

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

SC Court of Appeals

The Honorable Roger M. Young, Circuit Court Judge

Case No. 2011-GS-32-03107

The State,

Respondent,

v.

Jake Dale Lake

Appellant.

EXPLANATION OF APPEAL

This is an appeal from a guilty plea heard on October 4, 2012. The attorney who represented appellant at plea filed a motion to reconsider sentence. Appellant later filed a motion to withdraw his plea. Appellant's attorney was suspended from the practice of law, and the court appointed current counsel to represent appellant on the remaining motions. In an order filed on April 28, 2016, the court denied the motion to reconsider sentence and the motion to withdraw the plea.

Counsel submits this explanation to show there is an issue that can be reviewed on appeal. Appellant entered a plea of guilty to one count of attempted murder. The allegations were that appellant fired a rifle at his former girlfriend without hitting her.

At the guilty plea proceeding, the state recited its version of the facts. The court noted that appellant and his attorney shook their heads during the state's presentation. Appellant's

attorney told the court that “there were disputes as to the factual basis.” Later during the plea hearing, appellant’s attorney told the court that appellant “did miss this time, or the – just intended to scare her or something.” The plea attorney’s statement that appellant just intended to scare his former girlfriend shows that appellant did not admit acting with intent to kill. The offense of attempted murder contains the element of intent to kill. *State v. King*, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015).

Boykin v. Alabama, 395 U.S. 238 (1969) provides that in order to find a guilty plea is voluntarily and knowingly entered into, the record must establish the accused had a full understanding of the consequences of his plea and the charges against him. Appellant’s act of shaking his head during the reading of the facts and his attorney’s statements about appellant’s intent reflect that appellant did not understand the charges against him. The record contains no other evidence that appellant admitted acting with intent to kill. Therefore, appellant’s plea was not voluntarily and knowingly entered into.

The court’s failure to ascertain whether appellant admitted having the intent to kill demonstrates an absence of factual basis for the plea. Further, it was structural error for the court to find that the plea was freely, voluntarily, and intelligently made before hearing the state’s recitation of the facts.

Respectfully submitted,



Sarah H. Mauldin
Senior Assistant Public Defender
407 W. Main Street
Lexington, SC 29072