

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EMILIO BURTON CRAIG,

APPELLANT

Appellate Case No. 2011-199146

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in considering the solicitor's request for maximum sentencing in order to protect a certain segment of society (disabled citizens) because the issues raised at sentencing should have been confined to information about appellant and the case itself rather than the particular problems of our society at large.

STATEMENT OF THE CASE

Appellant Emilio Burton Craig was tried by jury and convicted of robbery and larceny during the August 2011 term of the Darlington County General Sessions Court before Judge Howard P. King.¹ William Grove represented appellant at trial. Appellant was sentenced to imprisonment for a period of fifteen years, suspended upon the service of eight years, and three years probation.

Appellant appealed. This brief follows.

¹ Appellant was tried jointly along with codefendant Mardrall Addison, who was acquitted of larceny, armed robbery, pointing and presenting a weapon and possession of a weapon during the commission of a violent crime, but convicted of driving under suspension and failure to stop for a blue light.

ARGUMENT

The trial judge erred in considering the solicitor's request for maximum sentencing in order to protect a certain segment of society (disabled citizens) because the issues raised at sentencing should have been confined to information about appellant and the case itself rather than the particular problems of our society at large.

At trial, Morris Mazyck, who was disabled and had a criminal record, testified that on January 31, 2011, he was parked in his car sitting in the East Park area of Hartsville, South Carolina, when a male appeared on the right side of the car asking about the shoes he (Mazyck) was selling. Then, according to Mazyck, another male (Derek Wise) appeared on the driver's side of the car and began talking; and thereafter, another male appeared with a gun, got into the car, held a gun to his (Mazyck's) side and told him to "give [up] everything." Mazyck stated that his money, cell phone, and tennis shoes were taken at that time. Mazyck stated that appellant was the male who held the gun and that he heard appellant refer to one of the males as Mardrall. See footnote #1 regarding Mardrall Addison. Mazyck stated that when the perpetrators fled, he drove to the police station to report the incident and that the police stopped him while en route there. After having been stopped by police, he reported the crimes. Later on the same day, Mazyck stated that police showed him two photographic lay-outs. Tr. 134, l. 1- p. 140, l. 2; Tr. 141, l. 5- p. 143, l. 1. Mazyck selected appellant's picture as one perpetrator from one of the photographic lay-outs shown to him, and then selected co-defendant Mardrall Addison's picture from another photo-graphic layout as another perpetrator in the case. Tr. 187, l. 13- p. 205, l. 25.. Tr. 146, l. 6- p. 148, l. 19. Appellant was subsequently apprehended after Officer Jackie Catoe,

who followed the car he and his friends were in on the day the events occurred. Tr. 233, l. 11- p. 240, l. 18. Tr. 251.

Appellant testified in his defense at trial and explained that he was in the area where Mazyck was selling shoes on the day the incident in question occurred, and that he bought shoes from Mazyck at that time. Appellant stated that a crowd of people were surrounding Mazyck at that time. Appellant added that he noticed that Addison and Tree were also in the area and that they (Appellant, Addison, and Tree) all drove off together shortly thereafter. At some point, Justine Peterson found his way inside the vehicle also. Appellant stated that he did not know why the police were following them shortly thereafter, and that he wondered if Tree had stolen some of Mazyck's shoes. Appellant stated that he and Tree fled after police stopped their car. Tr. 34, l. 1- p. 354, l. 23.

At the sentencing portion of the trial, the solicitor informed the court to be mindful of the following information:

Solicitor: I think the state would very much want the max, and I think we would ask for the max against [the co-defendant] also. Really what they have is a little cottage industry in Hartsville where they rob [people like Mazyck who are disabled and have dealt in drugs],² and people who[m] they feel are on the fringes of society...and have so much admitted to other officers.

App. 493, l. 20-25.

In determining what sentence to impose, a judge may consider information within a broad range, but the information received must be material to punishment. State v. Franklin, 267 SC 240, 226 S.E. 2d 896 (1976). However, in this case, the Solicitor, clearly indicated that he was asking for maximum sentencing in part in order to protect the people on the "fringes of society" from

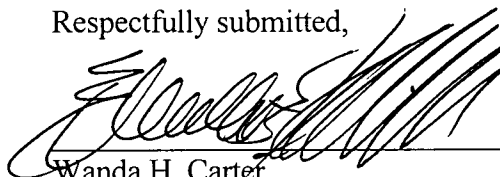
² Apparently, Mazyck, who was handicapped, had prior convictions for assault and battery, distribution of cocaine, and charges for grand larceny, armed robbery, kidnapping, and selling counterfeit items (tennis shoes). Tr. 151, l. 1-p. 170, l. 2.

becoming victims at the hands of people like appellant and his ilk per the inference that appellant and his co-defendant preyed on disabled people who may have criminal records, i.e. “fringe citizens.” By analogy, compare State v. Liberte, 336 S.C. 648, 521 S.E. 2d 744 (1999), where the Court held that the solicitor’s plea to convict the defendant’s in order to keep drugs off the streets was error because it played on “the jury’s fear of the impact of drugs on our society,” which would lead to a conviction on feelings of passions and prejudices rather than the evidence presented. Similarly, in the case at bar, the solicitor urged the judge to sentence harshly and accordingly (“the max” was requested) so as to keep appellant and people of his ilk from preying on the “fringe” citizens, who deserve to be free from victimization in the same manner that law abiding citizens deserve protection from victimization. This sentencing consideration request made by the solicitor was inappropriate and concerned matters outside punishment and the case itself. State v. Franklin, *supra*. The trial judge’s error in considering the same violated appellant’s Fourteenth Amendment right to a fair sentencing proceeding.

CONCLUSION

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

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of September, 2012.

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IN THE COURT OF APPEALS

Appeal from Darlington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EMILIO BURTON CRAIG,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Emilio Burton Craig states:

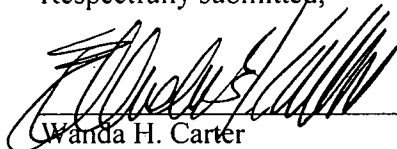
1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge Howard P. King, which was held on August 31, 2011, 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 Emilio Burton Craig.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of September, 2012.

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IN THE COURT OF APPEALS

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APPELLANT

**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.

September 11th, 2012



Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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Attorney for Appellant

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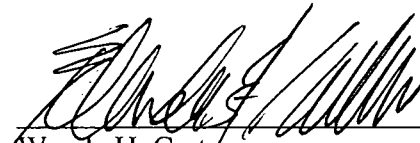
V.

EMILIO BURTON CRAIG,

APPELLANT

CERTIFICATE OF SERVICE

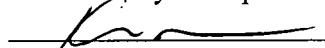
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Emilio Burton Craig, #319662 at Ridgeland Correctional Institution, this 11th day of September 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of September, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.