

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

JUN 10 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GARY L. RUCKER

APPELLANT

APPELLATE CASE NO. 2015-000723

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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Cases

State v. Hicks, 377, S.C. 322, 659 S.E.2d 499 (Ct. App 2008) 6

STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred in denying plea counsel's motion to reconsider appellant's sentence?

STATEMENT OF THE CASE

On March 19, 2015, appellant appeared before the Honorable Deadra Jefferson in Charleston County and pled guilty to bank fraud. A sentence of two (2) years was imposed. Megan Ehrlich, Esquire was plea counsel. Marion Atkins, Esquire was the assistant solicitor. A motion to reconsider the sentence was filed on March 25, 2015. The motion was denied on March 30, 2015.

This appeal follows.

ARGUMENT

The plea court erred in denying plea counsel's motion to reconsider applicant's sentence.

This was a guilty plea involving multiple defendants. Appellant was pleading guilty to bank fraud under S.C. Code Section 34-03-0110 (B) which carried a maximum penalty of five (5) years and/or a maximum fine of \$10,000. Appellant and a co-defendant entered Ameris Bank on June 4, 2014, and attempted to cash counterfeit checks in the amount of \$3,078 and \$1,700. The bank clerk went to verify the checks and appellant and the co-defendant fled. They were stopped by the police later and they had on their possession other counterfeit forged checks. (R. p. 23, line 21 – p. 24, line 5)

Plea counsel noted that appellant had served 37 days on this charge but he had been in jail since October for failing to support child support and he was given a one year sentence on that charge. (R. p. 46, ll. 21-24) She explained that appellant had a good work history. He had a grandfather that he helps care for. He was anxious to get out to help his grandfather. Plea counsel asked for a 90 day sentence to be served concurrent to his child support sentence. (R. p. 47, ll. 14-23) Instead, the plea court gave appellant two (2) years. (R. p. 48, ll. 3-8)

Plea counsel's March 25, 2015, motion for reconsideration of sentence contained the following:

The within motion will be made upon the grounds that the sentence imposed is unnecessarily severe under the circumstances and the following grounds which were not presented at the original sentencing hearing:

1. The codefendant, Robert Frazier, entered a guilty plea on December 2, 2014, and he did not receive an active prison sentence. He was sentenced to two years

suspended on the one-hundred eighty-eight (188) days already served and one year of probation. While Mr. Rucker had only served thirty-seven (37) days in jail on the charge before bonding out, the amount of time he will serve on an active two year sentence exceeds the time that Mr. Frazier, his co-defendant, served prior to receiving a probationary sentence.

2. At the time of Mr. Rucker's plea, he had been incarcerated in the Charleston County Detention Center since October 20, 2014, for child support. The Court ordered that his criminal sentence run concurrent to his "family court time." South Carolina Department of Corrections (SCDC) will not give credits towards his family court sentence, as it must be served in the county jail. Therefore, upon completion of his prison sentence, Mr. Rucker will be returned to the county jail and his family court sentence will actually run consecutively.
3. Mr. Rucker was not actively seeking to connect with the people who provided him with the counterfeit check. He was approached by these individuals, who produced and provided the checks but who have not been charged, while walking home from his job.
4. Mr. Rucker is the caretaker for his grandfather, Kinzy Stanley, and his continued incarceration would place a hardship on the family. Despite attempts by the undersigned counsel to reach Mr. Stanley by telephone and request his presence at the hearing, he could not be reached to be notified about Mr. Rucker's original sentencing hearing.

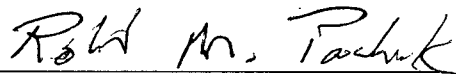
Mr. Rucker would respectfully request that the Court reconsider his sentence and instead sentence him to a sentence of probation, as the co-defendant received probation. In the alternative, Mr. Rucker would request that the Court fashion a sentence that would more closely mirror the amount of jail time served by the co-defendant. Finally, Mr. Rucker would request that the Court take into consideration that the family court time cannot be run concurrently and that upon the completion of the active sentence imposed, he will have to return to the county jail to finish out his family court civil sentence.

The court's order denying appellant's motion for reconsideration of sentence was in error. While the authority to change a sentence rests with the sentencing judge, it is discretionary. State v. Hicks, 377, S.C. 322, 659 S.E.2d 499 (Ct. App 2008) In this case the sentencing judge abused her discretion in not reconsidering appellant's sentence. The disparate sentencing between appellant and the co-defendant should be considered a due process violation.

CONCLUSION

Appellant's case should be remanded for resentencing.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert M. Pachak". The signature is written in a cursive style with a horizontal line underneath it.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of June, 2016.

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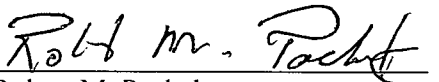
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gary L. Rucker 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 Deadra L. Jefferson, which was held on March 19, 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 Gary L. Rucker.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th 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) True-billed indictment(s);
- (2) Plea Transcript
- (3) Motion for Reconsideration of Sentence
- (4) Order Denying Motion for Reconsideration of Sentence

I certify that this designation contains no matter which is irrelevant to this appeal.
June 10th, 2016

Robert M. Pachak

Robert M. Pachak
Appellate Defender

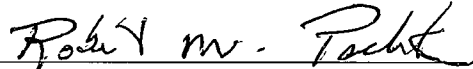
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 10th, 2016



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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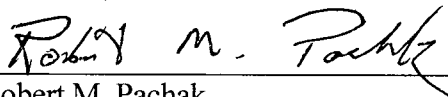
GARY L. RUCKER

APPELLANT

APPELLATE CASE NO. 2015-000723

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, 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 Gary L. Rucker, at 1902 Carlton Street, Apartment 2, North Charleston, South Carolina this 10th day of June, 2016.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of June, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.