

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW DEMOND GALLISHAW,

APPELLANT

APPELLATE CASE NO. 2013-000641

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the plea judge erred in denying appellant's motion for a reconsideration of the court's acceptance of his guilty plea under North Carolina v. Alford?

STATEMENT OF THE CASE

On September 14, 2009, appellant and a co-defendant appeared before the Honorable George C. James, Jr. in Sumter County and pled guilty to armed robbery and burglary in the first degree. Concurrent twenty (20) year sentences were imposed. Arthur Wilder, Esquire, was plea counsel. Jason Corbett, Esquire, was the assistant solicitor. On September 24, 2009, appellant moved for a reconsideration of the court's acceptance of his guilty plea under North Carolina v. Alford and the sentence imposed upon him. A hearing on the motion was held on March 18, 2013. Appellant was represented by Christopher Shipman, Esquire. The motion was denied at the hearing.

This appeal follows.

ARGUMENT

The plea judge erred in denying appellant's motion for a reconsideration of the court's acceptance of his guilty plea under *North Carolina v. Alford*.

The United States Supreme Court in *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969) that “a plea of guilty is more than admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality.” 395 U.S. at 242-243, 89 S.Ct. at 1712. In this case, appellant was accused of participating in a burglary and armed robbery at a local residence in Sumter. Appellant maintained that he was only present, but did not participate in the crimes even under the theory of “the hand of one is the hand of all.” Appellant explained:

THE COURT: Now earlier you indicated you were not guilty and that was approximately an hour or so ago. Will you tell me what you did that makes you guilty and you need to speak up so that the court reporter and I can hear you since there is some distance between us.

MR. GALLISHAW: Your Honor, the way I feel I was guilty because I was in the car on that night and I never did go in, I never been to that residence before in my life. You know, I never was there before. It's like my first time ever being there and the incident took place there, I didn't – you know, I wasn't involved or however you might call it but you know I did – I stood outside the door because I didn't want anything to do with the situation.

THE COURT: Did you know what was going to happen inside?

MR. GALLISHAW: No, sir. I didn't know what was going – I didn't know – the things that happened I didn't know what was going to take place. And I stood outside the door. I'm telling the truth.

THE COURT: Why did you stand outside?

MR. GALLISHAW: Because I didn't want to go in. I didn't want to participate in – I didn't want no part of that.

THE COURT: You didn't want part of what?

MR. GALLISHAW: The crime that happened.

THE COURT: All right. You said you didn't want to go inside, that you didn't want to participate in what happened, so what were you thinking was going to happen inside?

MR. GALLISHAW: Well, I know they had – who I was with they had guns, you know, and I mean ...

(R. p. 22, line 15 – p. 23, line 21).

The plea judge then questioned the assistant solicitor:

THE COURT: Is being in the car, and I'm not saying that these both men are telling the truth or not the truth, but the hand of one is the hand of all there has to be a hand. If you are riding in a car and three other people in the car with you run in and rob a house and you are just sitting there and you say, I'm not participating, and they jump back in the car and drive off, are you guilty?

MR. CORBETT: If I become the get away driver, I am.

THE COURT: Well, Mr. Gallishaw wasn't.

(R. p. 30, lines 3 -12).

Later, plea counsel advised the court that appellant had some mental health issues:

THE COURT: That's Mr. Gallishaw's mother?

MR. WILDER: That's correct, Your Honor, and she has been a very productive member of our community and has done her best to try to raise Matthew. Matthew has been treated before by the Department of Mental Health as he told you. I have evaluations from previous occasions with Matthew I would like to hand up to the Court. They indicate what I was telling you before about his mental retardation and evaluations given by the Department of Disability and Special Needs and also the Department of Mental Health. He does have children himself now.

(R. p. 59, lines 6 – 16).

* * *

But we have this situation of the evidence against him does indicate, I believe, an Alford plea. It is in his best interest to plead. I think Mr. Smith agrees with his decision to enter the plea today and we're begging for mercy. We're asking for you to understand that he is a person of limited intellectual capabilities; that he told you he went to the eleventh grade but it was in Special Education, Your Honor, and so his history with the school system really doesn't equip him to always make the right decisions when he is presented with choices to make and so, Your Honor, I would ask you to not impose the full sentence but to hear from his mother and any other member of his family that might wish to speak.

(R. p. 60, lines 9 – 21).

At the hearing to reconsider the Court's acceptance of appellant's guilty plea under North Carolina v. Alford, counsel explained:

MR SHIPMAN: And the basis for this motion, Your Honor, is that I believe, he had initially tried to plead guilty and then said that he didn't do it and then after a break he plead under Alford. He misunderstood the nature of the Alford plea and thought that he would get a lesser sentence by pleading under Alford because he's still maintaining his innocence through out it. And as you know that's not the case. I've spoke with Mr. Wilder about it and I've spoken to Mr. Gallishaw and you know, he's got some mental handicaps. I've got a report from a competency hearing from back in 2004 and it says he has an IQ of sixty and so I believe there could have been some issues with the knowingness of his plea at the time on whether or not he actually may have had an understanding of the rights that he was relinquishing at the time. I believe that's the basis ...

R. p. 87, lines 15 – p. 88, line 5).

Appellant also explained this at the hearing. (R. p. 94, line 16 – p. 95, line 4).

As can be seen from the above testimony, appellant's guilty plea was not entered voluntarily and intelligently.

CONCLUSION

Appellant's guilty plea should be vacated.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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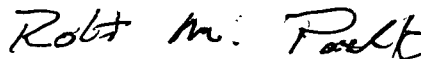
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Matthew Demond Gallishaw 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 George C. James, Jr., which was held on September 14, 2009, 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 Matthew Demond Gallishaw.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of November, 2014.

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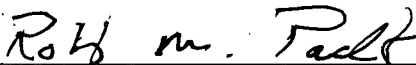
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Guilty Plea Transcript (September 14, 2009)
- (3) Reconsideration Hearing Transcript (March 18, 2013)
- (4) Motion for Reconsideration

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

November 14th, 2014



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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."

November 14, 2014

Robert M. Pachak

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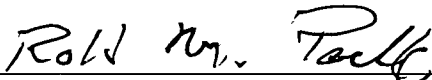
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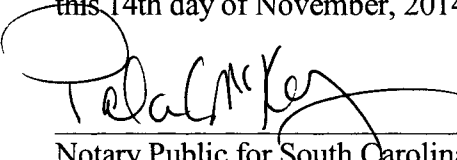
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Matthew Demond Gallishaw, #262426 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 14th day of November, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of November, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.