

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Marion County

Honorable D. Craig Brown, Circuit Court Judge

LARRY ANTHONY WHITE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001607

ANDERS BRIEF OF APPELLANT PURSUANT
TO WHITE V. STATE

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

RECEIVED

May 19 2021

S.C. SUPREME COURT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in accepting appellant's guilty pleas because they were given involuntarily as he was not apprised of sentencing consequences in the case?

STATEMENT OF THE CASE

Petitioner Larry Anthony White pled guilty to first degree burglary and attempted murder during the July 2018 term of the Marion County General Sessions Court before Judge William H. Seals, Jr. via a negotiated plea agreement, petitioner was sentenced to two concurrent fifteen-year sentences and his remaining charges were dismissed.¹ App. 1-11. Petitioner was represented at the hearing by Brad C. Richardson, and Assistant Solicitor Fitzlee McEachin appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On April 22, 2019, petitioner filed a PCR application with the Marion County Office of the Clerk of Court. App. 13-19. The respondent filed a Return dated July 1, 2019, requesting that a hearing be held in the case. App. 20-23.

A PCR hearing was convened on December 17, 2019, at the Marion County Courthouse before Judge D. Craig Brown. App. 26-64. Petitioner was present at the hearing and represented by Jonathan D. Waller, and Assistant Attorney General Samuel L. Key appeared on behalf of the state. On October 26, 2020, Judge Brown filed an Order of Dismissal therein granting petitioner's request for a direct appeal per White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), but denied petitioner's remaining questions regarding counsel's performance and the voluntariness of his plea. App. 66-81.

Petitioner appealed Judge Brown's Order. This brief follows.

¹ The dismissed charges were armed robbery, conspiracy, possession of a weapon during the commission of a violent crime, and two counts of kidnapping.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only, State v. Nesbitt, 411 S.C. 194, 768, S.E.2d 67 (2015), quoting State v. Jacobs 393 SC 584, 713 S.E.2d 621 (2011).

ARGUMENT

The trial judge erred in accepting appellant's guilty pleas because they were given involuntarily as he was not apprised of sentencing consequences in the case.

Before appellant pled guilty, the trial judge warned appellant of his constitutional rights waived under Boykin v. Alabama, 395 U.S. 238 (1969), such as the right to a jury trial, and the right to confront and cross examine witnesses, and the privilege against self incrimination. App. 3, 1.1 – p. 4, 1.11. Then, appellant waived his rights and acknowledged the plea negotiations. App. 6, 1.1-13. Also, the trial judge discussed the penalties attached to the crimes to which he was pleading guilty. App. 5, 1.17-23. Afterwards, the solicitor apprised the trial judge of the facts of the case. App. 7, 1.13 – p. 8, 1.11. Thereafter, the trial judge accepted appellant's pleas as “freely [and] intelligently” given. App. 10, 1.12-15.

Then, subsequent to accepting appellant's pleas, the following colloquy occurred.

Solicitor: Your honor, and I may not have been paying attention at the time. [Did] the Court review with the defendant the most serious offense? The fact that it falls under the two strikes rules?

Defense Counsel: And I didn't go over that with him, your honor. Whereupon, a pause in the proceedings.)

Defense Counsel: Your honor, that's always a difficult one. That's one thing I did neglect to talk about the nature of this being 85 percent. If, your Honor, would like to educate him—

The Court: You already went over that with him I assume. He understands it.

Solicitor: Very briefly, Your Honor. It's just basically in the State of South Carolina you heard two strikes, three strikes law. This would fall under the two strikes law. So if you got out and you committed what is considered a most serious offense or actually two most serious offense – if you committed a serious offense, you would be eligible for the possibility of a life sentence if convicted. App. 10, 1.16 – p. 11, 1.11.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Here, counsel's failure to explain to petitioner and the trial judge's failure to explain to petitioner before he pled guilty about how the most serious offense classification, and the two strikes rule, and future LWOP sentencing applied to his case meant that appellant pled guilty without understanding sentencing consequences in his case prior to entering his guilty pleas. This rendered appellant's pleas involuntarily given.

CONCLUSION

Based on the foregoing argument, counsel requests that appellant's convictions and sentences be reversed, and his case remanded to the lower court for a new proceeding.

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of May, 2021.

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Counsel for Larry Anthony White states:

(1) She is Deputy Chief 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 guilty plea hearing before Judge William H. Seals, which was held on July 30, 2018, 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 Larry Anthony White.

Respectfully Submitted,

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of May, 2021.