

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LESLIE MICHAEL MARTIN,

APPELLANT

APPELLATE CASE NO 2018-001663

ANDERS BRIEF OF APPELLANT

VICTOR R SEEGER
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TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT

The plea court erred when it accepted Appellant’s guilty plea to discharging a firearm into a dwelling where Appellant admitted to using a pellet gun in the alleged incident, where a pellet gun does not fit the definition of firearm under S.C. Code Ann. 16-23-440(A) and 16-23-405(A) because a pellet gun does not propel a project tile “through the energy of an explosive.”4

Relevant Facts4

Discussion4

CONCLUSION7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

<u>Blackledge v. Perry</u> , 417 U.S. 21, 30 (1974).....	5
<u>Boykin v. Alabama</u> , 395 U.S. 238 (1969)	5
<u>Class v. U.S.</u> , 138 S.Ct. 798 (2018).....	5, 6
<u>Commonwealth v. Hinds</u> , 101 Mass. 209, 210.....	5
<u>Pittman v. State</u> , 337 S.C. 597, 524 S.E.2d 623 (1999).....	5
<u>Sandstrom v. Montana</u> , 442 U.S. 510 (1979)	6
<u>State v. Cantrell</u> , 250 S.C. 376, 158 S.E.2d 189 (1967)	3
<u>State v. Lopez</u> , 352 S.C. 373, 74 S.E.2d 210 (Ct. App. 2002)	3
<u>State v. Riddle</u> , 278 S.C. 148, 292 S.E.2d 795 (1982)	3
<u>State v. Rikard</u> , 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006).....	3

Statutes

S.C. Code Ann. 16-23-405 (A).....	1, 4, 5, 6
S.C. Code Ann. 16-23-440 (A).....	1, 4, 5, 6

STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred when it accepted Appellant's guilty plea to discharging a firearm into a dwelling when Appellant only admitted to using a pellet gun in the alleged incident, where a pellet gun does not fit the definition of firearm under S.C. Code Ann. 16-23-440(A) and 16-23-405(A) because a pellet gun does not propel a projectile "through the energy of an explosive?"

STATEMENT OF THE CASE

During the October 2017 term, the Florence County Grand Jury indicted Appellant for discharging a firearm into a dwelling. R. 32.

On June 26, 2018, Appellant pled guilty before the Honorable Michael G. Nettles. R. 1. William “Vick” Meetze represented Appellant. Id. John Jepertinger represented Appellant. Id.

Judge Nettles accepted Appellant’s guilty plea as freely and voluntarily made. R. 10, ll. 3 – 7. Appellant was sentenced to ten years’ imprisonment suspended upon service of six years’ imprisonment and two years’ probation. R. 23, ll. 8 – 16.

On September 4, 2018, a reconsideration hearing was held before Michael G. Nettles. R. 25. Vick Meetze represented Appellant. Id. John Jepertinger represented the state. Id. Judge Nettles denied Appellant’s motion to reconsider his sentence. R. 30, ll. 13 – 15.

STANDARD OF REVIEW

“The withdrawal of a guilty plea is generally within the sound discretion of the trial judge.” State v. Rikard, 371 S.C. 295, 301, 638 S.E.2d 72, 75 (Ct. App. 2006) (quoting State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982)). “An abuse of discretion occurs when a trial judge's decision is unsupported by the evidence or controlled by an error of law.” Id. (citing State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct. App. 2002)). “A determination the plea was voluntarily entered ‘will normally show the trial judge did not abuse his discretion.’” Id. (quoting Riddle, 278 S.C. at 150, 292 S.E.2d at 796). See also State v. Cantrell, 250 S.C. 376, 378, 158 S.E.2d 189, 191 (1967) (“A motion to withdraw a plea of guilty, and to be allowed to enter a plea of not guilty, addresses itself to the discretion of the trial judge before whom the plea is entered, and, in the absence of a clear abuse of discretion, this court will not interfere.”).

ARGUMENT

The plea court erred when it accepted Appellant's guilty plea to discharging a firearm into a dwelling where Appellant admitted to using a pellet gun in the alleged incident, where a pellet gun does not fit the definition of firearm under S.C. Code Ann. 16-23-440(A) and 16-23-405(A) because a pellet gun does not propel a projectile "through the energy of an explosive."

Relevant Facts

On April 4, 2017, Appellant allegedly discharged a "firearm" into the complaining witness' home. That morning Appellant drove by the home of the complaining witness. R. 5, l. 13 – 7, l. 6. The state purported that Appellant then used a "firearm" to fire a bullet through the complaining witness' windows. Id.

At the guilty plea hearing Appellant admitted his involvement in the incident but stated that he only used a pellet gun, not a firearm. R. 8, ll. 10 – 12. Initially, the court accepted Appellant's version of events. Id. The plea court found there was a factual basis for Appellant's guilty plea and accepted it. R. 10, ll. 3 – 7. However, at the sentencing phase the plea court now seemed to believe that Appellant used a firearm to shoot through the complaining witness' window, even though no ballistic analysis was done on the holes in the window. R. 17, ll. 14 – 18; R. 29, l. 25 – 6, l. 5.

Accordingly, Appellant admitted to conduct that did not satisfy the elements of discharging a firearm into a dwelling such that the plea court should not have accepted his guilty plea. R. 10, ll. 3 – 7.

Discussion

In the present case, the plea court erred when it accepted Appellant's guilty plea where Appellant's admissions during the guilty plea hearing did not satisfy the elements of discharging

a firearm into a dwelling. “A defendant entering a guilty plea must be aware of the nature and crucial elements of the offense.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (see Boykin v. Alabama, 395 U.S. 238 (1969)).

The discharging a firearm into a dwelling statute states, “it is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons.” S.C. Code Ann. § 16-23-440 (A). However, firearm is not defined in that section. In S.C. Code Ann. § 16-23-405 (A) the term “firearm” is defined as a rifle, shotgun, pistol, or “similar device that propels a projectile *through the energy of an explosive*.” S.C. Code Ann. § 16-23-405. (emphasis added)

A pellet gun does not “propel a projectile through the energy of an explosive.” Id. A pellet gun is defined as an “air gun” that uses compressed air to propel a projectile without involving any chemical reactions, in contrast to a firearm, which generates propulsive energy through combustion¹.

In Class v. U.S., 138 S.Ct. 798 (2018), the Supreme Court of the United States held that a guilty plea does not prohibit an Appellant from challenging the “government’s power to criminalize conduct.” Class, at 805. In other words, when a defendant pleads guilty, he does not waive his right to challenge constitutional violations where the challenge implicates “the very power of the state to prosecute the defendant.” Id. at 803. (See Blackledge v. Perry, 417 U.S. 21, 30 (1974). Moreover, the Court cited favorably the holding from Commonwealth v. Hinds, 101 Mass. 209, 210, that stated, “if the facts alleged and admitted do not constitute a crime against [the state], the defendant is entitled to be discharged.” Id. at 804.

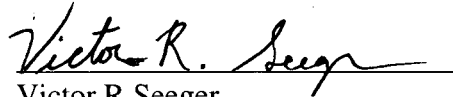
¹ Pellet Gun | Definition of Pellet Gun by Merriam-Webster, Oct. 14, 2019, <https://www.merriam-webster.com/dictionary/pellet%20gun>; Air Gun | Definition of Air Gun by Merriam-Webster, Oct. 14, 2019, <https://www.merriam-webster.com/dictionary/air%20gun>.

The Fourteenth Amendment to the United States Constitution requires the state to prove every element of a criminal offense to obtain a conviction. Sandstrom v. Montana, 442 U.S. 510 (1979). Here during the guilty plea hearing, Appellant only admitted that he used a pellet gun during the alleged incident. R. 8, ll. 10 – 12; R. 29, ll. 21 – 24. A requirement of discharging a firearm into a dwelling is that the defendant use a “firearm.” S.C. Code Ann. § 16-23-440 (A); S.C. Code Ann. § 16-23-405 (A).

Since Appellant admitted to using a pellet gun, and not a firearm, “the facts alleged and admitted” in this case do not constitute the crime of discharging a firearm into a dwelling. Class, at 804. Therefore, the state failed to prove, and Appellant did not admit to, an element of the crime to which he was charged. Accordingly, it was an error for the plea court to accept Appellant’s guilty plea to discharging a firearm into a dwelling.

CONCLUSION

By reason of the foregoing arguments, Appellant respectfully requests that this Court vacate his guilty plea and remand his case to the Florence County Court of General Sessions for a new trial.

A handwritten signature in cursive script that reads "Victor R. Seeger". The signature is written in black ink and is positioned above a horizontal line.

Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of October, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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THE STATE,

RESPONDENT,

V.

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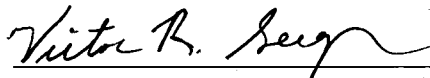
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Leslie Michael Martin 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 Michael G. Nettles, which was held on September 4, 2018, 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 Leslie Michael Martin.

Respectfully Submitted,



Victor R Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of October, 2019.

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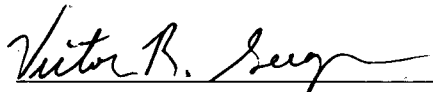
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Plea Hearing Transcript Dated June 26, 2018;
- (2) Hearing for Motion to Reconsider Sentence Dated Sept. 4, 2018; and
- (3) True-billed indictment and sentence sheet

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

October 18, 2019



Victor R Seeger
Appellate Defender

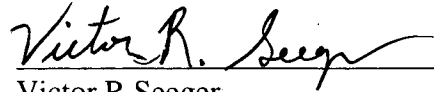
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ATTORNEY FOR APPELLANT

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."

October 18, 2019.



Victor R Seeger
Appellate Defender

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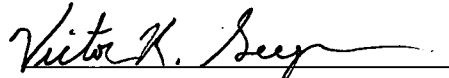
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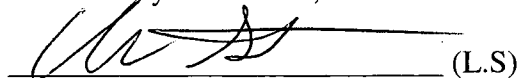
CERTIFICATE OF SERVICE

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 William M. Blich, 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 Leslie Michael Martin, #252028, at Dillon County Detention Center, 1027 Old Latta Highway, Dillon, SC 29536, this 18th day of October, 2019.



Victor R Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of October, 2019.



(L.S)

Notary Public for South Carolina
My Commission Expires: September 30, 2029