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**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

**RECEIVED**  
JUN 05 2019  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RONALD DUYANE DAVIS,

APPELLANT

APPELLATE CASE NO 2018-000651

ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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## **STATEMENT OF ISSUE ON APPEAL**

Whether the court abused its discretion when it refused to consider appellant's assertion when moving to withdraw his guilty plea, that he was coerced into pleading guilty in part due to a prior sexual relationship with his counsel's private investigator and he believed the investigator "wasn't going to do a good job" because "she got mad at me," since the failure to exercise discretion was an abuse of discretion?

## STATEMENT OF THE CASE

On September 16, 2016, a Laurens County Grand Jury indicted appellant for the offense of murder and possession of a weapon during the commission of a violent crime. R. 54 – 57. Appellant proceeded to trial before the Honorable Donald B. Hocker and a jury. R. 1. Appellant was represented by Chelsea McNeill and Tristan Shaffer; the state was represented by Warren Mowry and Jared Simmons. R. 1.

On March 28, 2018, the third day of his trial, appellant pleaded guilty to the lesser offense of voluntary manslaughter and to possession of a weapon during the commission of a violent crime. R. 2, ll. 17-19; R. 6, ll. 21-23. The court sentenced appellant to concurrent terms of twenty-five years for voluntary manslaughter and five years for the weapons charge. R. 22, ll. 14-18; R. 58 – 59.

On April 19, 2018, the parties appeared before the court for a motion to withdraw appellant's guilty plea. R. 24 – 25. The court denied the motion. R. 51, ll. 1-6; R. 53.

This appeal follows.

## 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 court abused its discretion when it refused to consider appellant's assertion when moving to withdraw his guilty plea, that he was coerced into pleading guilty in part due to a prior sexual relationship with his counsel's private investigator and he believed the investigator "wasn't going to do a good job" because "she got mad at me," since the failure to exercise discretion was an abuse of discretion.

### ***Relevant facts***

On the third day of appellant's murder trial the state extended a plea offer of a recommended twenty-five year term on the reduced offense of voluntary manslaughter and a concurrent five year term on the weapons charge. R. 6, ll. 21-23; R. 13, ll. 3-5. The judge recognized that appellant was "hesitant" to plead guilty and showed "trepidation." R. 50, ll. 10-11. However, appellant ultimately did plead guilty and during the colloquy he said he was satisfied with his attorneys and had no complaints against the public defender's office. R. 9, ll. 19-22; R. 11, ll. 2-7.

The parties reconvened on a motion to withdraw the guilty pleas based on appellant's communication to defense counsel Shaffer that "he felt coerced into pleading." R. 26, ll. 13-18. At the hearing, appellant told the court that defense counsel McNeill told him he must take the plea offer. R. 29, ll. 17-18. McNeill denied coercing appellant into pleading guilty. R. 39, ll. 1-3. McNeill said she was "shocked" to learn appellant alleged that he was having a sexual relationship with McNeill's investigator, Nicole Hurley. R. 41, ll. 18-22.

Appellant explained to the court that he told McNeill "that me and Nicole Hurley, we was sexually involved." R. 47, ll. 9-11. Appellant said, "[W]hen me or Ms. Hurley was in a relationship, she got mad at me. And I didn't know that Ms. Hurley was the investigator on this

case.” R. 47, ll. 22-24. Appellant explained that he became aware Hurley was involved in his case “when my trial started” and that he told McNeill “that she wasn’t going to do a good job because me and her had been sexually involved.” R. 48, ll. 1-6.

McNeill interjected that appellant was committing perjury. R. 47, ll. 12-14. The court stated that “as far as any alleged relationship with somebody else really kind of goes beyond the scope of this hearing . . . I have to determine whether or not to allow you to withdraw your plea. And any allegations concerning a relationship with somebody, that really is not a part of this proceeding here.” R. 47, ll. 15-20. The court denied appellant’s motion to withdraw his guilty pleas. R. 51, ll. 5-6; R. 53.

### ***Discussion***

The court refused to consider appellant’s allegation that he was coerced into pleading guilty because he believed defense counsel’s investigator would sabotage his trial out of anger where a romantic relationship between the two had soured. The court’s failure to exercise its discretion and consider that allegation in determining whether appellant should be allowed to withdraw his guilty pleas was an abuse of discretion.

“Once a defendant enters a plea of guilty, the decision whether to allow withdrawal of the plea is left to the trial court’s sound discretion.” *State v. Mansfield*, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000). “The failure to exercise discretion, however, is itself an abuse of discretion.” *Id. Accord State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015). “When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.” *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

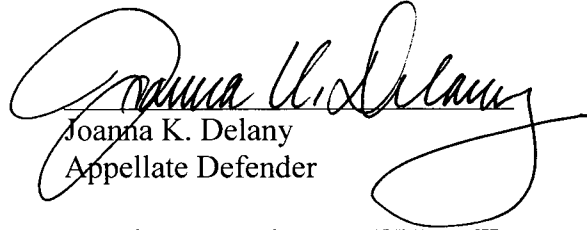
The Rules of Professional Conduct generally prohibit a lawyer from engaging in a sexual relationship with a client. Rule 1.7, RPC, Rule 407, SCACR; Rule 1.8, RPC, Rule 407, SCACR; *In re Mayer*, 396 S.C. 515, 722 S.E.2d 800 (2012). A lawyer supervising a non-lawyer assistant such as an investigator must “make reasonable efforts to ensure the person’s conduct is compatible with the professional obligations of the lawyer”—i.e., because the lawyer may not have a sexual relationship with a client, a sexual relationship between the lawyer’s investigator and the client is also improper.

“The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Gustine v. State*, 325 S.C. 123, 127, 480 S.E.2d 444, 446 (1997) (quoting *Hill v. Lockhart*, 474 U.S. 52, 56 (1985)). Here, whether appellant was coerced to plead guilty by the fear that his former lover, now employed by his attorney, would sabotage his trial was relevant to the determination of whether appellant was coerced to plead guilty—and thus should be allowed to withdraw the plea—and whether his decision to plead guilty was a voluntary and intelligent choice.

The court’s failure to consider the allegation that appellant’s pleas were coerced by an improper sexual relationship with his counsel’s investigator was an abdication of discretion and error. *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565; *Hill v. Lockhart*, 474 U.S. 52.

**CONCLUSION**

Based on the foregoing argument, appellant respectfully requests this court reverse his convictions and sentences and remand for a new trial.

A handwritten signature in black ink, appearing to read 'Joanna K. Delany', written in a cursive style. The signature is positioned above the printed name and title.

Joanna K. Delany  
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of June, 2019.

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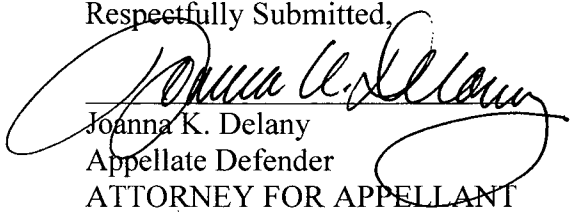
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Ronald Duyane Davis states:

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 Donald B. Hocker, which was held on March 28, 2018, 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 Ronald Duyane Davis.

Respectfully Submitted,

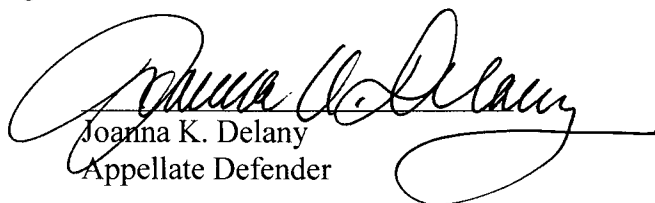
  
\_\_\_\_\_  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 5th day of June, 2019.

**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."

June 5, 2019.



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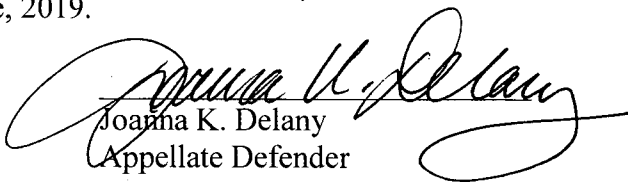
v.

RONALD DUYANE DAVIS,


APPELLANT

\_\_\_\_\_  
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 Ronald Duyane Davis, 272165, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 5th day of June, 2019.

  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 5th day of June, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 26, 2028