

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

SEP 17 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RICO GREEN,

APPELLANT

APPELLATE CASE NO. 2013-000441

INITIAL BRIEF OF APPELLANT

ROBERT M. PACHAK
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

Whether appellant's guilty plea was conditional when he appealed his guilty plea to preserve an issue raised at a motion hearing prior to entering his guilty plea?

STATEMENT OF THE CASE

Appellant was indicted for trafficking in cocaine, trafficking in cocaine base, possession of a firearm during the commission of a violent crime, and possession of a firearm by a person convicted of a violent crime at the November 2011 term of the Lancaster County grand jury. On February 11, 2011, a motion to suppress was heard before the Honorable Brooks P. Goldsmith. Appellant was represented by William Frick, Esquire. Bill Nowiki, Esquire, was the solicitor. Judge Goldsmith denied the motion to suppress. Later in the day, appellant again appeared before Judge Goldsmith and pled guilty to the two trafficking charges. He was sentenced to two ten (10) year concurrent terms of imprisonment.

Defense counsel's Rule 203, SCACR explanation for the appeal of the guilty plea was to preserve the issue raised at the suppression hearing.

This appeal follows.

ARGUMENT

Appellant's guilty plea was conditional when he appealed his guilty plea to preserve an issue raised at a motion hearing prior to entering his guilty plea.

Appellant's plea counsel gave the following reason for appealing his guilty plea:

Subsequent to his guilty plea, the defendant requested his counsel to file an appeal regarding this plea. Pursuant to Rule 203(b)(2) and (d) SCACR, defendant's counsel is filing this appeal. The grounds for requesting an appeal is the erroneous denial of the suppression of the drug evidence. According to law enforcement's testimony at the suppression hearing, there was no other reason for a stop of the defendant's vehicle except for the perceived paper tag violation. As stated in State v. Butler, 539 S.E.2nd 414, 343 S.C. 198, this did not in and of itself give reason enough to execute a traffic stop and search of the vehicle. Therefore, any illicit drugs found subsequent to the traffic stop are fruit of the poisonous tree and should be suppressed.

In State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982), a defendant filed pretrial motions. They were denied. The defendant then changed his plea from "not guilty" to "guilty." He then appealed and challenged the pre-trial motions that had been denied. The South Carolina Supreme Court held:

In effect, appellant here entered conditional plea which is a practice not recognized in South Carolina and a practice which we expressly disapprove. Pleas of guilty are unconditional, and if an accused attempts to attach any

condition or qualification thereto, the trial court should direct a plea of not guilty. Roberts v. Warden, 221 Md. 576, 155 A.2d 891, cert. denied Roberts v. Peppersack, 362 U.S. 953, 80 S.Ct. 866, 4 L.Ed.2d 871; 22 C.J.S. Criminal Law § 423(1); 21 Am.Jur.2d, Criminal Law, section 487. The basis for this rule is, of course, the settled doctrine that a guilty plea constitutes *waiver* of all prior claims of constitutional rights or deprivations thereof. State v. Patterson, *supra*; Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891; Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97; Lefkowitz v. Newsome, 420 U.S. 283, 289, 95 S.Ct. 886, 889, 43 L.Ed.2d 196 (and cases cited therein). It was thus improper for appellant to seek to preserve the constitutional issues enumerated above while entering pleas of guilty. It was error of the trial court to accept the pleas on such terms.

In State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186 (1990), a guilty plea was reversed because a defendant was allowed to condition his guilty plea upon the right to appeal the constitutionality of a statute concerning notice to drivers whose licenses were suspended. In State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001), the defendant's guilty plea was vacated when she attempted to raise constitutional issues because the guilty plea was conditional. Similar results can be found in In re Johnny Lee W., 371 S.C. 217, 638 S.E.2d 682 (2006) and State v. Rice, 401 S.C. 330, 737 S.E.2d 485 (2013).

Because appellant's guilty plea in this case was also conditional, it too should be reversed.

CONCLUSION

Appellant's guilty plea should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of September, 2013.

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THE STATE,

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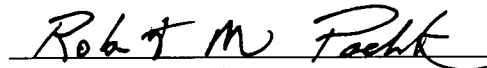
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Motion Hearing Transcript (February 11, 2013);
- (3) Guilty Plea Hearing Transcript (February 11, 2013);
- (4) Rule 203 explanation.

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

September 17th, 2013



Robert M. Pachak
Appellate Defender

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CERTIFICATE OF SERVICE

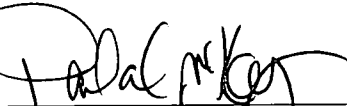
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of September, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of September, 2013.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.