ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Roger L. Couch, Circuit Court Judge
Appellate Case No. 2012-212222

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

CHARVUS TARREL NESBITT,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT.

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ABUSE ITS DISCRETION IN ONLY SETTING ASIDE ONE OF THE APPELLANT'S FOUR GUILTY PLEAS WHEN THE NEGOTIATED PLEA WAS NOT FULLY AND PROPERLY PLACED ON THE RECORD?

COUNTER STATEMENT OF ISSUE ON APPEAL

Did trial court properly refuse to vacate Appellant's convictions and sentences for murder, attempted murder and attempted armed robbery that were entered pursuant to an *Alford* plea and negotiated sentence, after vacating his plea to a weapons charge entered as part of the same deal, because (1) there was no evidence in the record that he did not voluntarily, knowingly and intelligently enter the remaining pleas; (2) the State had not breached the negotiated sentence; (3) prior to filing the motion to vacate, Appellant had received the agreed upon forty year sentence and he only lost that agreement as the result of his own action in filing the motion for reconsideration or new trial on the weapons charge; and, (4) in the absence of evidence showing ineffectiveness of plea counsel that is preserved for appellate review, any claim that the remaining pleas were involuntary is only properly heard in Post-Conviction Relief?

STATEMENT OF THE CASE

Charvus Tarrel Nesbitt (Appellant) is currently incarcerated in the Perry Correctional Institution, of the South Carolina Department of Corrections, as the result of his Spartanburg County murder conviction and life sentence. The Spartanburg County Grand Jury rendered three indictments on March 25, 2011, charging Appellant with one count of murder and one count of possession of a weapon during the commission of a violent crime (11-GS-42-1414); attempted murder (11-GS-42-1415); and armed robbery (11-GS-42-0349). **R. pp. 1-4**. Initially Fletcher N. Smith, Esquire, represented Appellant on these charges. Deputy Seventh Circuit Solicitor Derrick B. Bulsa prosecuted the case.

Counsel successfully plea bargained for a negotiated sentence of forty years imprisonment on all of the charges against Appellant; and Appellant appeared before the Honorable Roger L. Couch on February 23, 2012, to enter a guilty plea under *North Carolina v. Alford*, 400 U.S. 25 (1970), to these charges. The Deputy Solicitor called these four charges and announced the negotiated sentence. **R. p. 14, lines 3-11**. Mr. Smith also confirmed the negotiated sentence on Appellant's behalf and explained that it was an *Alford* plea. Judge Couch then had a colloquy with Appellant and Mr. Smith consistent with *Boykin v. Alabama*, 395 U.S. 238 (1969) and he accepted Appellant's plea as to all charges, except for the count of possession of a weapon during the commission of a violent crime in 11-GS-42-1414. **R. p. 14, line 12- p. 38, line 3**.

Judge Couch announced that he was accepting the negotiated sentence and he sentenced Appellant to forty years imprisonment for murder, with concurrent sentences of thirty years for

attempted murder and twenty years for attempted armed robbery. **R. p. 38, lines 14 - 21.**[1] After Appellant had left the courtroom, the Deputy Solicitor brought to Judge Couch's attention that he had not addressed the weapons charge. Judge Couch asked Mr. Smith if counsel wanted Appellant brought back in to receive a five year concurrent sentence. Counsel replied, "Yes, sir. Thank you." Judge Couch then imposed a concurrent five year sentence. **R. p. 38, line 24- p. 39, line 18.**

However, Appellant was apparently not brought back into the courtroom for further proceedings. Instead, he filed a February 23, 2012 motion for reconsideration or new trial on the weapons charge. **R. pp. 7-8.** He made an amended motion on March 7, 2012. **R. pp. 9-10.** Judge Couch heard this motion on April 26, 2012. Kenneth P. Shabel, Esquire, represented Appellant at the hearing. Deputy Solicitor Bulsa again represented the State.

Counsel argued that the trial court had to vacate the plea to the weapons charge because the sentence was imposed even though the trial court never addressed this count with Appellant and had not determined that Appellant had made a knowing and voluntary waiver of his constitutional rights. Because the weapons count was part of a negotiated sentence to all four charges, he argued that the trial court had to vacate the remaining pleas, as well. **R. p. 43, line 3 - p. 51, line 16.** At the conclusion of this hearing, Judge Couch took the matter under advisement. **R. p. 51, lines 19-20.**

On May 24, 2012, Judge Couch filed an Order vacating the conviction and sentence on the weapons charge but "affirming" the other convictions and sentences. **R. pp. 5-6.**

Appellant timely served and filed a notice of appeal.

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[1] Appellant was given credit for time served, as well. **R. p. 38, lines 4-13.**

STATEMENT OF FACTS

The State proffered the following factual basis for Appellant's guilty pleas:

This incident occurred on December the 7th of 2010 at approximately 5:45 in the evening. It was at a residence ... [in] a mobile home park in the Fairforest Community here in Spartanburg. A lady by the name of Germicka (phonetic) Rooker lived there with her two children. Her brother, the victim in the murder case, Daniel Tremayne Landrum lived there as well. On this occasion a phone call was made to Mr. Landrum concerning the purchase of some marijuana. Mr. Landrum sold marijuana actually from the residence. A phone call was made by a man by the name of Teddy Byers. Mr. Byers and Mr. Landrum had met working at Great American Paper Company up in the Inman community. They learned that each other dealt in marijuana. Mr. Byers arranged a so-called drug-buy for some of his friends or cousins to come by and make the buy. At about 5:45, Mr. Byers drives the car to the location. In the car is Mr. Nesbitt who is actually his half brother, a Hazel Stoudemire who is a young cousin, and a Johnathon Petty who was a friend of [theirs]. Mr. Nesbitt, Mr. Petty and Mr. Stoudemire get out of the vehicle, walk a short distance to where the trailer is located. Mr. Nesbitt, Your Honor, owned two pistols. He had purchased some pistols about a year earlier from the Inman Gun and Pawn. They were legally registered to him. It's the State's position that the evidence would show that Mr. Nesbitt had one of the pistols which actually looked sort like a mini machine gun, and the second pistol was in the possession of Hazel Stoudemire. When the three men got to the trailer, two of the three went inside, one being Mr. Nesbitt and one being Hazel Stoudemire. They got inside under the ruse that they were there to buy marijuana. ... It gets a little unclear because we've talked with Hazel Stoudemire. He says they went in, he was actually trying to make the buy. The plan was when the ... victim pulled the money out - - or pulled the drugs out, they were to take the drugs and whatever money he had with the drugs. Mr. Stoudemire tells us when they began that process, this defendant, Charvus Nesbitt began firing a handgun he had brought. The State would've went to trial on that premise that this was the actual gunman. He fired multiple times. The physical evidence shows eight shell casings recovered from the scene. It shows eight bullets recovered from the scene. Three were actually from the body of the victim, Daniel Tremayne Landrum. Your Honor, they went to actually what's the back door of the trailer. It opens into a small hallway. Pretty much directly in front of the doorway is a laundry room. That is where the transaction was taking place, in the laundry room and the hallway. The back door had been closed once the two men had got inside. ... There was a lady friend of Mr. Landrum's inside the laundry room. She was not really paying attention. She said she had her phone out, was messing with her phone. Ms. Rooker the main resident of the house and her children and the friend of [theirs] was in the living area of the trailer. When the shots began to be fired, Ms. Rooker went ... towards the area to see what was going on. She got shot herself. [The] State's position is the man saw her coming towards the area

and fired at her. She actually got struck in the neck and was fortunate she did not die. Mr. Stoudemire who readily admits that he had one of the guns, claims he never pulled his gun, panicked when Mr. Nesbitt began firing, tried to get out the back door, but the back door the way it closed, it was hard to get out, so he basically left that area and went towards the back of the trailer and dove out the master bedroom window, just dove right through the glass, took the curtain with him. Mr. Nesbitt, after he finished shooting, followed suit out the same window. Mr. Stoudemire actually dropped the pistol that he was carrying. He said he didn't realize it until he got back to the car. The car was parked about one street over, so they had to run back to the car. Mr. Petty had been waiting outside the trailer, heard the shots, took off ... back to the car. They all met up where Teddy Byers, the brother and Mr. Nesbitt was waiting. They got in the car, drove off and began talking about what had happened. That's when Mr. Stoudemire realized he'd dropped his pistol. They began talking about what they needed to do to cover that up, because they knew the pistol would come back to Mr. Nesbitt. A ruse was planned whereby he would report the pistol stolen. They actually drove the vehicle to the Inman community, left it on the side of the road and they reported that he'd broken down and the pistol had been stolen out of the glove box. The police working with the individuals in the house along with the information about the pistol, they knew they had a suspect in Mr. Nesbitt, because it came back to him, began working with line-ups, and they looked at the victim's phone and learned that ...one of the last numbers that had been called had come from a Teddy Byers, so the police were looking at Teddy Byers and Charvus Nesbitt as the two main perpetrators. Some of the line-ups, the identifications from the actual persons in the trailer were not that strong. The police picked up Mr. Byers, began questioning him hard. He then essentially started telling the police about setting up this deal, saying that Mr. Nesbitt, his brother and Hazel Stoudemire his cousin were the ones that went into the trailer. So the police were focusing on that part of it. When Mr. Stoudemire actually ... came to the police station, ... he readily confessed to his role in this. He, of course, denied being the shooter, told pretty much the story I've told the Court.

We've met with. Mr. Stoudemire and he was consistent in his past statements and readily pointed the finger at Charvus Nesbitt. I've met with Johnathon Petty, the gentleman who stood outside. He didn't give a statement initially. He actually fled to Florida and was brought back and questioned by us. He says it was Charvus Nesbitt that fired the -- fired the weapon. Teddy Byers decided to cooperate, initially not wanting to admit he set up a drug deal that was supposed to be armed robbery. Finally [he] admitted that the shooter was his brother. So we've got the three co-defendants all pointing the finger at the defendant. There was a lady friend of Mr. Petty's who was at the house where these ... men had gone ... – [it] was actually the defendant's brother's house, she came over and heard the defendants talking, heard Mr. Nesbitt say he didn't mean to shoot the boy, basically heard an admission by him that he had fired the gun. The police in speaking to Mr. Nesbitt, he first denied it to

> the police. They served the warrant on him, put him in the jail, and then they learned that he wanted to speak to them. So they went over to talk to him and he said I can take you to the gun, wouldn't really admit that he fired it, but admitted that the gun went off and actually went with the police to try to find the gun that had been thrown out. So all the evidence points to this defendant as being the shooter. And that is how I would've proceeded at trial. Those are the facts of the case.

r. pp. 26-32. Appellant admitted that this was the factual information that his attorney had provided to him and upon which he based his decision to enter his *Alford* plea. **R. p. 32, lines 4-13**.

ARGUMENT

The trial court properly refused to vacate Appellant's convictions and sentences for murder, attempted murder and attempted armed robbery that were entered pursuant to an *Alford* plea and negotiated sentence, after vacating his plea to a weapons charge entered as part of the same deal, because (1) there was no evidence in the record that he did not voluntarily, knowingly and intelligently enter the remaining pleas; (2) the State had not breached the negotiated sentence; (3) prior to filing the motion to vacate Appellant had received the agreed upon forty year sentence and he only lost that agreement as the result of his own action in filing the motion for reconsideration or new trial on the weapons charge; and, (4) in the absence of evidence showing ineffectiveness of plea counsel that is preserved for appellate review, any claim that the remaining pleas were involuntary is only properly heard in Post-Conviction Relief.

Appellant's only argument is that the trial court erred by refusing to vacate his convictions and sentences for murder, attempted murder and attempted armed robbery after vacating the plea to the charge of possession of a weapon during the commission of a violent crime. Respondent disagrees and submits that the trial court the trial court properly refuse to vacate Appellant's remaining pleas because (1) there was no evidence in the record that he did not voluntarily, knowingly and intelligently enter those pleas; (2) the State had not breached the negotiated sentence; (3) prior to filing the motion, Appellant had received the agreed upon forty year sentence and he only lost that agreement as the result of his own action in filing the motion for reconsideration or new trial on the weapons charge; and, (4) in the absence of evidence showing ineffectiveness of plea counsel that is preserved for appellate review, any claim that the remaining pleas were involuntary is only properly heard in Post-Conviction Relief.

A. How issue developed.

As discussed, original plea counsel successfully plea bargained for a negotiated sentence of forty years imprisonment on all of the charges against Appellant. Appellant appeared before the

Honorable Roger L. Couch on February 23, 2012, to enter an *Alford* plea[2] to these charges. The Deputy Solicitor called these four charges and announced the negotiated sentence. **R. p. 14, lines 3-11**.

Mr. Smith confirmed the negotiated sentence on Appellant's behalf and explained that it was an *Alford* plea. Judge Couch then had a colloquy with Appellant and Mr. Smith consistent with *Boykin v. Alabama*, 395 U.S. 238 (1969) and he accepted Appellant's plea as to all charges, except for the count of possession of a weapon during the commission of a violent crime in 11-GS-42-1414. **R. p. 14, line 12- p. 38, line 3**. Judge Couch announced that he was accepting the negotiated sentence and he sentenced Appellant to forty years imprisonment for murder and he imposed concurrent sentences of thirty years for attempted murder and twenty years for attempted armed robbery. **R. p. 38, lines 14 - 21**.[3]

After Appellant had left the courtroom, the Deputy Solicitor brought to Judge Couch's attention that he had not addressed the weapons charge. Judge Couch asked Mr. Smith if counsel wanted Appellant brought back in to receive a five year concurrent sentence. Plea counsel did not object and simply replied, "Yes, sir. Thank you." Judge Couch then imposed a concurrent five year sentence. **R. p. 38, line 24- p. 39, line 18**.

However, Appellant was apparently not brought back into the courtroom for further proceedings. Instead, he filed a February 23, 2012 motion for reconsideration or new trial on the weapons charge. **R. pp. 7-8**. He made an amended motion on March 7, 2012. **R. pp. 9-10**. Judge Couch heard this motion on April 26, 2012. Kenneth P. Shabel, Esquire, represented Appellant at

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[2] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

[3] Appellant was given credit for time served, as well. **R. p. 38, lines 4-13**.

the hearing. Deputy Solicitor Bulsa again represented the State.

Counsel argued that the trial court had to vacate the plea to the weapons charge because the sentence was imposed even though the trial court never addressed this count with Appellant and had not determined that Appellant had made a knowing and voluntary waiver of his constitutional rights. Because the weapons count was part of a negotiated sentence to all four charges, he argued that the trial court had to vacate the remaining pleas, as well. The State opposed his request. **Apr. R. p. 43, line 3 - p. 51, line 16**. At the conclusion of this hearing, Judge Couch took the matter under advisement. **R. p. 51, lines 19-20**.

On May 24, 2012, Judge Couch filed an Order vacating the conviction and sentence on the weapons charge but "affirming" the other convictions and sentences. **R. pp. 5-6**. In the Order, Judge Couch found that:

1. The Defendant was removed from the Courtroom prior to the discussion of the charge of possession of a weapon during the commission of a violent crime. Tr. at 28:24.

2. The Court overlooked the charge of possession of a weapon during the commission of a violent crime and was reminded by the Solicitor following the Defendant's exit of the Courtroom. Tr. at 29:2-9.

3. The Defendant's attorney at the plea, Fletcher Smith, did not waive the Defendant's presence with regards to the discussion of that particular charge. Tr. at 29:11-13.

4. The Defendant was never questioned by the Court about his plea to the offense of possession of a weapon during the commission of a violent crime.

5. The plea deal that Defendant agreed to on the record was forty (40) years for murder, attempted murder, and attempted armed robbery.

Order, pp. 1-2; R. pp. 5-6.

He further found that "'all plea agreements must be on the record and recite the scope,

offenses and individuals involved in the agreement.' *State v. Thrift*, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994)." **Order, p. 2; R. p. 6**. In this case, the trial court had only addressed the charges of murder, attempted murder and attempted armed robbery with Appellant, but the trial court had failed to address the weapons charge with him. As a result, the trial court found that the forty year agreement only pertained to the charges of murder, attempted murder and attempted armed robbery. **Order, p. 2; R. p. 6**.

Therefore, the trial court vacated the conviction and five year sentence for possession of a weapon during the commission of a violent crime. This conviction was "reopened and subject to prosecution by the State." However, the trial court found that this ruling "has no bearing on the validity of the plea given by the Defendant on the other three charges. *See Phillips v. State*, 281 S.C. 41, 314 S.E.2d 313 (1984) (the invalidation of a defendant's guilty plea on one charge does not affect the validity of a guilty plea for a different charge taken at the same hearing)."[4] Therefore, the trial court granted Appellant's motion to vacate the weapons conviction but denied it with respect to the remaining convictions and "affirmed" those convictions. **Order, p. 2; R. p. 6**.

B. Discussion.

There was no error. A guilty plea may not be accepted unless it is voluntary and entered into with an understanding of the nature and consequences of the charge and plea. A plea is properly accepted if the record establishes it was voluntarily and knowingly made. *Boykin, supra*; *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). "The standard was and remains whether the plea represents a voluntary and intelligent choice among

[4] The Order does not expressly state that the conviction was vacated but this portion of the Order makes clear that it was vacated, since he could not otherwise be retried for the offense.

the alternative courses of action open to the defendant." *Alford*, 400 U.S. at 31. Further, "[a] defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases." *Richardson v. State*, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993). See also *Carter v. State*, 329 S.C. 355, 360, 495 S.E.2d 773, 775-76 (1998).

While plea agreements are obviously a matter of criminal jurisprudence, most courts have held that they are subject to contract principles. *See, e.g., Thrift*, 312 S.C. at 292-93, 440 S.E.2d at 347 (citing *Santobello v. New York*, 404 U.S. 257 (1971)); *Reed v. Becka,* 333 S.C. 676, 686, 511 S.E.2d 396, 401 (Ct.App.1999); *United States v. Ringling,* 988 F.2d 504, 505 (4th Cir.1993); *United States v. Harvey,* 791 F.2d 294, 300 (4th Cir.1986) ("[I]n the process of determining whether disputed plea agreements have been formed or performed, courts have necessarily drawn on the most relevant body of developed rules and principles of private law, those pertaining to the formation and interpretation of commercial contracts").[5]

Here, the grant of relief on the weapons charge did not require the trial court to grant relief on the remaining charges. The State had lived up to its end of the negotiated sentence and did not breach it. *Accord Ricketts v. Adamson*, 483 U.S. 1 (1987) (defendant's breach of plea agreement by refusing to testify at co-defendants' retrial removed double jeopardy bar to prosecution of defendant on original charges, after defendant had been sentenced and began serving term on lesser offense, where plea agreement provided that parties would be returned to status quo if defendant refused to

[5] Of course, "a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based." *Thrift*, 312 S.C. at 293, 440 S.E.2d at 347 (citing *Ringling, supra*).

testify).[6] Also, the trial court had accepted this plea negotiation and had imposed a forty year sentence. As a result, Appellant had received the sentence that had been negotiated by plea counsel and that he had sworn that he wanted. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (defendant's representations, as well as any findings made by the judge accepting the plea, "constitute a formidable barrier . . . . Solemn declarations in open court carry a strong presumption of verity." Also, a subsequent presentation of conclusory allegations and contentions that are wholly incredible in the face of the record are subject to summary dismissal). The conviction and sentence on the weapons charge may have been voidable because the trial court had not addressed the matter with Appellant, *see Henderson v. Morgan*, 426 U.S. 637, 642-43 (1976), but it was not a void conviction or sentence since the trial court had subject matter jurisdiction to convict and sentence him. *State v. Gentry*, 363 S.C. 93, 100-01, 610 S.E.2d 494, 498-99 (2005) ("subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong;" and "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters"). While he had the right to file the motion and request the court to vacate the plea to the weapons charge, he only lost the benefit of the negotiated sentence as the result of his own decision to pursue his motion.

Further, there was no evidence in the record that he did not voluntarily, knowingly and intelligently enter the pleas to the remaining charges. *See* **R. p. 14, line 3 - p. 38, line 21**. To the contrary, he concedes that the trial court complied with *Boykin* with respect to these charges, and the

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[6] State prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty. *Santobello v. New York*, 404 U.S. 257, 262 (1971). South Carolina has recognized the principles set forth in *Santobello*: when an accused pleads guilty upon the promise of a prosecutor, the agreement must be fulfilled. *See Sprouse v. State*, 355 S.C. 335, 338, 585 S.E.2d 278, 280 (2003); *Thrift*, 312 S.C. at 292, 440 S.E.2d at 347.

trial judge's colloquy with Appellant and plea counsel supports the conclusion that Appellant "[understood] 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 also Blackledge*, 431 U.S. at 73-74.

Moreover, and contrary to Appellant's argument, the State would note that the trial judge's decision to allow the remaining convictions to stand where they were not effected by the error is supported by decisions by South Carolina appellate courts. Indeed, the trial court correctly noted that the Supreme Court had followed this approach in in *Phillips v. State. See* 281 S.C. at 42-43, 314 S.E.2d at 313-14.[7] In addition to *Phillips*, the State would note that a similar result was reached in *Summerall v. State*, 278 S.C. 255, 255-56, 294 S.E.2d 344, 344 (1982), overruled, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005), where the Court vacated two of three counts of receiving stolen goods because there was neither indictment nor waiver of Grand Jury presentment on those charges, but it allowed the remaining count to stand because the Grand Jury had true billed that indictment. *See also Joseph v. State*, 351 S.C. 551, 557-60, 571 S.E.2d 280, 283-84 (2002), overruled on other grounds, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *John W. Hayward v. State*, 2011-MO-008 (S.C. S.Ct., Mar. 7, 2011) (unpublished); *State v. McKenzie*, 2009-MO-012 (S.C. S.Ct., Feb., 23, 2009). *Accord United States v. Toothman*, 137 F.3d 1393, 1394 (9th Cir. 1998).

Finally, the State would note that there is no evidence showing ineffectiveness of plea

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[7] The defendant had been indicted for kidnapping and robbery. As the result of plea negotiations, he was allowed him to plead guilty to assault and battery, rather than kidnapping, but the State "did not present the assault charge to the grand jury." The Court found that the circuit court was deprived of subject matter jurisdiction on the assault and battery of a high and aggravated nature charge, but it allowed the robbery charge to stand.*Id.*

counsel that is preserved for appellate review. Thus, he should not be heard to complain on direct appeal, where he is the architect of the present scenario, the Court would simply be granting him a windfall to which he was not entitled, and any claim that the remaining pleas were involuntary based upon counsel's ineffectiveness is only properly heard in Post-Conviction Relief. *See State v. Kornahrens*, 290 S.C. 281, 287, 350 S.E.2d 180, 184 (1986); *State v. Carpenter*, 277 S.C. 309, 286 S.E.2d 384 (1982) ("Appellant's sole ground for appeal is ineffective assistance of counsel at trial. This Court usually will not consider that issue on appeal from a conviction, ... We follow that principle particularly when, as here, the issue was not argued to the trial judge") (citations omitted).

Therefore, Appellant's argument lacks merit.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court must be affirmed.

Respectfully submitted,

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By: _____
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May 15, 2013.

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THE STATE OF SOUTH CAROLINA,

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APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 15th day of May, 2013.

WILLIAM EDGAR SALTER, III
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CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record, Kenneth P. Shabel, Esq., 104 North Daniel Morgan Avenue, Ste. # 201, Spartanburg, SC 29306.

I further certify that all parties required by Rule to be served have been served.

This 15th day of May, 2013.

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