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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALTON RODGERS,

APPELLANT

APPELLATE CASE NO 2013-002180

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether appellant should have been sentenced as a Class E felon because of a third or subsequent offense when no value was established for the property that was taken?

STATEMENT OF THE CASE

Appellant was tried for armed robbery before the Honorable Stephanie P. McDonald and a jury on September 30, 2013, in Charleston County. The jury returned a guilty verdict on the lesser included offense of larceny. A seven (7) year sentence was imposed. Jason T. King, Esquire, and Michael Cooper, Esquire, were the trial attorneys. Meg Haley, Esquire, and Jessica Baldwin, Esquire, were the assistant solicitors.

This appeal follows.

ARGUMENT

Appellant should not have been sentenced as a Class E felon because of a third or subsequent offense when no value was established for the property that was taken.

The indictment charging appellant read as follows:

That on or about November 11, 2010, in Charleston County, South Carolina, the Defendant, ALTON RODGERS, while at 1934 Ashley River Road, Charleston, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Benny Taghivand with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

In actuality, the police responded to a shoplifting call at a Rite-Aid pharmacy. Appellant was alleged to have taken an MP3 player and a utility knife. (Tr. p. 72, lines 3 – 12; tr. p. 74, line 20 – p. 75, line 4). The jury saw through appellant being overcharged with armed robbery and convicted him of the lesser included offense of larceny.

Appellant's prior record was as follows:

MS. HALEY: Okay. 1982, shoplifting; 1983, assault; 1984, sale of marijuana; 1985, disorderly conduct; 1986, CDV first; 1987, forgery; 1988, shoplifting, two counts, also a larceny; 1989, two counts of passing a forged check; 1990, two counts of larceny, and burglary, one count of that; in 1992, a general property crime violation and three counts of larceny, and a probation violation; in 1995, two counts of larceny, contempt, and escape; in 1996, selling cocaine, burglary, two counts of criminal aggravated battery with a deadly weapon, and petty theft; and 1997, another probation violation; in 2001, scheme to defraud or swindle, two counts of larceny, and possession of cocaine; 2003, larceny, resisting an officer for merchandise recovery, and three counts of petty theft; a probation violation in 2004; 2005, trespass; 2006, trespass and drinking in public; 2007, resisting arrest and petty larceny; 2008, petty larceny; and then in 2009, burglary second nonviolent, two counts of trespassing, simple possession of marijuana, and a property offense enhancement. And the release date on that was October 1st, 2010.

(Tr. p. 189, line 11 – p. 190, line 5).

Appellant was sentenced as a third or subsequent offender and his offense was classified as a Class E felony. S.C. Code § 16-1-57 provides:

A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a Class E felony.

S.C. Code § 16-1-10 has six categories of felonies:

(A) **Felonies** are classified, for the purpose of sentencing, into the following six categories:

- (1) **Class A felonies**
- (2) **Class B felonies**
- (3) **Class C felonies**
- (4) **Class D felonies**
- (5) **Class E felonies**
- (6) **Class F felonies**

Sentencing for these categories is provided in S.C. Code § 16-1-20 and is as follows:

(A) A person convicted of classified offenses, must be imprisoned as follows:

- (1) for a Class A felony, not more than thirty years;
- (2) for a Class B felony, not more than twenty-five years;
- (3) for a Class C felony, not more than twenty years;
- (4) for a Class D felony, not more than fifteen years;
- (5) for a Class E felony, not more than ten years;

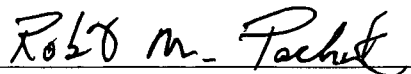
(6) for a Class F felony, not more than five years;

Based upon appellant's prior record, he was sentenced to seven (7) years under the Class E felony category. The problem in this case was that the State never specified in the indictment the value of the property involved. This was not brought out at the trial as well. S. C. Code § 16-1-57 mandates sentencing as a third or subsequent offender and as a Class E felony, but it has to be for an offense where the "term of imprisonment is contingent upon the value of the property involved..." (emphasis supplied). The State has not proven the value of the property involved.

CONCLUSION

Appellant's case should be remanded for resentencing.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2014.

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IN THE COURT OF APPEALS

Appeal from Charleston County
Stephanie P. McDonald, Circuit Court Judge

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RESPONDENT,

V.

ALTON RODGERS,

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APPELLATE CASE NO. 2013-002764

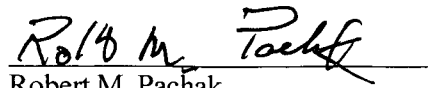
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alton Rodgers 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 Stephanie P. McDonald, which was held on October 1, 2013, 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 Alton Rodgers.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2014.

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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) Entire Trial Transcript (September 30, 2013)

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

January 7, 2014



Robert M. Pachak
Appellate Defender

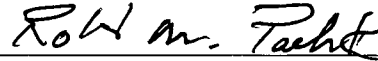
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 7, 2014



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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Columbia, South Carolina 29211-1589

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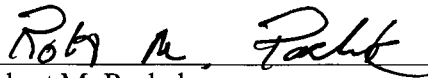
V.

ALTON RODGERS,

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CERTIFICATE OF SERVICE

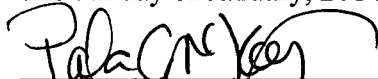
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Alton Rodgers, #334435 at Macdougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472 this 7th day of January, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of January, 2014.

 (L.S.)

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