

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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JUN 02 2014

SC Court of Appeals

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY T. BROWN,

APPELLANT

APPELLATE CASE NO. 2013-002087

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

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## **TABLE OF AUTHORITIES**

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### **STATEMENT OF ISSUE ON APPEAL**

The trial judge erred in allowing the solicitor to present irrelevant and prejudicial matter at appellant's sentencing proceeding because this information was likely processed and considered before a term of imprisonment was pronounced in the case.

### STATEMENT OF THE CASE

Appellant Jeffrey Thomas Brown was convicted of attempted armed robbery per jury trial held during the September, 2013 term of the Florence County General Sessions Court before Judge D. Craig Brown. Appellant was sentenced to imprisonment for a period of fifteen years. Daniel T. Jordan represented appellant at trial, and Assitant Solicitor John C. Jepertinger appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows.

## ARGUMENT

The trial judge erred in allowing the solicitor to present irrelevant and prejudicial matter at appellant's sentencing proceeding because this information was likely processed and considered before a term of imprisonment was pronounced in the case.

At trial, Teresa L. Swanson, who was working as a manager of a Kangaroo Express Store in Johnsonville, South Carolina, testified that at 4:30 a.m. on October 1, 2012, a man entered the store while holding a pocketknife and a plastic bag and ordered her to put money from the register into the bag. Swanson stated that she responded by quickly pulling up a club from underneath the counter and raising it up and pushing the panic button simultaneously. The man then said "s---" and fled. R. 41, l. 12 – 45, l. 19. Swanson identified appellant as the perpetrator on the surveillance tape photographs and in court at trial. R. 46, l. 10-15, R. 48, lines 1-15.

State's witness Michael J. Christian testified that he was employed as a cashier at the Kangaroo Express Store in question on the morning these events occurred and witnessed the male entering the store and demanding money. Christian testified that he saw the perpetrator exit the store and enter a truck, and then saw the driver of the truck speeding off. R. 57, l. 8 – p. 61, l. 6; R. 62, lines 2-14.

Police officer Ron Douglas stated that his investigation into the case led to appellant was the man who entered the store and ordered Swanson to surrender the money from the cash register. Ultimately, Douglas arrested appellant in connection with the incident. R. 66, l. 7 – R. 70, l. 16.

Matthew Venters testified that he and appellant, who is his stepbrother, were riding in his father's vehicle on the early morning hours of October 31, 2012, when they stopped at the Kangaroo Store in question per the plan to rob the store. Venters stated that appellant went into the store armed with a pocketknife. Venters stated that he drove off after appellant got back in the truck after exiting the store. R. 78, l. 19 – R. 83, l. 7.

At appellant's sentencing proceeding, the solicitor in effect praised Venter's behavior as admirable in comparison to appellant's behavior because accomplice Venters freely admitted guilt without requesting a trial and was forthcoming regarding the truth about the case, and then pled guilty. The solicitor in effect highlighted appellant's request for a jury trial and the inference was that appellant's behavior was less than admirable because he challenged the state's case by not pleading guilty. This information regarding Venter's succumbing to the state's charge was irrelevant to appellant's sentencing procedure. The solicitor's comments in question follow:

And, you know, the distinction between what Mr. Brown did and Mr. Venters, and Mr. Venters as soon as he approached – The chief approached him at Johnsonville High School, he fessed up to his involvement in this, to the burglary that I think they were involved with, and the breaking and entering motor vehicles that they were also involved with that evening. So, I mean, there is that distinction, your Honor. R. 127, lines 14 -21.

A sentencing judge should know all material facts, including any information material to punishment and the defendant's prior record prior to sentencing. State v. Franklin, 276 S.C. 240, 226 S.E.2d 896 (1976). Also, the Franklin Court cited to the holding in Townsend v. Burke, 334 U.S. 736 (1948), where the United States Supreme Court held that due process at sentencing is violated if a trial judge sentences the defendant

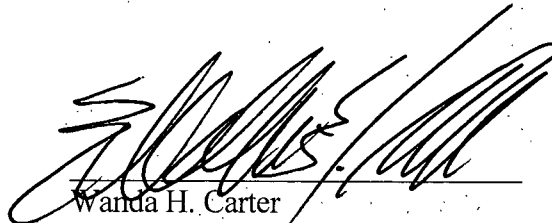
“on the basis of assumptions concerning his criminal record which were materially untrue.”

In the case at bar, the judge erred in allowing the solicitor to preach on his view as to how much less trouble Venters was to deal with in this case as opposed to appellant, who did not plead guilty, but rather exercised his right to a jury trial. Clearly, the convenience of the state's handling of Venters case bore no relevance on factors that should have been considered on the question of how appellant should be sentenced. Also, information regarding prior crimes appellant and Venters allegedly committed, which were independent of the crime at bar, without documentation of the same added to the prejudice. Appellant's sentencing proceeding was unfair and in violation of the Fourteenth Amendment Due Process Clause.

#### CONCLUSION

Based on the foregoing argument, appellant requests that his case be remanded for a new sentencing hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of June, 2014.



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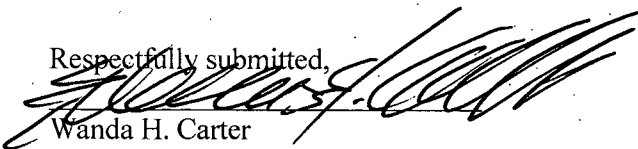
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Counsel for Jeffrey Thomas Brown states:

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 D. Craig Brown, which was held on September 19, 2013, 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 Jeffrey Thomas Brown.

Respectfully submitted,

  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR APPELLANT

This 2nd day of June, 2014.

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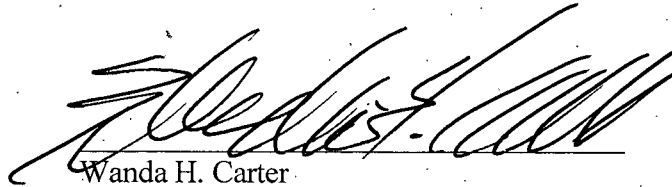
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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.

June 2, 2014.



Wanda H. Carter  
Deputy Chief Appellate Defender

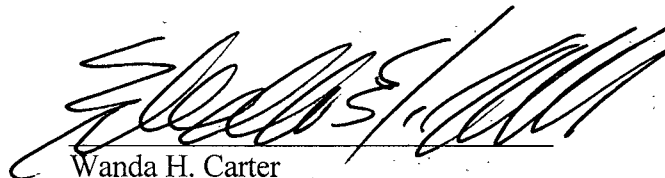
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

Attorney for Appellant

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."

June 2, 2014.



Wanda H. Carter  
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense  
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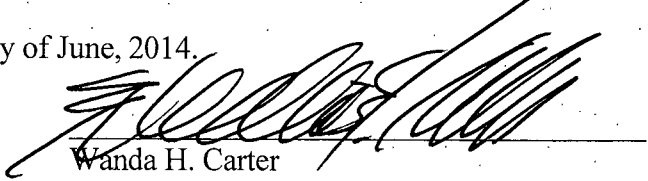
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CERTIFICATE OF SERVICE

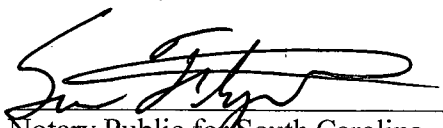
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Jeffrey Thomas Brown, #338329 at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 2nd day of June, 2014.

  
Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
This 2nd day of June, 2014.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2022.