

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Florence County

Honorable Paul M. Burch, Circuit Court Judge

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EDDIE BLASH, JR.,

ORIGINAL  
RECEIVED

JUL 12 2018

S.C. SUPREME COURT

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001839

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ANDERS BRIEF OF APPELLANT  
PURSUANT TO WHITE V. STATE

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ATTORNEY FOR APPELLANT

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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?

## 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 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 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, 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 resentencing 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 years. App. 11, ll. 7 – App. 14, ll. 6.

Counsel did not file a notice of appeal. App. 50, ll. 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, ll. 1 – 11. Blash then filed a federal habeas petition on July 12, 2013 which was eventually dismissed. App. 52, ll. 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, ll. 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. 79 – 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).

## ARGUMENT

The resentencing 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 resentenced 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, ll. 9 – App. 6, ll. 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, ll. 6 – App. 7, ll. 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, ll. 4 – 19. The jury found Petitioner Blash guilty of trafficking in powder cocaine more than 400 grams. App. 4, ll. 21 – App. 6, ll. 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, ll. 2 – App. 12, ll. 14; App. 100 – App. 101. The judge then sentenced Blash to the maximum of thirty years. App. 88; App. 12, l. 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 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, 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.

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, ll. 15 – App. 8, ll. 10. Defense counsel did not object. App. 7, ll. 15 – App. 8, ll. 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, ll. 1 – App. 11, ll. 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 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 years. Judge Russo then sentenced Blash to twenty-eight years. App. 11, ll. 7 – App. 14, ll. 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.

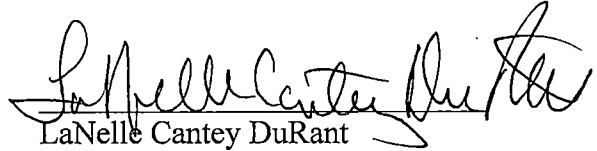
Once prior bad act evidence is found admissible by reason of its purpose, the trial court must then conduct a prejudice analysis, and may exclude the evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the defendant. Rule 403, SCRE, State v. 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 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.

**CONCLUSION**

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

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant". The signature is written in a cursive style with a large initial "L".

LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of July, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Florence County

Honorable Paul M. Burch, Circuit Court Judge

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EDDIE BLASH, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

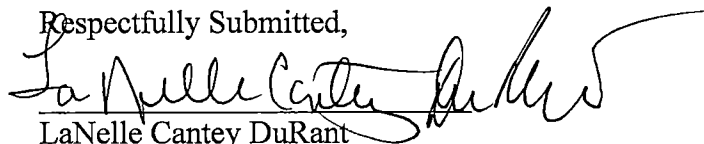
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Counsel for Eddie Blash states:

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 March 14, 2017, 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 Eddie Blash.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

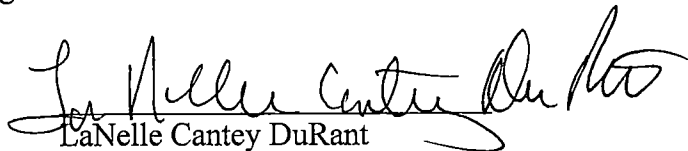
ATTORNEY FOR APPELLANT

This 12th day of July, 2018.

**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."

July 12, 2018.

  
LaNelle Cantey DuRant  
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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EDDIE BLASH, JR.,

APPELLANT

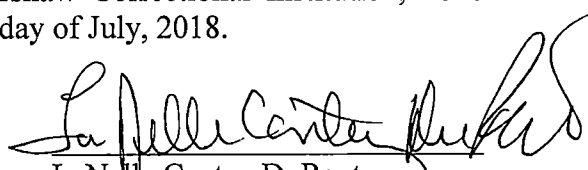
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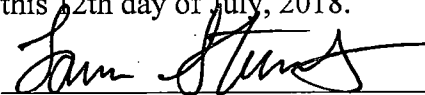
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant pursuant to White v. State has been served on Eddie Blash, 277603, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 12th day of July, 2018.



LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 12th day of July, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: June 5, 2027.