

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

JUN 04 2014

**SC Court of Appeals**

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Appeal from Beaufort County

Brooks P. Goldsmith, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

JOHN DECARLO,

APPELLANT

APPELLATE CASE NO. 2013-001232  
\_\_\_\_\_

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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**TABLE OF AUTHORITIES**

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**STATEMENT OF ISSUE ON APPEAL**

Whether the lower court erred in ruling that it could not suspend appellant's fifteen (15) year sentence for first-degree burglary and place him on probation?

**STATEMENT OF THE CASE**

On May 21, 2013, appellant appeared before the Honorable Brooks Goldsmith in Beaufort County and pled guilty to burglary in the first degree, armed robbery, and possession of a weapon. Respective sentences of fifteen (15) years, fifteen (15) years, and five (5) years were imposed. Tom Taylor, Esquire, and Bill Foster, Esquire, were the plea attorneys. Isaac McDuffie Stone, Esquire, was the solicitor.

This appeal follows.

## ARGUMENT

The lower court erred in ruling that it could not suspend appellant's fifteen (15) year sentence for first-degree burglary and place him on probation.

Plea counsel's explanation for appealing appellant's guilty plea is as follows:

Pursuant to SCACR 203(d)(1)(B)(iv), Counsel for Defendant John DeCarlo hereby advises the Court that this appeal from guilty pleas and sentence of 15 years concurrent is based upon the legal argument that Judge Goldsmith had the ability to suspend a portion of the sentence for Burglary First (S.C. Code Section 16-11-311) in his discretion. Counsel advises the Court that Judge Goldsmith heard counsel and the Solicitor in chambers prior to the plea, and counsel provided Judge Goldsmith at the time with a copy of State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011). Counsel argued to Judge Goldsmith that Jacobs should be read strictly and restricted to its facts, which therein included a request to suspend a portion of the minimum 15 year sentence and place Mr. Jacobs on probation. In our case, we urged Judge Goldsmith to examine the numerous mitigating factors set forth in the Psychological Evaluation of John DeCarlo performed by David R. Price, Ph.D., (submitted as a Court's Exhibit and a true and correct copy being attached to this Written Explanation) and to give Mr. DeCarlo a sentence that would comport with the findings of Dr. Price, to include supervised home arrest and drug and alcohol counseling. Judge Goldsmith indicated on the record during the plea, that he found the factors surrounding Mr. DeCarlo's earlier drug and alcohol abuse, along with physical abuse he suffered at the hands of his father, to be compelling, but said he was constrained by Section 16-11-311 and Jacobs to sentence Mr. DeCarlo to a minimum of 15 years in a South Carolina prison.

Counsel respectfully argues that the intention of the Legislature and the plain reading of the current statutes in South Carolina, allows our Circuit Court Judges discretion to craft a sentence to comport with the facts of the case and provide alternative time under supervised house arrest and treatment. Mr. DeCarlo requests that the Court so rule and remand the case for sentencing by Judge Goldsmith in conformity with his findings and conclusions.

S.C. Code § 16-11-311(B) provides:

Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, "life" means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years.

The lower court's authority to suspend a sentence and place a person on probation can be found in S.C. Code § 24-21-410 which states:

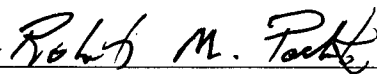
After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. Probation is a form of clemency.

As can be seen, the lower court erred in holding that it could not suspend appellant's sentence for burglary in the first degree and place him on probation. Contra, State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011).

CONCLUSION

Appellant's case should be remanded for resentencing.

Respectfully submitted,



---

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of June, 2014.

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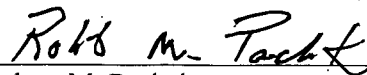
\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for John DeCarlo 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 Brooks P. Goldsmith, which was held on May 21, 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 John DeCarlo.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of June, 2014.

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APPELLATE CASE NO. 2013-001232

**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 Plea Transcript (May 21, 2013)
- (3) SCACR 203 Explanation for Appeal
- (4) Dr. Price's evaluation of appellant

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

June 4, 2014

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

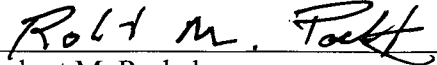
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 4, 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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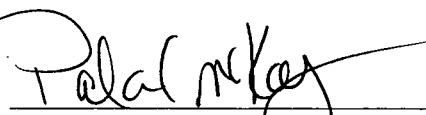
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on John DeCarlo, #355553 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 4th day of June, 2014.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 4th day of June, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.