

STATE OF LOUISIANA

NO. 17-KA-612

VERSUS

FIFTH CIRCUIT

DENNIS D. JACKSON

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 15-3720, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

April 11, 2018

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Hans J. Liljeberg

GUILTY PLEA VACATED; CONVICTION AND
SENTENCE SET ASIDE AND CASE REMANDED;
MOTION TO WITHDRAW GRANTED

HJL
SMC

WICKER J., CONCURS WITH REASONS

FHW

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Paul D. Connick, Jr.
Terry M. Boudreaux
Anne M. Wallis

COUNSEL FOR DEFENDANT/APPELLANT,
DENNIS D. JACKSON

Prentice L. White

DEFENDANT/APPELLANT,
DENNIS D. JACKSON

In Proper Person

LILJEBERG, J.

Defendant, Dennis Jackson, pleaded guilty to the amended charge of aggravated battery. The trial court sentenced defendant to ten years at hard labor. For the reasons that follow, we vacate the guilty plea, set aside defendant's conviction and sentence, and remand for further proceedings. Appellate counsel's motion to withdraw as attorney of record is granted.

FACTUAL AND PROCEDURAL BACKGROUND

On July 31, 2015, the Jefferson Parish District Attorney filed a bill of information charging defendant with attempted second degree murder in violation of La. R.S. 14:27 and La. R.S. 14:30.1. On August 17, 2015, defendant pleaded not guilty at his arraignment. On November 30, 2015, defendant filed a *pro se* motion for substitution of counsel complaining his court-appointed counsel was withholding evidence which could be used to "free" him. The trial court heard and denied this motion on April 28, 2016.

On June 16, 2016, the State amended the attempted second degree murder charge to aggravated battery in violation of La. R.S. 14:34. On that same day, defendant withdrew his plea of not guilty and pleaded guilty under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to the aggravated battery charge. The State agreed not to file a multiple offender bill of information with respect to this charge. After accepting defendant's guilty plea under *Alford*, the trial court sentenced defendant in accordance with the plea agreement to ten years at hard labor.¹

On July 5, 2017, defendant filed a Uniform Application for Post-Conviction Relief alleging ineffective assistance of counsel and violations of due process. In

¹ On that same day, defendant also pleaded guilty under *Alford* in Case No. 15-1608 to possession of cocaine, and stipulated to a habitual offender bill on that charge. The trial court found defendant to be a second felony offender and sentenced him to 30 months at hard labor without the benefit of probation or suspension of sentence. The trial court ran the sentence concurrent with the sentence imposed in the instant matter. The conviction and sentence in Case No. 15-1608 are not before this Court on appeal.

support of his application, defendant attached excerpts of alleged statements from the victim and the victim's brother which he claimed as proof he did not commit the alleged crime. On July 13, 2017, the trial court dismissed the application for post-conviction relief without prejudice on the basis that it was premature. On August 10, 2017, defendant filed a pro se motion for an out-of-time appeal, which was granted on August 22, 2017. This appeal follows.

DISCUSSION

Defendant's appointed appellate counsel filed an *Anders*² brief on defendant's behalf, asserting there is no basis for a non-frivolous appeal. Counsel also filed a motion to withdraw as attorney of record. Defendant filed a *pro se* supplemental appellate brief alleging his guilty plea was coerced. Defendant also references alleged favorable statements from the victim and other witnesses, and complains he did not have the opportunity to present this information in the lower court proceedings.

The "best interest" or *Alford* plea is one in which the defendant pleads guilty while maintaining his innocence. In *Alford*, the United States Supreme Court ruled that a defendant may plead guilty, without foregoing his protestations of innocence, if "the plea represents a voluntary and intelligent choice among the alternative courses of action open to defendant[,] . . . especially where the defendant was represented by competent counsel whose advice was that the plea would be to the defendant's advantage." *Alford*, 400 U.S. at 31, 91 S.Ct. at 164.

An *Alford* plea accompanied by a claim of innocence puts the trial court on notice that it must ascertain a factual basis to support the plea. *State v. Orman*, 97-2089 (La. 1/9/98), 704 So.2d 245 (*per curium*); *State v. Villarreal*, 99-827 (La. App. 5 Cir. 2/16/00), 759 So.2d 126, 129-30, *writ denied*, 00-1175 (La. 3/16/01), 786 So.2d 745. In a case involving a bona fide *Alford* plea, the record must

² *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

contain “strong evidence of actual guilt.” *Alford*, 400 U.S. at 38, 91 S.Ct. at 167. This Court has recognized that when a defendant enters an *Alford* plea, “constitutional due process requires that the record contain strong evidence of actual guilt.” *State v. Craig*, 10-854 (La. App. 5 Cir. 5/24/11), 66 So.3d 60.

On review of the record for errors patent, we find the defendant maintained his innocence and entered a guilty plea under *Alford*. However, the State did not provide a factual basis for the plea during the guilty plea colloquy and the record does not otherwise establish that strong evidence of actual guilt exists sufficient to convict defendant of aggravated battery. In the absence of a showing in the record that strong evidence of actual guilt exists, we find that defendant’s guilty plea to aggravated battery under *Alford* should not have been accepted and must be declared invalid. *See State v. Ables*, 15-720 (La. App. 5 Cir. 2/24/16), 186 So.3d 1274, 1276.

DECREE

For the reasons stated above, we vacate the guilty plea, set aside defendant’s conviction and sentence, and remand for further proceedings. We also grant the motion to withdraw as counsel of record filed by defendant’s appellate counsel.

GUILTY PLEA VACATED; CONVICTION AND SENTENCE SET ASIDE AND CASE REMANDED; MOTION TO WITHDRAW GRANTED

STATE OF LOUISIANA

NO. 17-KA-612

VERSUS

FIFTH CIRCUIT

DENNIS D. JACKSON

COURT OF APPEAL

STATE OF LOUISIANA

WICKER J., CONCURS WITH REASONS

I agree with both the analysis and outcome in this matter. I am loath, however, to grant appellate counsel's motion to withdraw, given that counsel missed a glaring error in the guilty plea.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 11, 2018** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-KA-612

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE STEPHEN D. ENRIGHT, JR. (DISTRICT JUDGE)

TERRY M. BOUDREAUX (APPELLEE)

PRENTICE L. WHITE (APPELLANT)

ANNE M. WALLIS (APPELLEE)

MAILED

DENNIS D. JACKSON #426063 (APPELLANT)

EAST FELICIANA PARISH PRISON
POST OFFICE BOX 8025
CLINTON, LA 70722

HON. PAUL D. CONNICK, JR. (APPELLEE)
DISTRICT ATTORNEY
TWENTY-FOURTH JUDICIAL DISTRICT
200 DERBIGNY STREET
GRETNA, LA 70053