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Sep 20 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

William A. McKinnon, Circuit Court Judge

Case No. 2013-GS-46-02041
Appellate Case No. 2021-000226

State of South Carolina,

Respondent,

v.

Duane A. Harrison

Appellant.

APPELLANT'S INITIAL REPLY BRIEF

Glenn Walters, Sr.
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Ph: 803 531-8844
Fax: 803 531-3628
glennwalterspa@gmail.com

Attorney for Appellant

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TABLE OF AUTHORITIES

Case:

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Other Authorities:

None

STATEMENT OF ISSUE ON APPEAL

Did the trial court lack authority to hear Appellant's Motion to Vacate guilty plea and conviction?

STATEMENT OF THE CASE

Appellant sufficiently delineated a statement of the case in his Initial Brief which has been filed with this Court. The Statement of the Case stated in the Appellant's Initial Brief is hereby incorporated by reference as if fully set out herein.

Respondent timely filed its Initial Brief after its Motion to Dismiss was denied by this Court. This Court then extended the Appellant's time to serve this Reply Brief to September 20, 2021.

STATEMENT OF THE FACTS

Appellant sufficiently delineated a statement of the facts in his Initial Brief which has been filed with this Court. The Statement of the Facts stated in the Appellant's Initial Brief is hereby incorporated by reference as if fully set out herein. The facts necessary to resolve this dispute are not in dispute.

STANDARD OF REVIEW

Appellant sufficient delineated a standard of review in his Initial Brief which has been filed with this Court. The Standard of Review stated in the Appellant's Initial Brief is hereby incorporated by reference as if fully set out herein.

REPLY ARGUMENT

APPELLANT’S MOTION TO DISMISS AT THE TRIAL COURT DID NOT CHALLENGE THE SUFFICIENCY OF THE INDICTMENT; INSTEAD, HE CHALLENGED THE JURISDICTION OF THE COURT TO ACCEPT HIS PLEA TO THE “VERBAL INDICTMENT”.

In its initial brief, the complete legal foundation of the Respondent’s argument is that the trial court did not have jurisdiction to vacate Appellant’s/Harrison’s guilty plea conviction based on an insufficient indictment. *Respondent’s Brief, pp. 8-9.* The foregoing would be a great argument and well supported by the law that Respondent cites if the Respondent was properly characterizing the Appellant’s argument. However, this argument is without merit and must fail because Harrison did not allege an insufficient indictment in his Motion to Vacate his Sentence and Conviction before the trial court, nor does Harrison assert such legal theory on appeal before this Court. Instead, Harrison’s asserted at the trial court and now asserts before this Court that the trial court did not have jurisdiction to accept his plea, because the State amended the indictment in such a way that it changed the nature of the offense and that such amendment was not allowed because there was not a waiver or presentment. *Clair v. State, 324 S.C. 144 (1996)* (affirming grant of post-conviction relief where defendant was indicted for trafficking in cocaine weighing more than 100 grams and less than 200 grams). Under the holding in *Clair*, an amendment to a drug indictment that changes the nature of the offence involves subject matter jurisdiction, not sufficiency of the indictment. *Id.*

On September 02, 2014, Harrison agreed to plead no contest to trafficking in cocaine, 28 to 100 grams. Of importance, no new indictment was prepared by the assistant solicitor. Instead, the assistant solicitor verbally stated in the record Harrison was pleading to trafficking in cocaine, 28 to 100 grams. *See, Sentencing Transcript, p7, Lines 2-25.* From the record, it appears that the sentencing court did not use an indictment. The Court completed a Sentencing Sentence, and the

trial judge checked the space “lesser included offense”, which intended to communicate that Harrison was pleading to a lesser-included offense. Harrison did not sign the Sentencing Sheet. There is nothing even to remotely suggest that Harrison waived presentment of the “verbal indictment” to the Grand Jury. There is no colloquy in the Sentencing Transcript to suggest that Harrison waived presentment of the new charge to the Grand Jury. The solicitor’s “verbal amendment” of the indictment before the court substantially changed the nature of the offense to which Harrison was charged. Harrison did not plead to the Amended Indictment. Instead, he was sentenced to 12.5 years for pleading no contest to the assistant solicitor’s “verbal indictment”, even though the nature of the offense was changed.

In sum, under the *Clair, supra*, line of cases, the trial court did not have subject matter jurisdiction to accept Harrison’s plea because the reduced charge was not a lesser included offense, and Harrison did not waive presentment of the reduced charge. Therefore, Harrison’s conviction and sentence are void as a matter of law.

CONCLUSION

Based upon the reasoning and citation of authority provided in the Appellant’s Initial Brief and this brief, and any arguments of counsel invited by this Court, Harrison requests this Court to issue an order vacating his sentence and conviction, and for an order granting him any other relief that is just and proper.

At Orangeburg, SC

Dated: September 20, 2021

/s/ Glenn Walters, Sr., Esquire

1910 Russell Street

Post Office Box 1346

Orangeburg, SC 29116

(803) 531-8844

(803) 531-3628 Fax

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PROOF OF SERVICE

I, Glenn Walters, certify that I have served the INITIAL REPLY BRIEF OF APPELLANT on the Respondent State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on September 20, 2021, addressed to the following attorneys of record:

Matthew W. Shelton, Esquire
Assistant Solicitor
York County Solicitor's Office
1675 York Highway
York, SC 29745

Alan M. Wilson, Esquire
William M. Blich, Jr., Esquire
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

At Orangeburg, SC
Dated: September 20, 2021

/s/ Glenn Walters, Sr., Esquire