

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

Howard P. King, Circuit Court Judge

RECEIVED

JUN 07 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILFORD GINO FORD,

APPELLANT

APPELLATE CASE NO. 2015-002006

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

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION7

PETITION TO BE RELIEVED AS COUNSEL8

TABLE OF AUTHORITIES

Cases

Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969) 5

State v. Cole, 304 S.C. 47, 403 S.E.2d 117 (1991) 6

State v. Patterson, 278, S.C. 319, 295 S.E.2d 264 (1982) 5

United States v. Carr, 271 F. 3d 172 (4th Cir. 2001)..... 5

STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred in failing to take into account the doctrine of the defense of necessity as mitigation in sentencing appellant?

STATEMENT OF THE CASE

On September 10, 2015, appellant appeared before the Honorable Howard P. King in Clarendon County and pled guilty to forgery, third or subsequent offense. He was sentenced to ten (10) years suspended upon the service of one (1) year, the balance suspended with probation for three (3) years thereafter. Scott Robinson, Esquire was plea counsel. Warren Anderson, Esquire was the assistant solicitor.

This appeal follows.

ARGUMENT

The plea court erred in failing to take into account the doctrine of the defense of necessity as mitigation in sentencing appellant.

Ordinarily a guilty plea may be attacked when it is not entered voluntarily and intelligently. A defendant is supposed to be advised of his privilege against compulsory self-incrimination, the right to a jury trial, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). In State v. Patterson, 278, S.C. 319, 295 S.E.2d 264 (1982), the court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it. In addition there must also be a sufficient factual basis to support the guilty plea. United States v. Carr, 271 F. 3d 172 (4th Cir. 2001).

In appellant's case the factual basis of the plea was not drawn into question. Rather, it was the facts presented that supported mitigation of his sentence. The assistant solicitor advised the court of the plea negotiations. He said the recommendation was a ten (10) year sentence suspended to six (6) months followed by three (3) years probation. (R. p. 8, ll. 1-4)

Appellant explained what was behind the facts of the situation:

MR. FORD: Yes, sir. The reason I've done this because I'm going to tell you the truth. I've been out in the world awhile. But then I changed my life. I've been known as a criminal, a bank robber, a burglar, a forgerer or whatever it is but my life has changed since then because I got married. I've took on a new role. And I'm a family man now. And I've had not only my children depending on me, but my wife as well as my grandparents and my father. As a matter of fact, my father is in the process of going into heart surgery Friday. And, so, basically speaking, I kind of support all of them. So, in so many ways, you know, I've been bonded with Savage Home Improvement but my partner died so I lost the

bond. So, a lot of times what I do, I take up work wherever I can get it and however I can get it. And then whatever I do do, the people that I hire, I try to give them - - - give them what they're worth. You know, money-wise. So I'm not really making any money. I don't do anything with the money but support my family. But at this time, like I said, I've been in the county jail a little over two months and I really don't have the money but I'd like to go ahead and if any way possible, you can give me time served and let me go and continue to take care of my family, I'd appreciate that. But I must take initiative of what I've done because a lot of times, when you're not bonded, you take on jobs that - - - you take on low-paying jobs. I mean, anything come and go.

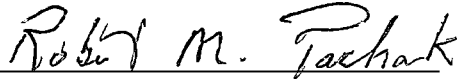
(R. p. 13, line 18 – p. 15, line 19).

As can be seen from appellant's explanation for the factual basis of his plea, the court should have taken into account the circumstancing surrounding his defense of necessity in sentencing him. See, State v. Cole, 304 S.C. 47, 403 S.E.2d 117 (1991).

CONCLUSION

Appellant's case should be remanded for resentencing.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of June, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Howard P. King, Circuit Court Judge

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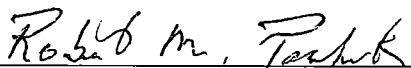
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Wilford Gino Ford 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 Howard P. King, which was held on September 10, 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 Wilford Gino Ford.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of June, 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) Guilty Plea Transcript Dated September 10, 2015;
- (2) True-billed Indictment and Sentence Sheet

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

June 7th, 2016

Robert M. Pachak

Robert M. Pachak
Appellate Defender

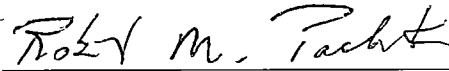
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 7, 2016



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
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Columbia, South Carolina 29211-1589

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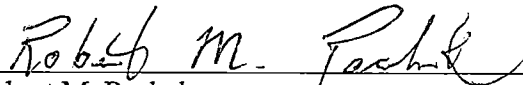
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APPELLATE CASE NO. 2015-002006

CERTIFICATE OF SERVICE

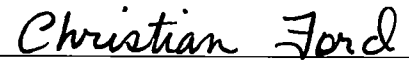
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Mr. Wilford Gino Ford, at, 5031 Brickyard Road, Columbia, South Carolina 29203, this 7th day of June, 2016.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of June, 2016.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: March 1, 2026.