STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE RILEY DREHER,

APPELLANT

APPELLATE CASE NO. 2021-000753

ANDERS BRIEF OF APPELLANT

TAYLOR D. GILLIAM
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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in denying Appellant's motions to withdraw his guilty plea, where Appellant presented the affidavit of another individual responsible for turning the steering wheel during a high-speed chase, causing the vehicle Appellant was driving to strike an officer?

STATEMENT OF THE CASE

In November and December 2020, Appellant was indicted for two offenses by a Berkeley County Grand Jury: failure to stop for blue lights resulting in great bodily injury and attempted murder. R. 147 – 151. On April 12, 2021, Appellant appeared before the Honorable R. Markley Dennis, Jr. for a plea.[1] R. 17. Melisa Gay represented Appellant; Wilton McNeely appeared on behalf of the state. The state alleged Appellant failed to stop for a traffic stop and led officers on a vehicle chase. R. 27, l. 1 – R. 28, l. 14. As a result of the situation, an officer was injured. Id.

The plea judge accepted the plea and found that a factual basis supported it. R. 28, ll. 18 – 23. He further found that it was freely, voluntarily, knowingly, and intelligently made. Id. Appellant was sentenced to ten years on the failure to stop charge, suspended to five years' probation and ten years on the lesser-included offense of assault and battery of a high and aggravated nature. R. 146 – 149. The sentences were crafted to run consecutively. R. 41, l. 18 – R. 42, l. 2.

Two motions to withdraw the guilty plea were filed by counsel in April 2021. R. 81 – 82. The second was based upon after-discovered evidence. Id. The state opposed the motion and filed a memorandum in support of its position. R. 84.

A hearing on the motions was held on June 17, 2021, before Judge Dennis. R. 136. The same attorneys were present. The motions were denied. R. 140, ll. 12 – 15. A formal order was signed on June 22, 2021. R. 144 – 145.

This appeal follows.

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[1] This plea followed an aborted plea attempt on February 18, 2021. R. 1.

STANDARD OF REVIEW

The withdrawal of a guilty plea is generally within the sound discretion of the trial judge. State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct. App. 2002). A determination the plea was voluntarily entered "will normally show the trial judge did not abuse his discretion." Riddle, 278 S.C. at 150, 292 S.E.2d at 796; see State v. Cantrell, 250 S.C. 376, 378, 158 S.E.2d 189, 191 (1967)("A motion to withdraw a plea of guilty, and to be allowed to enter a plea of not guilty, addresses itself to the discretion of the trial judge before whom the plea is entered, and, in the absence of a clear abuse of discretion, this court will not interfere.").

ARGUMENT

The circuit court erred in denying Appellant's motions to withdraw his guilty plea, where Appellant presented the affidavit of another individual responsible for turning the steering wheel during a high-speed chase, causing the vehicle Appellant was driving to strike an officer.

Relevant facts

At the first plea attempt, Judge Dennis discontinued the proceedings after Appellant vacillated on both the facts and his guilt. R. 12, l. 12 – R. 15, l. 11. Appellant indicated a passenger in the vehicle "snatched the wheel" thereby causing the car to hit an officer. Appellant outright stated "I would have never intentionally swerve[d] and hit an officer." Id. After Judge Dennis pointed out how ABHAN requires an intentional act, Appellant remarked:

> I was driving the car, Your Honor, and there was a passenger in the car. He snatched the wheel. I would never intentionally - - I'm pleading guilty, Your Honor. I'm not changing - - -

R. 12, ll. 20 – 23.

Following the above statement, Judge Dennis inquired whether Appellant was guilty. After Appellant answered in the affirmative, Judge Dennis questioned him again about the intentional act. After plea counsel suggested the parties and the court "stand down," Judge Dennis ended the plea. R. 14, ll. 19 – 23.

At the plea on April 12, 2021, approximately two months later, Appellant agreed with the facts as stated by the solicitor. R. 27, l. 1 – R. 28, l. 17. Judge Dennis found a sufficient factual basis and accepted the plea as freely, voluntarily, knowingly, and intelligently made. R. 28, ll. 18 – 23.

The two motions to withdraw the guilty plea were filed within a few weeks of the plea. R. 81 – 82. The first motion contained an assertion that Appellant "was not fully mentally sound at the time of his plea, therefore the plea process was not voluntarily entered in to." Id. The second motion alleged after-discovered evidence existed in the form of a "statement recently provided indicating that a third party is responsible for the injury to the victim in the Assault and Battery of a High and Aggravated Nature charge." Id. Included with the second motion was an affidavit from Brandon Swain which entailed an admission that Swain "was riding in the SUV driven by [Appellant] on Friday, April 10, 2020" and that "[s]econds before the accident [Swain] jerked the steering wheel while sitting in the passenger's seat." R. 83. This affidavit was dated April 17, 2021, five days after the completed guilty plea before Judge Dennis.

In the Order Denying Defendant's Motions to Withdraw Guilty Plea, Judge Dennis found this affidavit contained evidence "clearly known to the Defendant prior to the guilty plea." R. 144 – 145.

Discussion

At the hearing on Appellant's motions to withdraw, Judge Dennis questioned how the affidavit could be after-discovered evidence. R. 139, l. 1 – R. 140, l. 15. In the limited time defense counsel was given to argue on behalf of her motions, she articulated that the affidavit was procured after the April guilty plea. Id. The motions were then denied by Judge Dennis at the hearing. R. 140, ll. 12 – 15.

Appellant should have been allowed to withdraw his guilty plea, because he did not cause the vehicle that he was driving to strike the officer. The attempted murder indictment contains the grand jury's finding that "[Appellant] did, with intent to kill and malice aforethought, attempt to kill Quinn Hayden," a police officer. R. 151. As noted above, Appellant pled guilty to assault

and battery of a high and aggravated nature ("ABHAN"). The elements of ABHAN require the state to prove an unlawful injury to another person accompanied by either a) great bodily injury or b) an act likely to produce death or great bodily injury. S.C. Code Ann. § 16-3-600(B)(1).

A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238, 241, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Additionally, in order to knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant has a full understanding of the consequences of her plea and the charges against her. Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995). Moreover, the record in a guilty plea proceeding must establish a factual basis for the plea. LoPiano v. State, 270 S.C. 563, 569, 243 S.E.2d 448, 451 (1978); State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975).

In accepting a guilty plea, "the trial judge is free to use any appropriate procedure for determining the accuracy of the guilty plea. The judge must be certain that the defendant understands the charge and the consequences of the plea and that the record indicates a factual basis for the plea." Armstrong, 263 S.C. at 598, 211 S.E.2d at 891. "All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001). See State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct.App.1997) (finding no error in trial judge's refusal to allow appellant to withdraw guilty plea where appellant failed to object at any point before the judge accepted his guilty plea and judge: considered evidence presented by appellant, allowed appellant to testify about the nature of the guilty plea, and thoroughly questioned appellant during guilty plea).

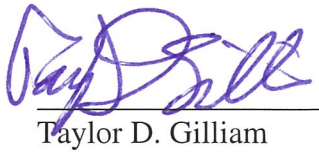
The credibility of newly-discovered evidence is for the trial court to determine. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). In order to qualify as after-discovered evidence, a moving party must show that the evidence "(1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue, and (5) is not merely cumulative or impeaching." State v. Harris, 391 S.C. 539, 544-45, 706 S.E.2d 526, 529 (Ct. App. 2011), citing State v. Spann, 334 S.C. 618, 619-20, 513 S.E.2d 98, 99 (1999).

In State v. Harris, the South Carolina Court of Appeals affirmed the lower court in a case that came down to a matter of witness credibility. 391 S.C. 539, 706 S.E.2d 526 (Ct. App. 2011). In doing so, it held that the trial court did not abuse its discretion in denying the motion for a new trial. Id. In Appellant's case, the motion to withdraw the guilty plea should have been granted in order to allow Swain's credibility to be assessed by a jury at trial.

A motion to withdraw a guilty plea is addressed to the sound discretion of the trial judge before whom the plea was entered. State v. Cantrell, 250 S.C. 376, 158 S.E.2d 189 (1967). In State v. Gilliam, 274 S.C. 324, 262 S.E.2d 923 (1980), this Court remanded to allow Gilliam to withdraw his guilty plea because it was predicated on an illegal banishment agreement. In this case, Appellant's conduct might not have satisfied the required elements for assault and battery of a high and aggravated nature. Swain's affidavit also would have mitigated Appellant's culpability. The plea court should have granted the motion to withdraw.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that this Court remand so that his plea can be withdrawn.



Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of March, 2022.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for George Riley Dreher states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Markley Dennis, which was held on June 17, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for George Riley Dreher.

Respectfully Submitted,

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of March, 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."

Taylor D. Gilliam
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March 16, 2022.

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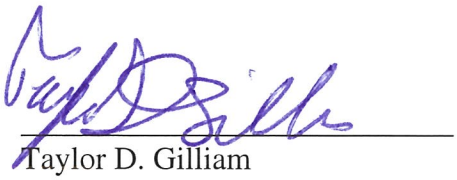
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case have been served upon William M. Blitch, Jr., Esquire at the primary e-mail address listed in the Attorney Information System (AIS); and on George Riley Dreher, #334165, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 16th day of March, 2022.



Taylor D. Gilliam
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