 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 11 2014

SC Court of Appeals

Appeal from Berkeley County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM E. FRITZ,

APPELLANT

APPELLATE CASE NO. 2014-000303

INITIAL BRIEF OF APPELLANT

ROBERT M. PACHAK
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in allowing the victim of an unrelated crime that had been dismissed give victim impact testimony prior to appellant being sentenced?

STATEMENT OF THE CASE

On February 7, 2014, appellant appeared before the Honorable Roger M. Young, Sr., in Berkeley County and pled guilty to receiving stolen goods. A six (6) year sentence was imposed. A prior probationary sentence was revoked and four (4) years was ordered to be served on that charge. Cody Groeber, Esquire, was plea counsel. Kendra Wilson, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The court erred in allowing the victim of an unrelated crime that had been dismissed give victim impact testimony prior to appellant being sentenced.

At appellant's guilty plea to receiving stolen goods, the court noted that the State was dropping a third degree burglary charge and a malicious injury to telephone equipment charge. (Tr. p. 4, lines 5 – 7). Later, the assistant solicitor said she would like the victim of the dropped burglary charge to address the court. Plea counsel objected to letting the victim have standing to speak at appellant's sentencing. Over objection, the court let the victim speak. This is what he said:

THE WITNESS: Thank you, Your Honor, for letting me address you. I'm a disabled retired military veteran. I've come up here numerous times to follow up with Mr. Fritz to ask you for a harsh sentence.

I'm the victim on another crime, one of many other crimes, and I'm very familiar with his activity. I challenge his statement that he's had a job. All he did was wander around the neighborhood looking for victims, me being one. He went into my house, with his sister, to haul my copper, made the house uninhabitable at a great financial loss to me.

He had no job, no car, no driver's license. The only source of income was an occasional scrapping permit. He was living with his sister, and they lived nearby my rental property. He got her involved at this particular—on this particular event. He got her involved with this crime, and she already pled guilty earlier this year.

He has never shown any remorse, apology, anything, nor has his sister with this. He's not a productive member of society, as you can see from his record. I don't think he'll ever change. I think he'll continue to prey on neighbors such as myself.

I'm asking you for a harsh sentence for this particular one time, and I do realize that the other crimes are going to be dismissed, and thank you for listening to me.

(Tr. p. 6, line 14 – p. 7, line 15).

After the witness spoke, plea counsel stated that appellant denied committing a burglary and that there was a reason that the charge was being dismissed. Plea counsel asked that the court not consider the victim's desires about harsh sentencing. (Tr. p. 7, line 20 – p. 8, line 2). Instead, the court sentenced appellant to six years. (Tr. p. 11, lines 2 – 8).

The court erred in considering the victim's testimony concerning the unrelated burglary charge that was dismissed. Appellant's sentence should not be contingent on what a victim says about another unrelated charge that is not before the court. That unrelated charge that was dismissed is not relevant to the charge which appellant pled guilty to. In State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976), the Court wrote:

If justice is to be done, a sentencing judge should know all the material facts. Fair administration of justice demands that the judge will not act on surmise or suspicion but will impose sentences with insight and understanding. Hence, the judge is required to listen and give serious consideration to any information material to punishment. If a defendant's record, as publicly disclosed, is incorrectly reported, defendant should have an opportunity to explain any discrepancy and inform the court concerning the alleged errors.

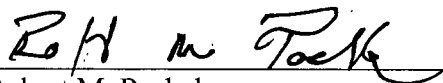
267 S.C. at 245-246, 226 S.E.2d at 897.

S.C. Code § 16-3-1515 (E) provides: “ A victim who wishes to make an oral victim impact statement to the court at sentencing must notify the prosecuting agency or summary court judge of this desire in advance of the sentencing.” This code section implies that the victim is the victim of the crime for which the defendant is being sentenced on. It does not mean that any victim may testify about any charge that is not the subject of the guilty plea. The victim of the unrelated charge that was dismissed should not have had standing to speak at appellant’s sentencing.

CONCLUSION

Appellant's case should be remanded for re-sentencing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2014.