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Jan 18 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CIEARA LAREE ROGERS,

APPELLANT

APPELLATE CASE NO. 2021-000388

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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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 lower court erred in accepting appellant’s guilty plea prior to
an inquiry into or a summary of the facts of the case in order to
ascertain whether there was any basis in fact that existed in support
of the plea.....4

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL6

TABLE OF AUTHORITIES

Cases

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967) 6

Dover v. State, 304 S.C. 43, 405 S.E.2d 391 (1991)..... 4

Gregory v. Solem, 774 F.2d 309 (8th Cir. 1985) 4

Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (1999)4

Santobello v. New York, 404 U.S. 257 (1971)..... 4

State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621(2011)..... 3

State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976) 4

State v. Nesbitt, 411 S.C. 194, 768 S.E.2d 67(2015)..... 3

United States v. Oberski, 734 F.2d 1030 (5th Cir. 1984) 4

Constitutional Provisions

Article 1, §3 of the South Carolina State Constitution..... 4

Fourteenth Amendment to the United States Constitution..... 4

STATEMENT OF ISSUE ON APPEAL

Did the lower court err in accepting appellant's guilty plea prior to an inquiry into or a summary of the facts of the case in order to ascertain whether there was any basis in fact that existed in support of the plea?

STATEMENT OF THE CASE

Appellant Cieara Laree Rogers pled guilty to trafficking in cocaine (28-100 grams) during the March 2019 term of the Aiken County General Sessions Court before Judge Clifton Newman and was sentenced to imprisonment for a period of eight years. Public Defenders Nicholas R. McCarley and Derek M. Bush represented appellant at the plea proceeding and Assistant Solicitors John L. Furse and Ashley A. Hammack appeared on behalf of the state. On March 5, 2021, a virtual sentencing reconsideration hearing was held at the Aiken County General Sessions Court before Judge Newman, who reduced appellant's sentence by one year. Ola A. Johnson represented appellant at that hearing and Assistant Solicitor Cassie W. Hall appeared on behalf of the state.

Appellant appealed. This brief follows.

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 S.C. 584, 713 S.E.2d 621(2011).

ARGUMENT

The lower court erred in accepting appellant's guilty plea prior to an inquiry into or a summary of the facts of the case in order to ascertain whether there was any basis in fact that existed in support of the plea.

Prior to accepting appellant's plea, the trial judge explained that he understood the facts of what would be presented in a suppression hearing regarding the drugs seized per a traffic stop of appellant; but, the facts of appellant's case were never stated to the trial judge in court. R. 3-35.

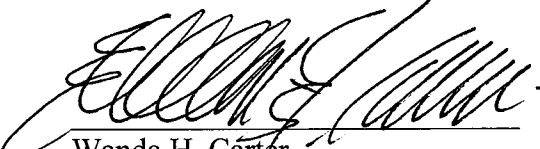
A court cannot enter judgement in a plea of guilty unless it is satisfied that there is a factual basis for the plea. Dover v. State, 304 S.C. 43, 405 S.E.2d 391 (1991); State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); United States v. Oberski, 734 F.2d 1030 (5th Cir. 1984). The purpose of a requirement that a factual basis of a guilty plea be established is to assure the plea's accuracy through the presence of sufficient evidence at the time of the plea upon which a court may reasonably determine that the defendant likely committed the offense. Gregory v. Solem, 774 F.2d 309 (8th Cir. 1985). Here, the record reflects there was insufficient evidence (i.e. no evidence) presented to the trial court when it accepted appellant's plea. As a result, appellant's plea was accepted contrary to due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution and Article 1, §3 of the South Carolina State Constitution.

Inasmuch as a trial judge is not required to accept a plea,¹ here, the trial judge erred in accepting appellant's plea when all the facts were not revealed. The lower court erred in accepting appellant's guilty plea prior to an inquiry as to whether any basis in fact existed in support of the plea.

¹ *Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (1999), citing to *Santobello v. New York, 404 U.S. 257 (1971).

CONCLUSION

Based on the foregoing argument, appellant's conviction and sentence should be reversed and her case remanded to the lower court for a new proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of January, 2022.

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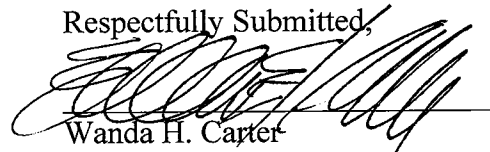
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cieara Laree Rogers 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 before Judge Clifton Newman, which was held on March 6, 2019, 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 Cieara Laree Rogers.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of January, 2022.

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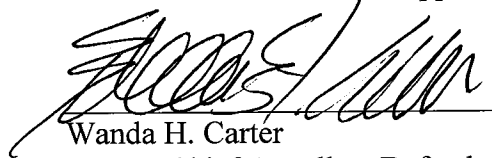
APPELLANT

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

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

- (1) True-billed Indictment(s):
- (2) Entire Guilty Plea Transcript
- (3) Entire Sentence Reconsideration Transcript
- (4) Sentence Sheet
- (5) Order Reducing Sentence

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



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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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