

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DELVINCHE KEON WILLIAMS,

APPELLANT

APPELLATE CASE NO 2019-000198

ANDERS BRIEF OF APPELLANT

RECEIVED
OCT 28 2019
SC Court of Appeals

VICTOR R SEEGER
Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred when it accepted Appellant's guilty plea to possession with intent to distribute methamphetamine where Appellant denied he was in knowing possession of methamphetamine?

STATEMENT OF THE CASE

During the October 2018 term, the York County Grand Jury indicted Appellant for unlawful carrying of a handgun and possession of methamphetamine with intent to distribute. R. 16 – R. 19.

On January 31, 2019, Appellant pled guilty before the Honorable William McKinnon. R. 1. Amber Holt represented Appellant. Id. Daniel Porter represented the state. Id.

Judge McKinnon accepted Appellant's guilty plea as freely, voluntarily, knowingly, and intelligently made. R. 11, ll. 17 – 23. For unlawful carrying of a handgun Appellant was sentenced to one-year imprisonment suspended upon the service of two days' imprisonment and three years' probation. R. 13, l. 17 – 14, l. 10. For possession of methamphetamine with intent to distribute Appellant was sentenced to five years' imprisonment suspended upon the service of two days' imprisonment and three years' probation. Id.

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 possession with intent to distribute methamphetamine where Appellant denied he was in knowing possession of methamphetamine.

Relevant Facts

On February 2, 2018, Appellant was pulled over at a highway patrol license check point. R. 8, ll. 21 – 25. The officers that operated the checkpoint suspected Appellant of driving under the influence and asked him to get out of the car. R. 8, l. 25 – 9, l. 1. The officers determined that Appellant's license was suspended. R. 9, l. 1 – 2.

Appellant was arrested and searched. R. 9, ll. 3 – 7. Pills were found on Appellant that Appellant believed to be ecstasy. R. 10, ll. 12 – 19. The officers who conducted the checkpoint also believed the pills were ecstasy, but the pills later tested positive for methamphetamine. R. 9, ll. 3 – 7

During the plea hearing, Appellant admitted that he possessed the pills but stated that he believed they were ecstasy. R. 10, ll. 12 – 19. The court still accepted Appellant's plea to possession with intent to distribute methamphetamine, even though Appellant never admitted to knowing possession. R. 11, ll. 17 – 23.

Discussion

“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)). Here, the plea court erred when it accepted Appellant's guilty plea to possession to with intent to distribute methamphetamine because Appellant denied knowingly possessing methamphetamines.

The possession of methamphetamines with intent to distribute statute states, “it shall be unlawful for any person *knowingly or intentionally* to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.” S.C. Code Ann. § 44-53-370(c). (emphasis added). Under State v. Davis, 422 S.C. 472, 812 S.E.2d 423 (Ct. App. 2018), this Court has held that it is illegal for a person to *knowingly or intentionally* possess methamphetamine. Davis, at 483 – 484, 812 S.E.2d at 429 – 430. (emphasis added) In other words, a person must have knowledge that they possess the controlled substance that they are alleged to have possessed with intent to distribute. Id.

In State v. Davis, this Court held that the state provided sufficient evidence to show Davis possessed and intended to distribute methamphetamine. Id. at 483, 812 S.E.2d at 430. The officers in that case found methamphetamine and, “[a] smaller plaid bag [that] contained money, a digital scale, tissue paper, little baggies, a spoon, and a metal tin in which there were two bags containing a crystal-like substance.” Id. at 484, 812 S.E.2d at 430. Therefore, the trial court correctly denied Davis’ directed verdict for possession with intent to distribute methamphetamine because the state showed she knowingly possessed it and showed “sufficient indicia of intent to distribute.” Id. at 483 – 484, 812 S.E.2d at 429 – 430.

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.

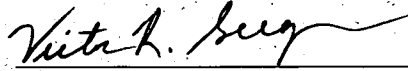
The Fourteenth Amendment to the United States Constitution requires the state to prove every element of a criminal offense to obtain a conviction. Sandstrom v. Montana, 442 U.S. 510 (1979). Here the state did not prove that Appellant knowingly possessed methamphetamine as required by S.C. Code Ann. § 44-53-370(c), nor did Appellant admit to it because he denied knowingly possessing the methamphetamines. R. 10, ll. 12 – 19; Davis, at 483, 812 S.E. at 483.

Appellant did not knowingly possess methamphetamine with intent to distribute because he thought that the pills found on his person were ecstasy. R. 10, ll. 12 – 19. The officers that operated the checkpoint believed the pills were ecstasy when they found them as well. R. 9, ll. 3 – 4. It was only until after the pills were tested that they were discovered to be methamphetamine. R. 9, ll. 5 – 7. Here, unlike in Davis, the state failed to show the “indicia of intent to distribute” required to accept Appellant’s guilty plea to possession with intent to distribute methamphetamine. Davis, at 483 – 484, 812 S.E.2d at 429 – 430.

Therefore, the state failed to prove, and Appellant did not admit to, an element of the crime to which he pled guilty. Accordingly, it was an error for the plea court to accept Appellant’s guilty to possession with intent to distribute methamphetamine.

CONCLUSION

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



Victor R Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of October, 2019.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Delvinche Keon Williams 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 William A. McKinnon, which was held on January 31, 2019, 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 Delvinche Keon Williams.

Respectfully Submitted,



Victor R Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

This 28th 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) Guilty Plea Hearing Transcript Dated January 31, 2019
- (2) True-billed indictment(s):

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

October 28, 2019



Victor R Seeger
Appellate Defender

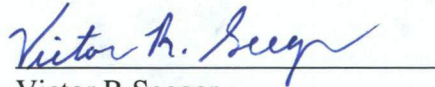
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ATTORNEY FOR APPELLANT

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 28, 2019.



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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 Delvinche Keon Williams at 115 Washington Street, York, SC 29745, this 28th day of October, 2019.



Victor R Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of October, 2019.

 (L.S)

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