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FEB 25 2020

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

SC Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of General Sessions

R. Scott Sprouse., Circuit Court Judge

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FEB 2<sup>2</sup> 2020 *WJS*

SC Court of Appeals

CASE NO.:2020-000212

The State,

Respondent,

v.

Cory Adam Whitten

Appellant

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FEB 24 2020 *WJS*

SC Court of Appeals

**EXPLANATION OF GROUNDS FOR APPEAL**

The Appellant appeared before the Trial Judge on January 30, 2020 and presented a plea citing Alford v. State of North Carolina, 405 F.2d 340 (4th Cir. 1968) vacated by 400 U.S. 25 (1970) He did not plead guilty to any of the indictments.

The appeal here presents challenges to the Alford Plea accepted by the circuit court judge as unconstitutionally compelling in violation of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

The Alford case, Supra, presented factual details not present in this case now before this court. In Alford, the Defendant first pled guilty before the trial judge, then, upon examination under oath, on the witness stand, testified that he was not guilty of the offense to which he pled.

In the case now before the court, the Appellant, Whitten, never plead guilty and only confirmed that the facts of the cases before the court, as presented by the Solicitor, were accurate. This is a far cry from pleading guilty..

The court, in its syllogism to Whitten, did not advise him that any further inquiry of him while in prison, could, if he continued to maintain his innocence, result in adverse effects on any post hearing entitlements to which he may be entitled, (parole, level of imprisonment, work release, and others). Lack of remorse is placed front and center in many of these post-conviction decisions by authorities reviewing Defendant's case.

The United States Supreme Court in Alford, Supra, in dicta, noted "We would, without more, vacate and remand the case for further proceedings...if it were not for other circumstances appearing in the record which might seem to warrant an affirmation of the Court of Appeals." (The Court of Appeals

had reversed the trial court citing *United States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968) on his contention that his plea of guilty had been involuntarily induced.) 400 215 25, 31(1970). The court then went on to note “the other circumstance”:

(a) The inconsistencies between the manner in which Alford pled guilty and what had historically been accepted as proper guilty plea procedures.

(b) Central to the plea and the foundation for entering judgment against the Defendant is the Defendant’s admission in open court that he committed the acts charged in the indictments. *Alford v. State of North Carolina*, Supra. Alford first pled guilty in open court before he professed his innocence. Whitten in this case never admitted guilt.

The Alford Plea is not a guilty plea. However, the judge should include all of the sentencing advisories necessary to accept a normal guilty plea, plus advise that Defendant’s failure to show remorse, or to admit his guilt to the offenses may have negative consequences in any future considerations where his sentence is under review, e.g. Parole, level of incarceration, early release, etc.

These requirements were not met at Defendant’s sentencing hearing.

A guilty plea cannot be accepted unless it is intelligently and voluntarily made. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)

Knowledge of the terms of the guilty plea is crucial. “Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality. *Boykin v. Alabama*, Supra.

It is necessary for a Defendant to be “fully aware” of the direct consequences of a guilty plea in order for the plea to be acceptable. *Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)

Material was submitted to the trial judge, on behalf of Whitten, as mitigating circumstances, including a statement from his employer, his medical records indicating a lifelong medical problem with anxiety, depression and episodes of losing consciousness. (He had expressed that he did not remember committing the offenses). Under the plea presented citing Alford, these objective factors could not be considered and could never again be brought forth to support Defendant’s innocence.

“An essential component of due process rights is that individuals be given fair warning of acts which may lead to revocation”. (referring to probation revocation). This right to fair warning appears to require that the warning be given at the time of sentencing rather than after the plea has been accepted”. *U.S. v. Dane*, 570 F.2d 840 (9th Cir. 1977).

“Where the warning is not contained in a formal condition, the record must be closely scrutinized to determine whether the Defendant did, in fact, receive the required warning *U.S. v. Dane*, Supra

The Alford plea as it is presented in courts today, and which was an instrument in Appellant’s case for compelling him to admit the facts described by the solicitor while at the same time professing innocence, without knowledge of the long lasting consequences of the plea, is a deliberate prevarication designed to evade the truth, concocted from a case (Alford) that in no way resembles the cases in which it now is allowed, including this case, and is accepted by the trial courts as a substitute for truth .

Arguments parsing direct or collateral future effects upon a Defendant miss the mark, especially when the Defendant is not knowledgeable at sentencing of the real effects the Judicial lie will have on his or her future life. How is the fact that the Defendant professes innocence while agreeing to be punished and sentenced as if he committed the charged offense or offenses to be considered in future parole hearings, level of incarceration, job applications and simply community considerations about someone who has spent years in prison. If he now, after imprisonment, continues to profess his innocence, who will believe him? The conundrum cannot be accepted as logical. These and other impacts are indeed "direct" effects resulting from the decision to apply the apparitional North Carolina vs Alford guidelines. Something is missing here.

The trial judge's failure to give Defendant fair warning of the future consequences of his agreement to proceed under Alford, including direct future effects, compelled Defendant to accept the plea without an intelligent, voluntary, and knowledgeable understanding of the full direct consequences of his acceptance, in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and of the Constitution of South Carolina requiring due process.

Therefore the Defendant's conviction and sentence should be reversed and the case remanded for a new trial

Sincerely,



Charles W. Whiten, Jr.  
Attorney at Law

CWW/crw

cc: V. Claire Allen, Chief Deputy Clerk  
Robert Michael Dudek, Esquire  
Jason Alderman, Esquire  
William M. Blitch, Jr. Esquire  
Alan McCrory Wilson, Esquire

LAW OFFICES OF CHARLES W. WHITEN, JR., P.A.  
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February 21, 2020

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
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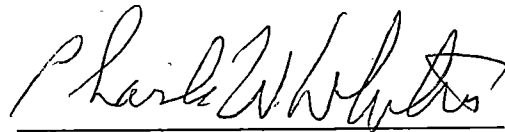
Re: State vs Cory A. Whitten  
Case No.: 2020-000212

Dear Ms. Kitchings:

Per your letter dated February 12, 2020 I am enclosing for filing my Explanation of Grounds for Appeal on the above referenced case.

Thank you for your courtesies in this matter.

Sincerely,



Charles W. Whiten, Jr.  
Attorney for Appellant

cc: Robert Michael Dudek, Esq.  
Jason Christopher Alderman, Esquire  
William M. Blitch, Jr. Esquire  
Alan McCrory Wilson, Esquire

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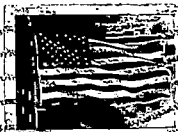
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