

STATE OF SOUTH CAROLINA

IN THE SUPREMENT COURT

Certification to Marion County

Honorable D. Craig Brown, Circuit Judge

LARRY ANTHONY WHITE,

APPELLANT

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001607

APPELLANT'S BRIEF
(Direct Appeal)

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STATE OF ISSUES ON APPEAL

- I. WHETHER THE APPELLANT'S GUILTY PLEA TO ATTEMPTED MURDER AND BURGLARY FIRST DEGREE ARE INVALID ON THE BASIS THAT THE RECORD DOES NOT SUPPORT A VOLUNTARILY AND INTELLIGENT PLEA COMPLIANT WITH THE DUE PROCESS CLAUSE OF THE CONSTITUTIONS OF THE UNITED STATES OF AMERICA AND THE STATE OF SOUTH CAROLINA?

- II. WHETHER APPELLANT'S GUILTY PLEA FOR ATTEMPTED MURDER AND BURGLARY FIRST DEGREE IS INVALID ON THE BASIS THAT THE COURT LACKED JURISDICTION TO ACCEPT THE PLEA?

STATE OF THE FACTS

During the plea colloquy the trial judge informed Appellant of constitutional rights he was entitled: (1) the right to a jury trial; (2) the right to confront any witnesses presented by the government; and (3) the constitutional right of silence. (App., pp. 3-4). Furthermore, Appellant was informed of the maximum and minimum penalties for burglary first degree and attempted murder; the sentence of fifteen years he would receive under the negotiated agreement with the government, if accepted by the court; and his right to appeal his conviction within ten days of his plea. (App., p. 6). Appellant acknowledged understanding of his rights, penalties he faces, and the sentence he was likely to receive. (App., p. 7).

After hearing mitigating arguments from Appellant's counsel, the court accepted the negotiated plea agreement and sentenced Appellant to fifteen years, with five hundred fifty-one days credit. (App., p. 10). Thereafter the assistant solicitor inquired whether Appellant had been advised prior to acceptance of his plea that the offenses pleaded to were classified as "most serious" under South Carolina law, and the consequences of such classification. (App., p. 10). Appellant's counsel informed the court he had not explained these things to Appellant. (App., p. 10). Furthermore Appellant' counsel also stated, "I did neglect to talk about the nature of this being 85 percent." (App., p. 10-11). Appellant's counsel briefly explained to Appellant the classification of the offenses he plead to and the nature of such classification. (App., p. 11). Then, the sentencing hearing ended.

LAW AND ARGUMENT

"Entering a guilty plea results in a waiver of several constitutional rights, therefore, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intentionally." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623 (1999). In *Boykin v.*

Alabama the United States Supreme Court held that Due Process requires that a defendant be informed of his constitutional rights of trial by jury, privilege against self-incrimination, and confrontation of accusers. 395 U.S. 238, 243, 89 S. Ct. 1709 (1969). “In addition to the requirements of *Boykin*, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. at 599 (1999). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and charges against him.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418 (2000).

A guilty sentence may have many collateral consequences; however, a defendant need not be informed of all collateral consequences to render a guilty plea voluntarily, knowingly, and intelligently under the Due Process Clause. *Williams v. State*, 662 S.E.2d 615, 617, 378 S.C. 511 (SC App. 2008). “The distinction between ‘direct’ and collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.” *Id.* at 617.

When reviewing the validity of a guilty plea the court must consider the entire record, including transcript of the guilty plea and any evidence present at a PCR hearing. *Roddy v. State*, 339 S.C. at 33 (2000). The Due Process Clause requires that a voluntary, knowing, and intelligent waiver of one’s rights and the consequences of a waiver of such rights and of pleading guilty must be reflected in the record. *Roddy v. State*, 339 S.C. at 33-34 (2000).

I. APPELLANT'S GUILTY PLEA TO ATTEMPTED MURDER AND BURGLARY FIRST DEGREE ARE INVALID ON THE BASIS THAT THE RECORD DOES NOT SUPPORT A VOLUNTARILY AND INTELLIGENT PLEA COMPLIANT WITH THE DUE PROCESS CLAUSE OF THE CONSTITUTIONS OF THE UNITED STATES OF AMERICA AND THE STATE OF SOUTH CAROLINA

The record shows that Appellant was never informed by the trial court or his counsel that his guilty plea to attempted murder and burglary first degree constituted "most serious" offenses under section §17-25-45(C), and the consequence of that most serious offense classification. (App., p. 10-11), *see*, S.C. Code Ann. §17-25-45(C) (2016). Furthermore, Appellant was not informed that the sentenced offenses required service of eighty-five percent of his sentence before becoming eligible for release. (App., p. 10-11).

In *Taylor v. State*, the South Carolina Supreme Court was confronted with the issue of whether failure to inform a defendant of his classification under South Carolina's "two strike" law rendered his plea involuntary and unintelligent considering the United Supreme Court's holding in *Padilla v. Alabama*. 404 S.C. 350, 359, 745 S.E.2d 97 (2013). The *Taylor* court declined to decide this issue, but instead ruled that the question was not relevant under the circumstances because, assuming trial counsel's representation was deficient, the additional element of prejudice under the *Strickland* model was not met. *Id.* at 361-362; *see also*, *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). Appellant's case once again raises this issue before the court for resolution.

In *Padilla v. Alabama*, the United States Supreme Court held that in a case where the consequences of a guilty plea of a noncitizen defendant's immigration status is unclear, an attorney must put the defendant on notice that the criminal charge may carry adverse immigration consequences. 130 S. Ct. 1473, 1477 (2010). Furthermore, in those situations where the immigration consequences are clear, an attorney must inform a defendant of the actual

immigration consequences of a plea. *Id.* at 1476-1477. Most importantly, the United State Supreme Court held that it has never made a distinction between direct and collateral consequences in deciding whether an attorney's representation is constitutionally adequate under the Sixth Amendment right to counsel. *Id.* at 1467.

This represents a departure from South Carolina's jurisprudence that the consequence of a plea that does not have an immediate and definitive impact on defendant's punishment is collateral, and failure to inform a defendant of such consequences will not render a plea involuntary and unintelligent in violation of the Due Process Clause. Furthermore, South Carolina seems to hold that a distinction between consequences that are direct and those that are collateral is the deciding factor.

However, the *Padilla* Court seems to focus not on whether the consequence is collateral or direct, but whether the consequence is so important to a defendant's interest that it would sway his or her decision to plead guilty. Although Padilla, a noncitizen, had no right to residing in the United States, but the privilege to do so was so important to himself, it weighed heavily on his decision to plead guilty; therefore, the failure of his attorney to put him on notice, at a minimum, of that consequence to his guilty plea goes to the constitutionality of adequate representation under the Sixth Amendment.

In the current case, Appellant's freedom and how much of it he will voluntarily surrender to the government is a very important constitutional and human right and or interest; therefore, any consequence that would affect the amount of time Appellant will serve affects whether a plea was voluntarily and intelligently given under the Due Process Clause. Appellant's trial counsel's failure to inform him that §24-13-150 mandates that he served eighty-five percent of his sentence before becoming eligible for release because the plead offenses placed him in

special classification of offenders. S.C. Code Ann. §24-13-150 (2016). Any assertion to the contrary is legal fiction. There are not many interests more important than freedom to the human being.

II. APPELLANT’S GUILTY PLEA FOR BURGLARY FIRST DEGREE IS INVALID ON THE BASIS THAT THE COURT LACKED JURISDICTION TO ACCEPT THE PLEA

“The circuit court lacks subject matter jurisdiction to accept a guilty plea when the indictment fails to state an offense.” *Johnson v. State*, 459 S.E.2d 840, 841, 319 S.C. 62 (SC 1995). Appellant was charged with burglary first degree. The burglary first degree statute states in pertinent part that: “A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling.” S.C. Code Ann. § 16-11-311 (2016). It is clear from the plain language of the state that burglary first degree requires a defendant to enter a dwelling without consent.

In the current case, the indictment only alleged that Appellant, “willfully and unlawfully attempted to enter the dwelling.” The allegations of the indictment do not allege facts sufficient to constitute burglary first degree. In a case where an indictment fails to state an offense, the property remedy is to vacate the conviction and sentence. *Johnson v. State*, 459 S.E.2d at 41 (S.C. 1995).

CONCLUSION

Appellant request that court to find his July 30, 2018 guilty plea to attempted murder and burglary first degree invalid and vacate the conviction and the sentence.

Respectfully submitted,

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