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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CANDACE BEHELER,

APPELLANT

Appellate Case No. 2012-213016

INITIAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in treating the traffic hit and run offenses charged against appellant as violent offenses in the case because the solicitor entered into an agreement ensuring that these offenses would be considered non-violent charges and appellant relied on that agreement in deciding to plead guilty as charged.

STATEMENT OF THE CASE

Appellant Candice Beheler pled guilty to two counts of traffic hit and run with death during the September, 2012 term of the Spartanburg County General Sessions Court before Judge Letitia H. Verdin. Appellant was sentenced to imprisonment for an aggregate fifteen-year period. J. Patricia Anderson represented appellant at the plea proceeding.

Appellant appealed her convictions and sentences. This brief follows.

ARGUMENT

The trial court erred in treating the traffic hit and run offenses charged against appellant as violent offenses in the case because the solicitor entered into an agreement ensuring that the offenses would be considered non-violent charges and appellant relied on that agreement in deciding to plead guilty as charged.

During the plea proceeding, the solicitor apprised the trial judge of the events that led to appellant's arrest in the case. Apparently, appellant's van struck Jeremy Phillips and Danielle Hazelrigg, both of whom were riding on a motorcycle, at River Oak Road on May 20, 2012, in Spartanburg County. Appellant ran from the scene after the collision, but was arrested thereafter. Tr. 9, l. 2-22 Also, during the plea proceeding, the trial judge addressed the issue of whether the offenses were considered violent or non-violent as follows:

The Court: Okay. One thing I did not go over with you, ma'am, is that that and this is a violent offense and you understand, you understand that this is a violent offense and you discussed that with your attorney?

Defendant: Yes, ma'am.

The Court: You understand what a violent offense means and it means that your, uh, well I believe this is no parole.

Solicitor : It's no parole ---

The Court: ---eligible, is that correct?

Solicitor: ---yes, ma'am.

The Court: And so you're not eligible for parole on this, on these charges, you understand that? So in other words, the sentence that I give you is the sentence for all intensive purposes may be, may be off by slightly but with the sentence I give you is the sentence you serve, do you understand that?

Defendant: Yes, ma'am.

The Court: Alright, I've taken the liberty of changing the sentencing sheets, they were marked as a non-violent, I. I've taken the liberty of changin' those to reflect they're violent offenses. Yes, ma'am.

Tr. p.29, l. 13-p.30. l.8

Trial counsel appealed appellant's case on the following ground:

Pursuant to Rule 203(d)(1)(B)(iv), SCACR, I provide the following explanation showing an issue that can be reviewed on appeal.

The Solicitor, Barry Barnette, provided me with sentencing sheets that indicated that my client's two counts of Traffic/Hit and Run, duties of driver involved in accident with death were non-violent offences. When I met with my client I explained the law as it pertained to non-violent offences. In the middle of the plea, the trial judge, Letitia Verdin, announced that the charges were violent instead of non-violent and marked the sentencing sheets accordingly (see attached). I did not object because I relied on the solicitor's sentencing sheets. In essence, my client pled to charges that were violent although I had explained to her that they were non-violent. Neither the solicitor nor I objected. After the plea, the solicitor informed me that the judge was correct which is why I appealed.

As a rule, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires that the plea bargain be honored. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994); Santobello v. New York, 404 U.S. 257 (1971). Prosecutors are obligated to fulfill the promises they make to defendants when the promises are inducements to plead guilty. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2007). Breached plea agreements will invalidate guilty pleas. Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988); Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009); Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007); Sprouse v. State, 355 S.C. 335, 585 S.E.2d 278 (2003).

In Thompson v. State, *supra*, the Court struck down a guilty plea where the plea agreement in that case was violated because the solicitor promised that there would be no specific sentencing recommendation requested in the case, but yet recommended the maximum sentence of thirty years at sentencing after the defendant plead guilty to voluntary manslaughter. In State v. Jordan, *supra*, the Court reversed a plea conviction where the solicitor's promised to neither oppose nor recommend probation in exchange for the defendant's plea; but nevertheless made a recommendation against probation at sentencing in the case. Compare Sprouse v. State, *supra*,

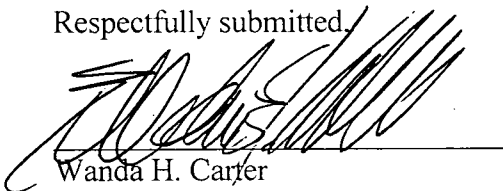
where the Court reversed due to a plea agreement breach where the solicitor's classification of the defendant's second-degree burglary offense as violent deviated from the plea agreement. Also, compare Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), where the Court reversed where there was no enforcement of the plea agreement of a fifteen-year cap on non-violent burglary charges in exchange for the defendant's cooperation in returning stolen items and where there was reliance on the plea bargain by the defendant when he pled guilty in the case.

In the case at bar, the solicitor promised that appellant's hit and run offenses charged would be treated non-violent offenses and listed them as such on the sentencing sheets. Appellant relied on this agreement in pleading guilty as charged and was prejudiced thereafter when the offenses were treated as violent offenses because this changed the character of her criminal record and increased her sentencing time as the same meant her offense would be classified as "no parole" offenses.

CONCLUSION

Based on the foregoing argument, petitioner requests that her convictions and sentences be reversed and remanded to the lower court for a new proceeding.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of April, 2013.

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Appeal from Spartanburg County

Letitia H. Verdin, Circuit Court Judge

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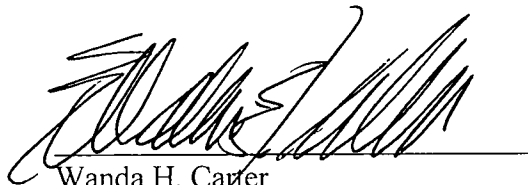
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Sentencing sheet(s);
- (3) Entire transcript
- (4) Rule 203, SCACR, Explanation

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

April 24th, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

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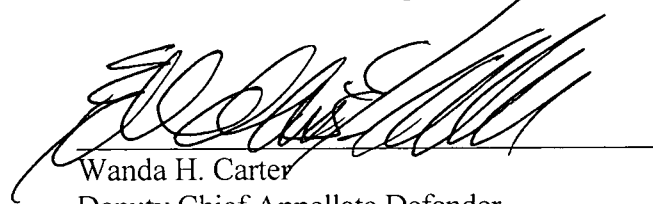
V.

CANDACE BEHELER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Candace Beheler, # 351802, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 24th day of April, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of April, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.