

STATE OF SOUTH CAROLINA
COURT OF APPEALS

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Jul 15 2020

SC Court of Appeals

Appeal from Florence County
Honorable Paul M. Burch, Circuit Court Judge

EDDIE BLASH JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001839

PRO SE ANDERS BRIEF OF APPELLANT
PURSUANT TO WHITE V. STATE
AND UNITED STATES V. WINBUSH

EDDIE BLASH JR. #277603
Appellate

Kershaw C.I. HB-276
4848 Goldmine Highway
Kershaw, S.C. 29067

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APPELLATE DEFENSE

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STATEMENT OF ISSUE ON APPEAL

Did the resentencing court err in allowing Blash's criminal history from Florida into evidence which was prejudicial to Blash because the history contained one conviction which was tried in Blash's absence for the same offense for which he was being resentenced and also contained numerous drug offenses which did not indicate convictions?

Counsel failure to challenge the State bringing in defendants prior Florida conviction for trafficking cocaine, not the other drug charges for the Judge's consideration.

Cannot substitute career offender predicate on collateral review.

STATEMENT OF THE CASE

In June 2000, the Florence County Grand Jury indicted Blash for trafficking cocaine over 400 grams. App. 83 - App. 84. On August 13, 2001, Blash and his co-defendant, Michael George Monfries, proceeded to trial before the Honorable B. Hicks Harwell and a jury. Blash was represented by Hank Anderson. App. 66, ll. 4 - 19. His co-defendant Monfries did not appear for the trial. App. 75; App. 3, ll. 1 - App. 4, ll. 5. The jury found Petitioner Blash guilty of trafficking in powder cocaine more than 400 grams. App. 4, ll. 21 - App. 6, ll. 8. The judge sentenced Blash to the maximum sentence of thirty (30) years. App. 75.

Blash's attorney did not file a notice of appeal. On August 16, 2002, Blash filed a 'pro se' post-conviction relief (PCR) application alleging that his trial counsel was ineffective for not filing a timely notice of appeal. App. 75. An evidentiary hearing was held on October 14, 2004 before the Honorable James E. Brogdon, Jr. On December 15, 2004, Judge Brogdon issued an order granting Blash a belated appeal. Blash filed an amended PCR after the PCR judge gave him thirty (30) days to file an amended PCR application. In this amended PCR application, Blash again alleged trial ineffective assistance of counsel for failing to object to the testimony of a witness. App. 51, ll. 1 - 24; App. 75.

An evidentiary hearing was held on December 12, 2007, before the Honorable Thomas Russo. Judge Russo denied the application with prejudice except granted Blash's right to a belated appeal. App. 51, ll. -25 - App. 52, ll. 2. This appeal was perfected by the Division of Appellate Defense. On March 28, 2012, the Supreme Court reversed Blash's case and remanded for resentencing. App. 106-App. 107.

On May 8, 2012, Petitioner Blash appeared before the Honorable Thomas Russo for a re-sentencing hearing. Blash was represented again by his trial counsel, Hank Anderson. The State was represented by Patricia S. Parr. App. 1. Judge Russo then sentenced Blash to twenty-eight (28) years. App. 11,11. 7 - App. 14, 11. 6.

Counsel did not file a notice of appeal. App. 50,11. 1-25. Blash attempted to file a notice of appeal but it was ultimately dismissed by the Court of Appeals in April of 2013 for being untimely. App. 52,11. 1-11. Blash then filed a federal habeas petition on July 12, 2013 which was eventually dismissed. App. 52,11. 12 - 13.

On April 3, 2014, Blash then filed a second PCR application. The state filed a return and partial motion to dismiss all claims as successive except the belated appeal issue. App. 52,11. 14 - 23. On March 14, 2017, an evidentiary hearing was held before the Honorable Paul M. Burch. Blash was represented by Johnathan D. Waller, and the state was represented by Lindsey A. McCallister. App. 48.

The PCR judge issued an order on August 17, 2017 denying Petitioner Blash's PCR application and dismissing it with prejudice. App. 74 - App. 81. The judge did find that Blash was entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1974) because Blash did not knowingly and voluntarily waive his appellate rights. App. 78- App. 80.

PCR counsel filed a notice of appeal. This Anders brief pursuant to White v. State, id. follows accompanied by a petition for a writ of certiorari.

STANDARD OF REVIEW

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006). An abuse of discretion occurs when the trial court's ruling is based on an error of law or factual conclusion without evidentiary support. State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003).

SUBMIT ARGUMENT

The re-sentencing court erred in allowing Blash's criminal history from Florida into evidence which was prejudicial to Blash because the history contained one conviction which was tried in Blash's absence for the same offense for which he was being re-sentenced and also contained numerous drug offenses which did not indicate convictions.

RELEVANT FACTS

On April 10, 2000 around ten o'clock p.m., the police received a tip that three black males, one in a green car with a California plate, and two in a SUV with a Florida plate had a large amount of cocaine and were looking for someone to cook it for them to make crack. App. 5,11. 9 - App. 6,11.5. The officers were able to track down the cars and found under the white SUV a large quantity of powder cocaine. The cocaine was sent to SLED where it was determined that the amount was 997.22 grams. App. 6,11. 6 - App. 7,11. 14.

Petitioner Eddie Blash was arrested and charged with trafficking cocaine. In June 2000, the Florence Grand Jury indicted Blash for trafficking cocaine. App. 82- App. 83. On August 13, 2001, Blash and his co-defendant, Michael George Monfries, proceeded to trial before the Honorable B. Hicks Harwell and a jury. Blash was represented by Hank Anderson. App. 66,11. 4-19. The jury found Petitioner Blash guilty of trafficking in powder cocaine more than 400 grams. App. 4,11. 21-App. 6,11. 8.

At sentencing, the trial judge began yelling at Blash and asked why should the judge not give him the maximum sentence. The judge said that Blash had never accepted responsibility for his behavior and that Blash had chosen to go to trial and the jury convicted him. The judge said

he agreed with the jury. App. 11, 11. 2- App. 12, 11. 14; App. 100- App. 101. The judge then sentenced Blash to the maximum of thirty (30) years. App. 88; App. 12, 1. 1 - 5.

Blash's attorney did not file a notice of appeal. On August 16, 2002, Blash filed a "pro se" post-conviction relief (PCR) application alleging that his trial counsel was ineffective for not filing a timely notice of appeal. App. 75. An evidentiary hearing was held on October 14, 2004 before the Honorable James E. Brogdon, Jr. On December 15, 2004, Judge Brogdon issued an order granting Blash a belated appeal. Blash filed an amended PCR after the PCR judge gave him thirty (30) days to file an amended PCR application. In this amended PCR application, Blash again alleged trial counsel's failure to file a notice of appeal. Blash also alleged ineffective assistance of counsel for failing to object to the testimony of a witness. App. 51, 11. 1 - 24; App. 75.

An evidentiary hearing was held on December 12, 2007, before the Honorable Thomas Russo. Judge Russo denied the application with prejudice except granted Blash's right to a belated appeal. App. 51, 11. -25 - App. 52, 11. 2. This appeal was perfected by the Division of Appellate Defense. On March 28, 2012, the Supreme Court reversed Blash's case and remanded for resentencing. App. 106-App. 107.

On May 08, 2012, Petitioner Blash appeared before the Honorable Thomas Russo for a resentencing hearing. Blash was represented again by his trial counsel, Hank Anderson. The State was represented by Patricia S. Parr. App. 1.

During this hearing, the State told the judge that Blash had a prior conviction in Florida for trafficking cocaine on February 5, 2000. The date of conviction was February 26, 2002 for trafficking cocaine 28 to 150 grams. However, he was in South Carolina at that time so he must have been tried in his absence. The State then told the judge that there were "numerous drug arrests on his criminal history but without the dispositions." App. 7, 11. 15 - App. 8, 11. 10. Defense counsel did not object. App. 7, 11. 15 - App. 8, 11. 25.

Defense counsel Anderson told the court that the co-defendant failed to appear for the trial while Blash appeared every day although the trial judge had allowed him to stay out on bond. Counsel said that everything belonged to the co-defendant which included the car, the room, the keys. App. 9, 11. 1 - App. 11, 11. 6.

Counsel also told the court that the trial judge, Judge Harwell, got "carried away" at sentencing and began yelling at Blash and asked Blash about other incidents. Counsel thought Judge Harwell may have said that he was going to punish Blash for going to trial. The judge then gave Blash the maximum of thirty (30) years. Counsel argued that Blash came to court although he was working during this time. Counsel said that Blash was a good client to work with. Counsel asked the judge to give Blash the minimum of twenty-five (25) years. Judge Russo then sentenced Blash to twenty-eight (28) years. App. 11, 11. 7 - App. 14, 11. 6.

DISCUSSION

Counsel did not object to the State bringing in Blash's prior Florida conviction for trafficking cocaine nor the other drug charges for the judge's consideration.

Rule 403 SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

Once prior bad act evidence is found admissible by reason of its purpose, the trial court must then conduct a prejudice analysis, and may exclude the evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant. Rule 403, SCRE, State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013).

It was prejudicial to Blash for the State to admit for the judge's consideration in resentencing a similar conviction from Florida where the evidence indicated that he was tried in his absence. It was also prejudicial for the State to admit for the judge's consideration in sentencing the other drug offenses on Blash's record where there was no evidence of convictions from those. The judge sentenced Blash without a clear record of his prior offenses.

The resentencing judge said on the record that there was not much of a sentencing range for consideration. He said that someone who has a

"horrible" prior record should not be treated the same as someone who has be convicted for the first time. The judge said that he "was not real clear on what the Court found improper about judge Harwell's sentence." This indicated that the judge was biased as he obviously thought the previous sentence was proper.

SUBMIT ARGUMENT

Counsel failure to challenge the State bringing in defendant prior Florida conviction for trafficking cocaine, nor the other drug charges for the Judge's consideration.

DISCUSSION

During this resentencing hearing, the State told the Judge that Blash had a prior conviction in Florida for trafficking cocaine on February 5, 2000. The date of conviction was February 26, 2002 for trafficking cocaine 28 to 150 grams. However, he was in South Carolina at that time so he must, have been tried in his absence. The State then told the Judge that there were "numerous drug arrests on his criminal history but without the disposition". App. 7, 11.15-App. 8, 11.10: defense counsel did not object. see App. 7, 11.15-App. 8.25. Rule 403, SCRE provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Once prior bad act evidence is found admissible by reason of its purpose, the trial court must then conduct a prejudice analysis and may exclude the evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant. Rule 403, SCRE. State v. Spears 403 S.C. 247, 742 S.E. 2d 878 (Ct. App. 2013). It was prejudicial to Blash for the State to admit for the Judge's consideration in resentencing a similar conviction from Florida where the evidence indicated that he was tried in his absence. It was also prejudicial for the State to admit for the Judge's consideration in sentencing the other drug offenses on Blash's record where there was no evidence of convictions from those. See App. 7, 11.15-App. 8, 11.10. The Judge sentenced Blash without a clear record of his prior offenses.

The resentencing Judge said on the record that there was not much of a sentencing range for consideration. He said that someone who has a "horrible" prior record shouldn't be treated the same as someone who has been convicted for the first time. The Judge said that he "was not real clear on what the court found improper about Judge Harwell's sentence." This indicated that the Judge was biased as he obviously thought the previous sentence was proper.

STANDARD OF REVIEW

The admission or exclusion of evidence is left to the sound discretion of the trial Judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002) A court's ruling on the admissibility of evidence will not be reversed on appeal absent of discretion or the commission of legal error that results in prejudice to the defendant. State v. Douglas, 369 S.C. 424, 632 S.E. 2d 845 (2006). An abuse of discretion occurs when the trial court's ruling is based on an error of law or factual conclusion without evidentiary support. State v. Mattison, 263 S.C. 110, 208 S.E. 2d 35 (1974). United States v. Winbush, 922 f 3d 227 (4th Cir. 2019).

SUBMIT ARGUMENT:

CANNOT SUBSTITUTE CAREER OFFENDER PREDICATE ON COLLATERAL REVIEW

The U.S. Court of Appeals for the Fourth circuit Reversed a District Court's Denial of a Defendant 2255 Motion, holding the Lower Court "Clear Error" when it rejected Defendant's claim that his attorney's failure to challenge a prior drug conviction for use as a career offender enhancement did not result in prejudice because a prior robbery conviction would still support the enhancement discussion.

Defendant, Antwaun Winbush, filed a motion under 28 U.S.C. 2255, arguing his attorney should have challenged the conveyance charge as being insufficient to support the career offender enhancement because it lacked the pre-requisite intent element. The District Court agreed that counsel was deficient, but decided no prejudice occurred because Winbush's prior Ohio conviction for third-degree robbery would have been sufficient to sustain the career offender enhancement even if the conveyance charge were invalidated.

-United States V. Hodge, 902f. 3d 420 (4th Cir..2018) Precluded such substitution. In Hodge the court ruled that such a substitution was not permissible because the Government "cannot identify only some ACCA qualifying convictions at sentencing"- thereby limiting the defendant's notice of which to contest- and later raise additional convictions to sustain an ACCA enhancement once the burden of proof has shifted to the defendant.

-Molina-Martinez V. United States, 136 S.CT.1338 (2016) Further, the court explained that the career offender designation still has serious consequences for defendants. In fact, the Forth Circuit has held that a lawyer's failure to challenge the designation can constitute deficient performance, resulting in prejudice. See: United States V. Carthorne, 878f. 3d 458 (4th Cir. 2017)

Accordingly, the Court reversed the District Court's denial of Winbush's 2255 motion and remanded the directions to re-sentence him without a career offender enhancement. See: United States V. Winbush, .922f. 3d 227 (4th Cir. 2019)

CONCLUSION

Based on the above, the sentence should be reversed, and the case remanded for a resentencing hearing.

Eddie Blash Jr.

EDDIE BLASH JR. #277603

APPELLANT

THIS 10TH DAY OF JULY, 2020

STATE OF SOUTH CAROLINA

COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY

HONORABLE PAUL M. BURCH, CIRCUIT COURT JUDGE

EDDIE BLASH JR.,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Pro Se Anders Brief of Appellate pursuant to White v. State and United States v. Winbush in the above referenced case has been served upon Claire Allen, Clerk, South Carolina court of Appeals, P.O. Box 11629, Columbia, S.C. 29211; and a copy of the Prose Anders Brief of Appellate pursuant to White v. State and United States v. Winbush has been served upon Lindsey McCallister, Esquire at the Rembert Dennis Building, 100 Assembly Street, Room 519, Columbia, S.C. 29201; and a copy of the Prose Anders Brief of Appellate pursuant to White v. State and United States v. Winbush has been served upon Joanna K. Delany, Appellate Defender, South Carolina Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.



Eddie Blash Jr.

Appellant

Subscribed and sworn by me this 10th, day of

July, 2020.

Cathie A. Amos

Notary Public for South Carolina

My Commission expires: Dec 22 2029

STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPELLATE CASE # 2017-001839

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SC Court of Appeals

DATE: JULY 10, 2020

RE: Submit issues for the Court's Consideration of
Appeal, has forty-five (45) days to file from the date
of June 09, 2020.

Dear Mrs. Claire Allen, Clerk,

Enclosed- please find a copy of the Pro Se Anders Brief of Appellant
pursuant to White v. State and United States v. Winbush in my case, which I ~~SENT~~
A COPY with the South Carolina Attorney Generals Office, Lindsey McCallister
Esquire. AND APPELLATE DEFENDER, JOANNA K. DELANY.

Also enclosed, find a copy of the South Carolina Court of Appeals
letter I received here at Kershaw Correctional mail room with the date stamped
of June 11, 2020.

Sincerely,

Eddie Blash #277603
Kershaw C.I. HB 276
4848 Goldmine Highway
Kershaw, S.C. 29067

CC:EB

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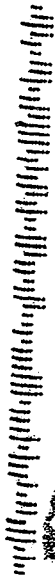
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