only if adequate tools were provided for Moore during his (120) minutes in the Courts holding cell.

The evidence of Moore's sentence and his current confinement, because of commitment orders by Spartanburg's Clerk of Court, shows the prejudice and the many clear errors. The decision to Reconsider the plea bargain is soundly within the plea court's discretion and this court "is confined by an extremely limited 'abuse of discretion' standard of review." *Smith*, 383 S.C. at 167, 679 S.E.2d at 181.

Based on this issue and the review of the record, the Appeals Court should make an opinion that there is evidence to support the Appellant's claims, that he involuntarily and unknowingly plead guilty to the Burglary 1st Degree, without all essential elements being met, therefore the Appellant now would like to initiate a need for a jury trial on the indicted charge, and the current conviction and sentence be reversed and remanded to the lower court, primarily with upholding the integrity of the court. Protecting the integrity of the judicial system is fundamental to administering justice. In addition to recognizing "the necessity to uphold the integrity of our judicial system," *Id.* at 168, 679 S.E.2d at 181, we likewise emphasize the need for respect of the constitutional principles raised in the handling of these matters. The trial court committed error of law in entertaining the motion but then denying the continuance.

FIRST ARGUMENT

BECAUSE APPELLANT INAPPROPRIATELY WAIVE HIS CONSTITUTIONAL RIGHTS AND PLEAD GUILTY, BASED ON PROOF, THAT THE RECORD PLAINLY AND CLEARLY DISCLOSED THE INVOLUNTARY WAIVER OF [HIS] UNITED STATES CONSTITUTIONAL RIGHTS

The Appellant contends in his first assignment of error by bring polite as possible when stating that the lower court, has erroneously deprive him of an opportunity for fair and impartial proceedings, being that, it was error plain on the face of the record, for the lower court to accept plea bargains/pleas of guilty without affirmative showing that the plea was intelligently and voluntarily made. These very types of procedural errors are not harmless under the laws of the land in the United States and shall be considered explicitly injurious.

Appellate asserts that he explained to the lower court at the guilty plea hearing on a date of April 10, 2017that he wanted a continuance because he needed ample defense, Discovery, and the need of counsel substitution. See < transcript >

The Appellant, was so entitled to a continuance, being that the evidence of prior convictions was critical to the issue of his guilt of burglary 1st degree, and the evidence could have exculpated the Appellant from that crime of first-degree. Where there is clear showing that other evidence on the behalf of the Appellant could have produced, and any other point could have been raised had more time been granted for the purpose of preparing the case for a meaningful defense and possibly for trial, being that the Appellant never admitted to the

elements of the charge of burglary 1st degree and a denial of the motion for a continuance is an abuse of discretion.

In the state of South Carolina entering a guilty plea results in a waiver of several constitutional rights, and therefore, the due process clause requires that guilty pleas are entered voluntarily, knowingly, and intelligently by defendants.

Defendants entering a guilty plea must be aware of the privilege against self-incrimination, the right to a jury trial, the right to confront one's accusers, the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.

When determining issues related to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea.

Now, in this present case, appellants guilty plea was neither voluntary nor knowingly. The trial judge did not affirming Italy ask for an admission of guilt, nor did the judge advised the appellant of crucial elements of the charge offenses. The judge failed to inform the appellant that the burglary 1st degree carry a mandatory minimum sentence of 15 years thru Life without the possibility of parole, and Appellant did not fully understand the nature of the constitutional rights being waived and that he had asked for a motion for continuance to obtain a viable defense, being that he only verbally spoken to the appointed plea counsel Mr. David MacDonald, a public defender, a total of (2)two times in the 90 days that he's been appointed, and the record also clearly shows that appellant was only allowed less than (2) two hours to obtain counsel, and was not given the adequate provisions to do so.

The guilty plea judge abuse his discretion when only allowing the appellant 180 minutes to find, pay, and contact a lawyer. Now being that there what is no tools adequately enough to

do so because of the confinement being in the holding cell of the courthouse. This deprivation of those necessities and or tools was very critical and a fair opportunity for the court to have rescheduled the proceedings, because the discovery of the case in Chief was incomplete, in part of the deficiency of the attorney for refusing to comply with the preparation, the case should have been removed from the guilty plea calendar of the term of December 2016 and reset to a subsequent term of Court. However, this action did cause prejudice onto the Appellant and was typically to the sound discretion of the judge.

Appellant asserts that the trial court did not give him appropriate advice regarding his rights. The elements of burglary 1st degree did negate the guilty plea, and a challenge to the sufficiency of the factual basis for a plea is generally premised upon a failure of a defendant to admit to all of the elements of a crime, there for those statements made by appellant were unsupported by the elements of burglary 1st degree.

The events that occurred at the Appellant's guilty plea proceeding, did undermine the judicial system compelling interest and finality and a plea bargain system as a whole. As a matter of law Appellant prays for relief because of this very issue of not admitting guilt of all the elements of first-degree burglary.

SECOND ARGUMENT

BECAUSE THE POTENTIAL FOR UNFAIR PREJUDICE FROM PROOF OF THE PRIOR CONVICTION TO ESTABLISH AN ELEMENT OF AN OFFENSE THE COURT ERRED WHEN IT ALLOWED SPILLOVER PREJUDICE, A GREAT RISK OF UNFAIR PREJUDICE TO THE DEFENSE IN THIS CASE

Courts across the country disagree as to how to handle defendants request for guilty pleas, offers, and or stipulation to prior conviction elements of offenses. Controversy over the issue heat it up again following the United States supreme Court's decision in *Old Chief v. United States*, 519U.S. 172 (1997), where the court applied the balancing test set out in *Fed.R.Evd 703*, and held that evidence of the name it nature of a prior feeling offered to prove conviction element of an offense carries too great a risk of unfair prejudice to the defense. In the wake of *Old Chief*, many courts have been asked to take another look at the issue, and there has been significant disagreement amongst the State courts as to how to handle the potential for unfair prejudice from evidence offered to prove a prior conviction element of an offense. See, e.g., *Carter v. State*, 824 A.2d 123, 374 md. 693 (2003).(discussing divergence of Authority).

Appellant avers in his second assignment of error, that first, the absence of pertinent information pertaining to the prior conviction to be used as the element of the crime might cause a reasonable factfinder to question the criminality if the defendant's conduct and may encourage oneself to engage in nullification when considering the prior conviction element.

Second, the prior conviction stipulation limits the fact finding and thereby interferes with the courts role as the respective representative of the public's interest as well as equality. The factfinder cannot condemn behavior if it is unaware of the true nature of the crime charged.

THIRD ARGUMENT

BECAUSE IT IS ERROR TO ALLOW THE APPELLATE DEFENSE COUNSEL TO SUBMIT AND ANDERS BRIEF AND THEN TO WITHDRAW WHERE CERTIFICATION OF A MERITORIOUS ISSUE ON APPEAL DOES DRAW ATTENTION TO THE RECORD WHICH SUPPORTS THE APPEAL AND EVEN MORE SO ERRONEOIS TO ALLOW THE

MOTION TO BE RELIEVED AS COUNSEL BEFORE THE COURT OF APPEALS MAKES
ITS OWN EXAMINATION OF THE ENTIRE RECORD

A defendant's right to effective assistance of counsel, applies not just at trial but also on direct appeal. See Romero v. Tansy, 46 F.3d 1024 (10th Cir.1995). A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as "an active advocate on behalf of his client." see Anders v. California, 386 U.S. 738, 744 (1967). Cause shown because counsel rebuffed Petitioner's request to raise issue on direct appeal. See Ratliff v. U.S.; 999 F.2d 1023, 1026 (6th Cir.1993).

Appeals court across the country, but recently in Ohio says attorneys can no longer withdraw if appeal is frivolous. Decided on April 23rd 2018 <see> State vs Cruz-Ramos, 2018-Ohio-1853. Admissions or Exclusion of evidence is left, to the sound discretion of the trial judge who decision will not be reversed on appeal absent an abuse of discretion. State v. Lee, 732 S.E.2d 2283.

The lower court err by abusing its discretion when it denied appellant a more visible, understandable, and fair dispositional process. Clear and Present Danger is on the record and plainly shows: due process violations, cruel and unusual punishments, and defective prior convictions. <see> Rule 609(B) which: establishes a presumption against admissibility. A reasonable person must/shall consider the totality of the issue such as challenging the elements of the crime and also shows that the counsel, stopping the plea to explain the crime, and because of non-compliance with the Rules unless the judge(s) finds that the non-compliance was substantially justified.

Failing to move for a continuance, and not met with an objection, as a matter of law, because the verbal continuance for a 2 hour period, Shows the prejudice of not having a phone

present to call or even contact a lawyer. The plea judge knew if he was to send appellant into the holding cells there wouldn't be any access to contact no one, never mind an attorney. However, what was present, was the irrational urge that might mitigate the defendant's guilt of the first-degree statute. Appellate questions the court by asking if the crime(s) committed is a product of an abnormal mind, or the result of social and economic factors?

Under criminal law this case shows how merely come in an illegal act is not enough for conviction. The law demands that various physical and mental elements must be proven before a person may be convicted of a crime. However all criminals suffer from psychological deficits or else they would not have committed their crime

Motion to Reconsider Sentence:

Under the sixth amendment any fact other than a prior conviction which is necessary to support a sentence exceeding the maximum authorized by the facts established by plea of guilty or a jury verdict must be admitted by the defendant prove to a jury beyond a reasonable doubt.

Booker, 543 U.S. at 255, also Fed.R.Crim.Proc 52(a)

There was no question that more had committed a crime to question that should have been picked at/or forced to look upon West to decide what was Maurice degree of criminal responsibility could injury really be sure whether the motor was or an array rational numbers that might mitigate defendant's guilt contested there was no violence in this burglary, (transcript page 23) also see: U.S. v. Berry, 553 f.3d 273,282 (3d.2009)(play error werebear arrest records used as evidence of prior crimes to impose elevated sentence); U.S. v. Slade, 631 f.3d 185, 191-92 (4th Cir. 2011)(plain error we're Court erroneously applied enhancer results on an excessive sentence); U.S. v. Arbolaez, 450 f.3d 1283, 1294-95(11th Cir. 2006)(constructive denial of Rights

council when council was denied opportunity to argue the evidence did not establish elements of crime, not subject to harmless error analysis); *U.S. v. Booker*, 543 U.S. 220(2005)(constitutional Booker errors occur when sentencing enhancement are imposed on the basis of judge found facts).

Fourth Argument

ACCUMULATION OF ERRORS CLAIM

In his final and one of the most important assignment of errors, appellant contends that even if no individual error warrants reversal the effect of such errors warrants the reversal of his conviction or modification of his sentence apparent contest the sufficiency of the evidence as it pertains to the prior offense of burglary more prejudicial than probative prior conviction was the only evidence presented during the sentencing phase, and appellant did not receive sufficient notice of the evidence to be the appellate Court has to conclude independently regardless of counsel conclusion whether or not the pill has for it can discuss the pill *Turner v. State*, 670 S.E.2d 373 (2008); *State v. McKennedy* (2002).

Having reviewed the entire record and applicable law apparent praised at the South Carolina court of appeals reverses the lower Court's commitment orders and fairness and mercy being that there does exist marriages claims and questions of law that needs to be determined there for appellant mr. Willie James Moore ask for an oral argument or cordially finding multiple errors warrants reversal or modification which is necessary

22049305.1.16

CONCLUSION

For the reasons stated above, and under [Olano] test for plain error Review before Appellate Court can correct error not raised at trial, there must be “erroe” that is “plain” and that affects substantial rights. See Johnson v. United States, 520 U.S. 461 (1997); Fed.Rules.Crim.Proc Rule 52(b), 18 U.S.C.A.; and that this Court should reverse the judgment of the circuit court, by first that's not my name reconsidering the appellate defense motion to be relieved back ordering a Meritus brief.

Respectfully submitted,

August 06, 2019

/s/ _____

Mr. Willie James Moore

SCDC# 315016 (Mont. Unit)
Columbia, South Carolina 29210

Appellant, Pro se

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
LETTERSTREAM

The Moore Family
C/O Willie J. Moore
4460 Broad River road
Columbia SC 29210



0002204805000910
South Carolina court of Appeals
C/O Clerk of Court
1220 Senate Street
Columbia SC 29201
USA

RECEIVED
AUG 26 2019
SC Court of Appeals

75 GAC7AF4 29201

