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**Jan 04 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Clarendon County

Honorable R. Ferrell Cothran, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MARVIN KEITH MCBRIDE, JR.,

APPELLANT

APPELLATE CASE NO. 2021-000813

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ANDERS BRIEF OF APPELLANT

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WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
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PO Box 11589  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in holding a competency hearing on appellant's behalf sans the benefit of documentation from a formal examination conducted upon appellant in the matter prior to trial?

## **STATEMENT OF THE CASE**

Appellant Marvin K. McBride was convicted of forgery (valued over \$10,000.00) per jury trial held during the July 2019 term of the Clarendon County General Sessions Court before Judge R. Ferrell Cothran. Timothy L. Griffith represented appellant at trial and Assistant Solicitor Philip D. Little, Jr., appeared on behalf of the state. Appellant was sentenced to imprisonment for a period of six years.

Appellant appealed. This brief follows.

## **STANDARD OF REVIEW**

The trial judge's determination of competency must have evidentiary support and not be against the preponderance of the evidence. State v. Nance, 320 S.C. 501, 466 S.E.2d 349 (1996).

## ARGUMENT

The trial judge erred in holding a competency hearing on appellant's behalf sans the benefit of documentation from a formal examination conducted upon appellant in the matter prior to trial.

The state alleged that appellant forged a check for \$10,000.00 containing the questionable signature of his employer James Johnson and presented the same to a bank for payment. The trial in this case consisted of the testimony of three witnesses: 1.) appellant, 2.) appellant's employer James Johnson, and 3.) Police Officer Andrew Hughes.

State's witness Officer Andrew Hughes testified that he arrested appellant for forgery on April 19, 2018, after being dispatched to the bank in question per a report regarding the presentation of a certain check by appellant. R. 56, 1.4-63, 1.5.

James Johnson stated that he has employed appellant in the past to perform odd jobs (construction), but denied making out and signing the check in question presented that was presented to the bank by appellant. R. 66, 1.11-p.20.

Appellant testified and stated the check was made out to him. R. 85, 1. 18 – p 95, 1. 18.

Prior to trial, the trial judge held a competency hearing at the solicitor's behest and ruled that appellant was competent to stand trial after answering in the affirmative a few basic questions. R. 17, 1.22-p. 27, 1.14. Prior to the competency hearing, defense counsel stated the following:

Solicitor: Your Honor, it's my understanding that defense counsel made a motion for a mental evaluation based on his concern of lack of competency of the defendant in some unrelated Sumter County case. It's, from what I understand Judge Curtis heard that and is going to issue an order in that; but we would ask that the Court inquire of Mr. McBride as to his competency to make a determination whether he's competent to stand trial.

The Court: Okay. You want to tell me anything, Mr. Griffith, or do you want to put anything on the record?

Defense Counsel: Your Honor, I'm just checking my email to see if I got a reply from Judge Curtis; and the reply, she's just asking if this is the same one that we had discussed before. She didn't make any other reply. I'm sending it again. But, Your Honor, I'd – in Sumter County Mr. McBride is facing significant charges but not terribly serious. But, Your Honor, Mr. McBride, I'm not a medical doctor, of course, and cannot give any kind of a psychological analysis myself; but you know, I am afraid that he has some issues with comprehension of the seriousness of the charges against him and some competency as far as understanding his actions as far as being sometimes delusional or – in communicating with him, your honor, sometimes it's difficult for me to communicate with him. We made sure what's happening, and he has difficulty to communicating to me in a coherent manner his defenses, Your Honor.

Then after asking appellant questions about basic courtroom procedure and the role of the solicitor and judge, the ruling made by the trial judge was that appellant was competent to stand trial (sans an expert evaluation and report). R. 29, 1.9-24.

In competency matters, the trial judge must after receiving a report from a DMH examiner, who passed on the issue of competency, hold a Blair<sup>1</sup> hearing on the issue of competency. Here, the trial judge held a Blair competency hearing, but the hearing was held without the benefit of the expert mental health examiner's report on the issue of appellant's competency. This violated S.C. Code Ann. Section 44-23-410 and Section 44-23-430 (Supp 2011). Furthermore, if another judge possessed a report that existed in the matter, then a continuance, or recess to review the same, if it existed, should have been the remedy. A reading of appellant's testimony clearly, very clearly, indicated that he was not competent to stand trial. The competency test required to stand trial is that the accused have a sufficient ability to consult

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<sup>1</sup> State v. Blair, 275 SC 549, 273 S.E.2d 536 (1981).

with his lawyer with a reasonable degree of understanding and have a rational as well as factual understanding of the proceedings against him. State v. Bell, 29356391, 360 S.C.2d 256 (1987), citing to Dusky v. United States, 362 U.S. 402, (1960). Due process prohibits the conviction of an incompetent defendant. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992).

The trial judge erred in holding a competency hearing on appellant's behalf sans the benefit of the receipt of a formal expert examination of appellant in the matter prior to trial.

### **CONCLUSION**

Based on the foregoing argument, counsel for appellant would request that appellant's conviction be reversed and his case be remanded to the circuit court for a new proceeding.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of January, 2022.

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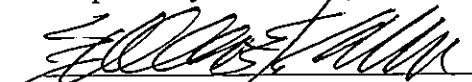
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marvin K. McBride states that :

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 trial before Judge R. Ferrell Cothran, which was held on July 26-27, 2021, 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 Marvin K. McBride.

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of January, 2022.

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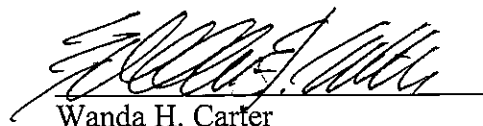
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Entire Trial Transcript dated July 26-27, 2021

I certify that this designation contains no matter which is irrelevant to this appeal.



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January 4, 2022

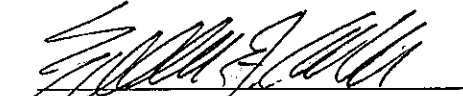
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CERTIFICATE OF COUNSEL

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."



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