

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Appeal from Pickens County

Honorable Alex Kinlaw, Circuit Court Judge

RECEIVED

APR 10 2020

JOHN DAVID SARTIN,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001606

ANDERS BRIEF OF APPELLANT  
PURSUANT TO WHITE V. STATE

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**STATEMENT OF ISSUE ON APPEAL**

Did the plea court err in sentencing Petitioner to five years' probation following a three-year active sentence on an assault and battery in the first degree charge, where Petitioner outright indicated that it was his understanding that he would only receive a three year sentence?

## STATEMENT OF THE CASE

Petitioner was indicted for assault and battery of a high and aggravated nature on August 21, 2018 by a Pickens County grand jury. App. 116 – 117. He appeared before the Honorable Perry Gravely on August 29, 2018 for a plea. App. 8. Dorothy Manigault represented Petitioner; Brandi Hinton appeared on behalf of the state. App. 1.

Petitioner pleaded to assault and battery in the first degree. App. 10 ll. 8 – 14. He indicated that he was told he would receive a three-year sentence. Id. In response, the plea judge explained the concept of a negotiated sentence. App. 10 ll. 15 – 24. The assistant solicitor advised the court that the negotiated sentence was ten years suspended to three years followed by probation and restitution. App. 10 l. 25 – App. 11 l. 2. The plea judge told Petitioner that he had discretion in determining the length of probation. App. 13 ll. 12 – 25. As an additional term of the plea agreement, the state agreed to dismiss other charges Petitioner was facing. App. 11 ll. 18 – 24.

The facts as alleged by the state were as follows: Petitioner was incarcerated at the Pickens County Law Enforcement Center on March 26, 2018. App. 14 l. 19 – App. 15 l. 2. He supposedly punched a man named Adam Griggs in the face, resulting in a broken orbital bone. Id. Petitioner clarified to the plea judge that he was defending himself after Griggs spit on him and destroyed his personal property. App. 15 ll. 6 – 13. The plea judge accepted Petitioner's plea, noted that there was a substantial and factual basis for the plea, and found that it was knowingly, intelligently, and voluntarily made. App. 15 ll. 17 – 21.

Plea counsel asked that the court follow the negotiated sentence and requested two years of probation. App. 17 ll. 13 – 17. The plea judge adopted the negotiated sentence and handed down a sentence of ten years suspended following the service of three years, followed by five

years' probation. App. 18 l. 16 – App. 19 l. 2. The probation was terminable following the payment of twenty thousand dollars in restitution. App. 17 l. 13 – App. 19 l. 2.

This brief, filed contemporaneously with a petition for writ of certiorari under Rule 243(i)(1), SCACR, 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 sentencing Petitioner to five years' probation following a three-year active sentence on an assault and battery in the first degree charge, where Petitioner outright indicated that it was his understanding that he would only receive a three year sentence.**

### Relevant facts

Petitioner was taking Celexa, an antidepressant at the time of his plea. App. 8 l. 17 – App. 9 l. 9. He was thirty-two years old at the time of the plea. App. 16 ll. 22 – 25. He attended high school through the twelfth grade but did not graduate; instead, he received his GED. Id. Most of his life was spent doing construction jobs. Id.

According to plea counsel, Petitioner attended a few mental health counseling sessions. App. 17 ll. 1 – 12. He was diagnosed with anxiety, depression, and bipolar disorder. After plea counsel requested two years' of probation, Petitioner spoke to the plea judge and evidenced his intent to pay the restitution. App. 17 l. 20 – App. 18 l. 2. Petitioner advised the plea judge that he was previously addicted to drugs, in addition to his mental health diagnoses. Following his incarceration, he felt like “a brand new person” and promised to stay off drugs. App. 18 ll. 5 – 10. Petitioner intended to go back to school and learn how to become an electrician. App. 18 ll. 13 – 14.

### Discussion

In general, a defendant's guilty plea is more than an admission of conduct; rather, it is a conviction that can deprive him of his liberty or other constitutionally protected interests. Mabry v. Johnson, 467 U.S. 504, 507, 104 S.Ct. 2543, 81 L.Ed.2d 437 (1984); Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969). Therefore, the entry of

a guilty plea implicates the protections of the Due Process Clause of the federal and state constitutions. See U.S. Const. amend. XIV (providing that states may not deprive a person of life, liberty, or property without due process of law); S.C. Const. art. I, § 3 (same).

Among these protections, the Due Process Clause requires that a defendant enter his guilty plea voluntarily, knowingly, and intelligently. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). Thus, prior to receiving a defendant's guilty plea, the court must advise the defendant of “the nature and crucial elements of the charges, the consequences of the plea [including any maximum and minimum penalties for the crimes], and the constitutional rights he is waiving” by pleading guilty. Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001) (citing Anderson, 342 S.C. at 57, 535 S.E.2d at 651); see also Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (stating that a defendant knowingly and voluntarily pleads guilty when he fully understands the consequences of his plea and the charges against him).

A trial judge is allowed broad discretion in sentencing within statutory limits. Brooks v. State, 325 S.C. 269, 481 S.E.2d 712 (1997); Garrett v. State, 320 S.C. 353, 465 S.E.2d 349 (1995). See also State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976) (trial judge is given wide discretion in determining what sentence should be imposed). A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant. Brooks, 325 S.C. at 272, 481 S.E.2d at 713. Absent partiality, prejudice, oppression, or corrupt motive, appellate courts in South Carolina lack jurisdiction to disturb a sentence that is within the limit prescribed by statute. Stockton v. Leeke, 269 S.C. 459, 237 S.E.2d 896 (1977); Franklin, 267 S.C. at 246, 226 S.E.2d at 898. See also Garrett, 320 S.C. at 356, 465 S.E.2d at 350 (“It is well settled in this State that this Court has no jurisdiction to disturb,

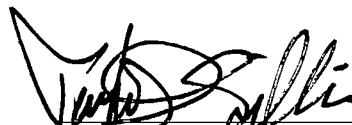
because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute itself violates the constitutional injunction, Article I, Sec. 19, against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive.""); State v. Bolin, 209 S.C. 108, 39 S.E.2d 197 (1946) (length of prison sentence rests in sound discretion of trial court unless partiality, prejudice, oppression or corrupt motive is shown).

However, at sentencing, a judge has an obligation to consider information material to punishment. Hayden v. State, 283 S.C. 121, 322 S.E.2d 14 (1984). In Townsend v. Burke, 334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948) the Supreme Court made it clear that a sentence cannot be predicated on false information. State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976).

Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature. S.C. Code Ann. § 16-3-600(C)(3). The maximum sentence for this charge is ten years. S.C. Code Ann. § 16-3-600(C)(2). The sentence received by Petitioner exceeded his understanding of three years considering the five years of probation. The assault and battery charge was a felony and therefore likely affected his job prospects. The imposition of restitution as a condition of terminating his probation was unreasonable. The plea court erred in imposing the sentence.

**CONCLUSION**

Based upon the foregoing, Petitioner respectfully requests this Court reverse his conviction and sentence and remand this matter to the Charleston County Court of General Sessions.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of April, 2020.

**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."

April 09, 2020.



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\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for John David Sartin 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 plea before Judge Perry Gravely, which was held on August 29, 2018, 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 John David Sartin.

Respectfully Submitted,



\_\_\_\_\_  
Taylor D Gilliam  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 9th day of April, 2020.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant the above referenced case has been served upon Taylor Z. Smith, Esquire, via electronic mail; and a copy of the Anders Brief of Appellant has been served on John David Sartin at 155 Herta Street, Apartment G., Easley, SC 29640, this 9th day of April, 2020.

  
Taylor D Gilliam

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 9th day of April, 2020.

Mary Allaire (L.S)

Notary Public for South Carolina

My Commission Expires: May 12, 2027.