

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

ORIGINAL RECEIVED

JAN 06 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA,

RESPONDENT

v.

KEISHAWN MCMANUS,

APPELLANT

APPELLATE CASE NO 2019-001042

ANDERS BRIEF
PURSUANT TO WHITE V. STATE

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the plea court err in accepting Appellant's plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), where Appellant indicated during the plea colloquy that he had been promised something to induce him to enter the plea thereby rendering his plea involuntary?

STATEMENT OF THE CASE

In April 2016 Appellant was indicted by a Lancaster County grand jury for murder and possession of a weapon during the commission of a violent crime. App. 92-93. On December 19, 2017, Appellant appeared before the Honorable Brian M. Gibbons to enter a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). App. 1; App. 3. The state was represented by Lisa Collins. Creighton Coleman represented Appellant. App. 1.

In accordance with a plea agreement Appellant pled guilty to the lesser included charge of voluntary manslaughter. App. 3. He received a twenty-one-year sentence in the Department of Corrections. App. 26. Plea counsel did not file a notice of intent to appeal Appellant's guilty plea and sentence.

Appellant filed an application for post-conviction relief on April 13, 2018. App. 28-34. The state filed a return dated October 24, 2018. App. 35-41. An amended PCR application, dated November 13, 2018, was filed by PCR Counsel Donae Minor. App. 42-43.

An evidentiary hearing was convened on January 23, 2019 before the Honorable Paul M. Burch. Appellant was represented by Donae Minor. The state was represented by Samuel Key. App. 44. Appellant and Counsel Coleman testified at the hearing.

The PCR court found that, based on the testimony at the evidentiary hearing, Appellant did not knowingly and voluntarily waive his direct appeal right and was entitled to a belated appeal. App. 80. Judge Burch's order granting belated appellate review pursuant to White v. State was filed on June 11, 2019. App. 73-91. This brief pursuant to White v. State, and a simultaneously filed petition for writ of certiorari, follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Nesbitt, 411 S.C. 194, 199, 768 S.E.2d 67, 70 (2015) (quoting State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)).

ARGUMENT

The plea court erred in accepting Appellant's plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), where Appellant indicated during the plea colloquy that he had been promised something to induce him to enter the plea thereby rendering his plea involuntary.

Relevant Facts

On December 23, 2014, Appellant called 911 to report that his girlfriend, Quatavia Robinson, was dead from a gunshot wound. App. 9-10. Based on Appellant's statements and text messages from Robinson about wanting to harm herself, police initially investigated the case as a suicide. App. 9-10. An autopsy was performed on Robinson that concluded she died from a single gunshot wound to the chest. According to the pathologist, the angle of the wound, the bullet trajectory, the wound characteristics, and the position Robinson had been found in did not support a self-inflicted gunshot wound. App. 10-12.

Believing that Robinson had in fact been killed by another person police began to investigate Appellant. Through a conversation with Appellant's mother law enforcement learned that Appellant had been present when Robinson was shot and stated that it had been an accident. App. 12-13. This statement conflicted with what Appellant had previously told police. Police asked that Appellant come speak with them again, but he did not. A year later Appellant was arrested after a standoff with police. App. 13.

Appellant was initially charged with the murder of Robinson. Through plea negotiations the charge was reduced to voluntary manslaughter. At the plea hearing the state did not make a recommendation as to sentencing. App. 3. The plea judge reviewed the meaning of entering a plea pursuant to *North Carolina v. Alford*, *supra*, and then the following exchange occurred:

The Court: Has anybody forced, pressured, coerced or made you plead that way?

The Defendant: No, Sir.

The Court: Has anybody promised you anything to get you to plead that way?

The Defendant: Yes, sir.

The Court: All right. You wanted to talk with your lawyer about what's been promised you? Talk to your lawyer.

(break in proceedings)

The Court: Mr. McManus, I'll ask the question again. Has anybody made any promises to you or held out any hopes or reward to get you to plead under Alford?

The Defendant: No, sir.

App. 5, l. 19-App. 6, l. 6.

The court finished the plea colloquy and heard the facts. The court found a substantial factual basis for the plea and that Appellant had acknowledged he was satisfied with plea counsel. The court accepted the plea and sentenced Appellant to twenty-one years in prison.

App. 15, ll. 10-16; App. 26, ll. 9-12.

Discussion

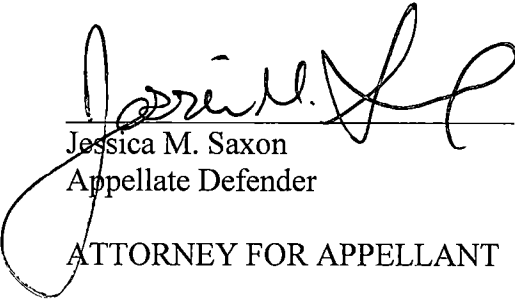
A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969). The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand *unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises)* or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business. Brady v. United States, 397 U.S. 742, 755 (emphasis added).

During the plea colloquy Appellant answered that he had been promised something in return for his guilty plea. While the plea judge allowed Appellant to then confer with his counsel there was no inquiry made on the record as to what Appellant was promised. Further, no statement was made that Appellant misspoke or misunderstood the question. After a brief break during which Appellant spoke to counsel, the judge resumed the plea colloquy and again asked if Appellant had been promised anything in return for his plea. Here Appellant said no but no further inquiry was made. Eventually his plea was accepted, and Appellant received a twenty-one-year sentence. Notably, the judge did not make a finding on the record that the plea was voluntarily and knowingly made without promise, threat, coercion or force.

As stated in Boykin v. Alabama, 395 U.S. 238, 242-53 (1969), “a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality.” “A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void.” Machibroda v. United States, 368 U.S. 487, 493 (1962). The record indicates that Appellant was promised something in return for his plea pursuant to Alford. It was incumbent upon the plea court to inquire into the promises made to Appellant to see if such promises induced his plea. By failing to inquire into Appellant’s responses and determine if his plea was in fact voluntary, the plea court committed an error of law.

CONCLUSION

Based on the foregoing, Appellant requests that this court set aside Appellant's plea pursuant to Alford, and remand for a new trial.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of January, 2020.

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PETITIONER

V.

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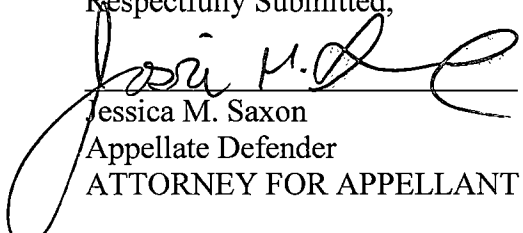
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Keishawn Omar McManus states:

1. She is 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 Paul M. Burch, which was held on January 23, 2019, 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 Keishawn Omar McManus.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of January, 2020.

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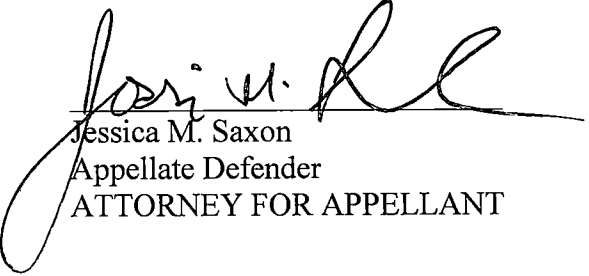
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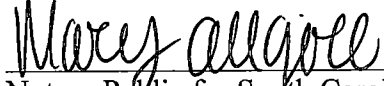
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief Pursuant to White v. State in the above referenced case has been served upon Samuel Key, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief Pursuant to White v. State has been served on Keishawn Omar McManus, 375011, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 6th day of January, 2020.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of January, 2020.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.