

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Fairfield County

Brian M. Gibbons, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

MAR 11 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARVIN KADARRO WORKMAN

APPELLANT

APPELLATE CASE NO. 2015-001903  
\_\_\_\_\_

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 allowed to withdraw his guilty plea when the plea judge told him he could?

STATEMENT OF THE CASE

On September 2, 2015, appellant appeared before the Honorable Brian M. Gibbons in Fairfield County and pled guilty to receiving stolen goods, possession of a firearm by a person convicted of a felony violent crime, and failure to stop for a blue light. Respective sentences of ten (10) years, five (5) years, and three (3) years were imposed. William Frick, Esquire was plea counsel. Riley Maxwell, Esquire was the solicitor.

This appeal follows.

## ARGUMENT

Appellant should have been allowed to withdraw his guilty plea when the plea judge told him he could.

The solicitor presented the following testimony to the court concerning the plea agreement in this case:

MR. MAXWELL: Your Honor, this is Marvin Workman, Mr. Workman is represented by Mr. Frick. Mr. Workman has been charged with failure to stop for a blue light, 2014-GS-20-224, he is pleading guilty as charged there. He's been charged with possession of a firearm by a violent felon, 2015-GS-20-225, pleading as charged. He was initially charged with three counts of burglary, two being burglary first, one being burglary in second degree. We've basically consolidated those charges into a direct indictment of receiving stolen goods, it is a third property offense, he is pleading to the enhanced property offense, 2015-GS-20-226. All three of those charges he's waiving presentment to the grand jury and entering the plea, and per his plea the State is dismissing the three burglary counts as well as the unlawful carrying of a pistol that was related to this case. The State is recommending a six year sentence. Mr. Workman is also on the community supervision program and I believe probation is ready to handle that issue as well.

(R. p.3, ll. 1 – 19)

The plea court explained to the appellant:

THE COURT: And, of course, you understand that the State is recommending that you receive a six year active sentence, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. So understanding all of those things, how do you wish to plead?

THE DEFENDANT: No contest.

(R. p.5, ll. 4-10)

THE COURT: Do you understand that on a recommendation the Court is not bound to do what the State is recommending, that means I can give you the ten years or I can give you - - well, what is in front of me now is up to 18 years, do you understand that?

THE DEFENDANT: I didn't understand that at the beginning now.

(R. p. 5, ll. 18-24)

THE COURT: The recommendation is simply just that, they are recommending that I give you six and we'll leave it at that, that's what they're recommending. But just because they're recommending that doesn't mean I have to do that. If I thought it was best for Fairfield County and the State of South Carolina I could give you ten, plus five, plus three, for a total of 18. Of course, if I was going to do that - - if I was going to max you out like that I would let you withdraw your plea and go talk to your lawyer some more, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: So understanding all of those things you still wish to go forward with this guilty plea?

THE DEFENDANT: Yes, sir.

THE COURT: And I hope you learn while you are incarcerated and you won't continue to reoffend whenever you do get out. All right. I'm not going to follow the recommendation but I'm not going to max him out either. Sentence of the Court on indictment 15-GS-20-226 is ten years. The sentence of the Court on indictment 225 is five. Sentence on 224 is three and we're going to run them all concurrent. Credit for the time he's served. I do find he has willfully failed to comply with the terms and conditions of his community supervision, therefore I revoke one year, run that concurrent with the ten year sentence. Good luck to you.

MR. FRICK: Judge, I've got to ask because he's going to file a PCR if I don't ask this, you had initially said if you weren't going to follow the recommendation you would consider - -

THE COURT: That was if I was going to max him out and give me consecutive sentences on May 8. I make a specific finding for the purpose of the PCR record that Mr. Frick has done an outstanding job representing his client, specifically considering that he was facing what kind of burglary charges?

MR. MAXWELL: Burglary in the first degree on two of them.

THE DEFENDANT: I would rather just go ahead and go to trial, I don't want to accept no other pleas.

THE COURT: Well, see you later. It's done. You're going to jail for ten years.

(R. p.15, line 11 – p.16, line 13)

The plea court should have allowed appellant to withdraw his guilty plea. In State v.

Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982) two dissenters wrote:

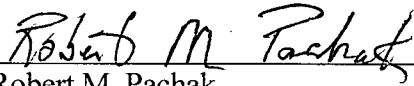
The withdrawal of a guilty plea is generally within the sound discretion of the trial judge. \*151 *State v. Neal*, 267 S.C. 53, 226 S.E.2d 236 (1975). We believe appellant's plea was not entered knowingly because he misunderstood the scope of the agreement on sentencing. *Cf. State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (plea not knowingly made because defendant misunderstood requirement of statutory mandatory sentence). *See also Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed. 2d 274 (1969); *State v. Peeler*, S.C., 283 S.E.2d 826 (1981). When the judge discovered the misunderstanding, he should have allowed appellant to withdraw the plea. His failure to do so was an abuse of discretion. *Hazel*. *See also State v. Smith*, S.C., 280 S.E.2d 200 (1981).

It was obvious in this case that appellant was confused over the scope of his plea agreement. He should have been allowed to withdraw the agreement.

CONCLUSION

Appellant's guilty plea should be vacated.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of March, 2016.

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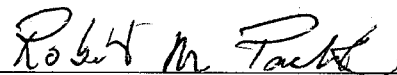
\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Marvin Kadarro Workman 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 Brian M. Gibbons, which was held on September 2, 2015, 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 Marvin Kadarro Workman.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of March, 2016.

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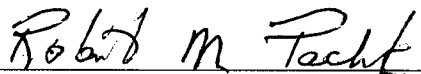
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) Entire Trial Transcript
- (2) True-billed indictments

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

March 11th, 2016



Robert M. Pachak  
Appellate Defender

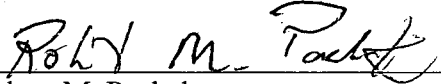
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PO Box 11589  
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(803) 734-1343

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."

March 11, 2016

  
Robert M. Pachak  
Appellate Defender

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Columbia, South Carolina 29211-1589

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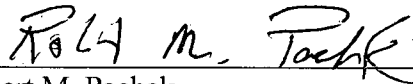
MARVIN KADARRO WORKMAN

APPELLANT

APPELLATE CASE NO. 2015-001903

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, 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 Marvin Kadarro Workman, #297866 at Turbeville Correctional Institution, this 11th day of March, 2016.



\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 11th day of March, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.