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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO MARION COUNTY
COURT OF COMMON PLEAS

The Honorable William H. Seals, Jr., Plea Judge
The Honorable D. Craig Brown, Post-Conviction Relief Judge

Appellate Case No. 2020 – 001607

LARRY ANTHONY WHITE, # 371303,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT PURSUANT TO *WHITE V. STATE*

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ATTORNEYS FOR RESPONDENT

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Petitioner's Statement of Issue on Appeal

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.

II. Appellant's guilty plea for burglary first degree is invalid on the basis that the court lacked jurisdiction to accept the plea.

Respondent's Counterstatement of Issue on Appeal

I. The trial judge did not err in accepting Appellant's guilty plea to attempted murder and burglary first degree as the record supports that Appellant's guilty plea was voluntarily and knowingly entered and Appellant was not denied any constitutional deprivations.

II. Appellant's guilty plea for burglary first degree is valid because the court had jurisdiction to accept the plea.

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. 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, Appellant 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. Appellant 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 Appellant's request for a direct appeal per *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) but denied Appellant's remaining questions regarding counsel's performance and the voluntariness of his plea. App. 66-81. Appellant appealed Judge Brown's Order.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001).

ARGUMENT

I. The trial judge did not err in accepting Appellant's guilty plea to attempted murder and burglary first degree as the record supports that Appellant's guilty plea was voluntarily and knowingly entered and Appellant was not denied any constitutional deprivations.

On appeal, Appellant claims his plea was involuntary because he was not informed that his guilty plea to attempted murder and burglary first degree constituted "most serious" offenses and the offenses he pleaded guilty to required service of eighty-five percent of his sentence. However, the record clearly establishes that Appellant's plea was freely and voluntarily entered into. Furthermore, Appellant's plea was not rendered involuntary in a constitutional sense because he was not informed of the collateral consequences he raises on appeal.

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). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton v. State*, 376 S.C. 130, 137-138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of

his statements." *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976)).

Here, the record clearly establishes that Appellant's plea was voluntarily and knowingly entered into because he was advised of and had a full understanding the consequences of pleading guilty. At the plea hearing, Appellant was advised he was facing a minimum sentence of fifteen years and a maximum of life for burglary first degree. Appellant affirmed he understood. Then Appellant was advised he was facing up to thirty years for the attempted murder charge. Appellant affirmed he understood. Appellant was advised the plea was negotiated and if the plea judge accepted his guilty plea, Appellant would receive a sentence of fifteen years. Appellant affirmed he understood. App. 5–6.

Appellant affirmed he was satisfied with his lawyer, that plea counsel answered all of his questions, and plea counsel had done everything that Appellant had asked of him. Appellant denied having been promised anything to get him to plead guilty. App. 6. Appellant denied having been threatened in any way to make him plead and denied being under the influence of any alcohol or drugs. App. 7. Plea counsel, during mitigation, also stated "He doesn't like being at Lee [Correctional Institution], but he doesn't like the prospects of being up there for the rest of his life. He understand[s] this. He accepts his role and his culpability. And we just ask that the Court go along with the negotiations." App. 9–10. Accordingly, the record establishes that Appellant's plea was voluntarily and knowingly entered into. *Simpson*, 317 S.C. 506, 455 S.E.2d 175 (1995) ("To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him."). Therefore, the record clearly reflects that Appellant's plea was voluntarily and knowingly entered into.

Furthermore, even if defense counsel failed to go over what pleading to a "most serious offense" meant or the eighty-five percent rule, this would not have rendered Appellant's plea involuntary. "The imposition of a sentence may have a number of collateral consequences, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences." *Williams v. State*, 378 S.C. 511, 514, 662 S.E.2d 615, 617 (Ct. App. 2008) (quoting *Brown v. State*, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991)). "Thus, a defendant need not be advised of all collateral consequences of his or her plea in order for the plea to withstand constitutional scrutiny." *Id.*, 378 S.C. at 511-12, 662 S.E.2d at 617.

A consequence that the defendant must be informed of is one which impacts the sentence imposed on the defendant, and as such, is a direct consequence. *See State v. Armstrong*, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (stating the defendant must be apprised of the direct consequences, which are the direct and immediate results, of his guilty plea). "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." *Cuthrell v. Dir., Patuxent Inst.*, 475 F.2d 1364, 1365-66 (4th Cir. 1973).

Here, Appellant claims his plea was involuntary because he was not informed 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. 10-11; *see* S.C. Code Ann.§17-25-45(C) (2016). Additionally, Appellant claims his plea was involuntary because he was not informed that the sentenced offenses required service of eighty-five percent of his sentence before becoming eligible for release. App. 10-11. These claims are not direct consequences, but rather collateral consequences of his plea. The record clearly establishes that

Appellant's plea was freely and voluntarily entered into and Appellant's plea was not rendered involuntary in a constitutional sense because he was not informed of the collateral consequences. *Williams v. State*, 378 S.C. 511, 514, 662 S.E.2d 615, 617 (Ct. App. 2008) Accordingly, the trial court did not err and the court should deny certiorari.

II. Appellant's guilty plea for burglary first degree is valid because the court had jurisdiction to accept the plea.

On appeal, Appellant's allegation that the trial court lacked subject matter jurisdiction because his first degree burglary indictment was insufficient is without merit. "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). With respect to Appellant's claims concerning the sufficiency of the indictment, Appellant was required to raise such a challenge prior to the swearing of the jury. S.C. Code Ann. §17-19-90 (2003). Regardless, "[a]n indictment is merely a notice document." *State v. Baker*, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing G*entry*, 363 S.C. at 102-103, 610 S.E.2d at 500. Whether or not the indictment could be made more definite and certain is irrelevant. *Baker*, 390 S.C. at 62, 700 S.E.2d at 442. The court in *Baker* noted the following:

> [T]he court must look at "the indictment with a practical eye in view of all the surrounding circumstances. The sufficiency of the indictment is determined by whether: (1) the offense charged is stated with sufficient certainty and particularity to enable a court to know what judgment to pronounce, and the defendant to know what he or she is called upon to answer and whether he or she may plead an acquittal or conviction thereon, and (2) whether it apprises the defendant of the elements of the offense that are intended to be charged.

Id. (citing *Gentry*, 363 S.C. at 102-103, 610 S.E.2d at 500).

Moreover, "an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged

may be easily understood." *Id.* 390 S.C. at 63, 700 S.E.2d at 443 (citing *State v. Tumbleston*, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007)); S.C. Code Ann. § 17-19-20. When the indictment references the statute, the elements of the charge are thereby incorporated into the indictment. *See State v. Owens*, 346 S.C. 637, 649, 552 S.E.2d 745, 751 (2001) (murder statute) *overruled on other grounds by Gentry*, 363 S.C. 93, 610 S.E.2d 494; *see also State v. Beam*, 336 S.C. 45, 50-51, 518 S.E.2d 297, 300 (Ct. App. 1999) (video piracy statute); *State v. Crenshaw*, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980) (bribery statute).

In the present case, Appellant's first-degree burglary indictment read as follows:

> **COUNT ONE- BURGLARY, FIRST DEGREE**
>
> That LARRY ANTHONY WHITE JR., did in Marion County on or about December 22, 2016, willfully and unlawfully attempt to enter the dwelling of [Victim], located at [redacted] Belin Court, without consent and with the intent to commit a crime therein, and the defendant was armed with a deadly weapon, in violation of the Common Law and Section 16-11-311, S.C. Code of Laws, 1976, as amended.

App. 85. "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 (2012). Because the indictment references the statute directly, the elements of the charge are thereby incorporated into the indictment.

Accordingly, the indictment passes legal muster as it charged the crime substantially in the language of the statute prohibiting the crime and the elements of first-degree burglary were incorporated into the indictment because the indictment directly referenced the statute. Appellant's failure to raise this challenge before he entered into a guilty plea failed to preserve this issue for appeal. As such, Appellant's allegation as it pertains to the indictment is without merit and certiorari should be denied.

CONCLUSION

Based on the foregoing argument, the State requests that Appellant's convictions and sentences be affirmed.

Respectfully submitted,

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