

RECEIVED

Jul 21 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID DWYER COCKRELL,

APPELLANT

APPELLATE CASE NO 2020-001070

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

The circuit court judge erred in ordering appellant to pay
restitution for back-rent owed because the case involved a
landlord/tenant matter where the landlord’s remedy to recover fell
under a magistrate’s court jurisdiction.....4

CONCLUSION.....5

TABLE OF AUTHORITIES

Cases

State v. Morgan, 417 S.C. 338, 790 S.E.2d 27 (2016)..... 3, 4

State v. Dawson, 402 S.C. 160, 740 S.E.2d 501 (2013) 3

Other Authorities

S.C. Code Ann Section 17-25-322..... 4

S.C. Code Ann Sections 27-39-210-360..... 4

S.C. Code Ann Sections 27-40-710 & 510.....4

S.C. Code Ann. Section 16-3-1110 (12)..... 4

STATEMENT OF ISSUE ON APPEAL

The circuit court judge erred in ordering appellant to pay restitution for back-rent owed because the case involved a landlord/tenant matter where the landlord's remedy to recover fell under a magistrate's court jurisdiction.

STATEMENT OF THE CASE

Appellant David Dwyer Cockrell pled guilty to two counts of uttering a fraudulent check during the April 2020 term of the Greenville County General Sessions Court before Judge Letitia H. Verdin, who sentenced appellant to imprisonment for a period of two years, suspended upon sixteen days time served, and three years probation. A restitution hearing was held on July 23, 2020, at the Greenville County General Sessions Court before Judge Edward W. Miller, who ordered appellant pay restitution in the amount of \$10,060.00. Demi Messer, Esq. represented appellant at both proceedings. Assistant Solicitor L. Mark Mayer appeared on behalf of the state at the plea proceeding, and Assistant Solicitor Sylvia Harrison appeared on behalf of the state at the restitution hearing.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. State v. Morgan, 417 S.C. 338, 790 S.E.2d 27 (2016), citing to State v. Dawson, 402 S.C. 160, 740 S.E.2d 501 (2013).

ARGUMENT

The circuit court judge erred in ordering appellant to pay restitution for back-rent owed because the case involved a landlord/tenant matter where the landlord's remedy to recover fell under a magistrate's court jurisdiction.

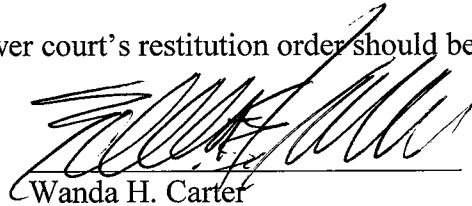
In the instant case, appellant wrote two separate checks in the amount of \$5,000.00 each for rent. Both checks were returned for insufficient funds with an accompanying charge of \$60.00. R. 3-8. During the restitution hearing held in the case, the trial judge ordered appellant to pay the landlord \$10,060.00. Counsel objected and argued that the \$60.00 loss for the returned checks ended up being the only amount that was due to the landlord as a result of appellant's criminal actions. The circuit court judge overruled counsel's objection. R. 13, 1.1 – 18, 1. 5.

S.C. Code Ann Section 17-25-322 allows for restitution for a victim as a result of the defendant's criminal acts as compensation for any pecuniary damages. Also, S.C. Code Ann. Section 16-3-1110 (12) states that restitution means payment for injuries, specific losses, and expenses sustained by a crime victim resulting from an offender's criminal conduct. However, restitution orders do not limit any civil claims that a crime victim may file. In the assault and battery case of State v. Morgan 417 S.C. 338, 790 S.E.2d 27 (2016), the Court held that civil damages were separate and distinct from restitution, and that the execution of a civil settlement and covenant not to execute in the case between the victim and defendant prior to sentencing did not preclude an award of restitution. However, State v. Morgan, supra, involved the effect of an insurance matter and settlement on restitution whereas the case at bar involved a landlord and tenant law issue where the landlord had remedies in magistrate's court to recoup his back-rent losses. See S.C. Code Ann Sections 27-39-210-360, 27-40-710 and 27-40-510.

The restitution covering back-rent was not connected to the bad check crimes. The amount owed on the returned checks (\$60.00) only would qualify as the loss from the bad check crimes. Therefore, the restitution award of 10,000.00 was improper as there was another court, that being magistrate's court, in which to properly bring an action for back-rent owed to the landlord to request a \$10,000.00 judgment.

CONCLUSION

Based on the foregoing argument, the lower court's restitution order should be vacated.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of July, 2021.

RECEIVED

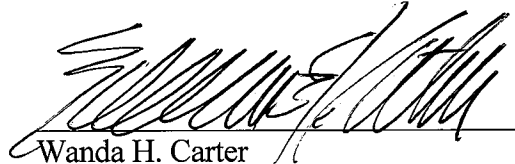
Jul 21 2021

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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 21, 2021



Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589