

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Williamsburg County APR 07 2016

Clifton Newman, Circuit Court Judge SC Court of Appeals

THE STATE,

RESPONDENT,

V.

Walter Louis Brown, III,

APPELLANT

APPELLATE CASE NO 2015-001774

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's guilty plea was knowingly and intelligently entered?

STATEMENT OF THE CASE

On November 2, 2012, appellant appeared before the Honorable Clifton Newman in Williamsburg County and pled guilty to burglary in the second degree. A fifteen (15) year sentence was imposed. Doward Harvin, Esquire was plea counsel. Kimberly V. Barr, Esquire was the assistant solicitor. A hearing on a motion to reconsider was held on April 2, 2015. On July 25, 2015, Judge Newman issued an order denying the motion.

This appeal follows.

ARGUMENT

Appellant's guilty plea was not knowingly and intelligently entered.

Appellant was originally indicted for burglary in the first degree. He pled down to burglary in the second degree, non-violent. Appellant explained that he was an accomplice with two co-defendants who actually broke into the residence and stole several items. (R. p. 2, ll. 4-12; R. p. 4, ll. 7-9) The assistant solicitor explained the case as follows:

MS. BARR: Your Honor, please the court, this incident happened back on February 25th of 2009, on New Zion Road in Lake City, which is located in Williamsburg County. The victim in the case, William McClendon, who is in the courtroom, called to report that his daughter had gotten home from school; walked in the house noticed, first of all, noticed the front garage door open, and noticed several items thrown about in the rooms in the house.

She immediately left the residence and called her dad. Dad came home. They had a camera missing, a firearm missing, and other items of personal property were missing from the residence. The investigator who handled the case, eventually spoke first, I guess with an individual by name of the Steven Riles who is also one of co-defendants charged. Gave a statement to police saying that he, Levy, Murphy and Walter Brown, were the individuals who broke into the home. He correctly identified the items that were stolen. And he even took the sheriff's deputies back to the house and confirmed that that was the one that he went into.

He said that they had a scheme is what you would call it, going, where they would knock on the door to try to first find out whether or not anybody was home. And if no one was home, then they would break into the residence and take the items. Mr. Riles claims to be the lookout and claims that was his role. He said that on this day, he had a cell phone and he would basically, his job was to call back and tell Mr. Brown that the homeowners were coming home, or somebody was there. This was his Q to them that they needed to leave out of the residence. Judge, that's essentially my case.

(R. p. 4 line 20 – p. 6, line 6)

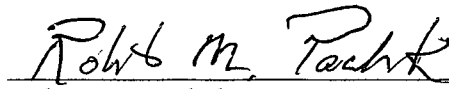
The Judge sentenced appellant to the maximum sentence of fifteen (15) years. Appellant through his counsel, in the written motion for reconsideration asked that his

sentence be reconsidered because he felt wrong information was considered in deciding his sentence and that he was treated more harshly than his co-defendants. The trial court's ruling denying the motion was in error. Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to a trial by jury, 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. 695 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the Court held that the "essence" of Boykin, was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the states. In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), this 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. This Court has held that in addition to the above rights, a realistic picture of all sentencing possibilities should be given. Gaines v. State, 335 S.C. 376, 517, S.E.2d 439 (1999).

CONCLUSION

Because appellant was not properly advised to all sentencing possibilities his guilty plea should be vacated.

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 7th day of April, 2016.

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Appeal from Williamsburg County

Clifton Newman, Circuit Court Judge

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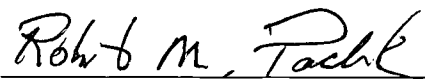
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Walter Brown, III 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 Clifton Newman, which was held on November 2, 2012, 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 Walter Brown, III.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2016.

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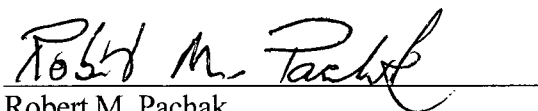
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Guilty Plea Transcript dated November 2, 2012;
- (2) Motion for Reconsideration;
- (3) Hearing on Motion to Reconsider dated April 2, 2015;
- (4) Order Denying Motion to Reconsider

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

April 7th, 2016



Robert M. Pachak
Appellate Defender

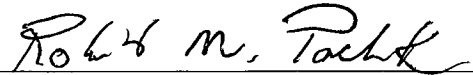
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

April 7, 2016



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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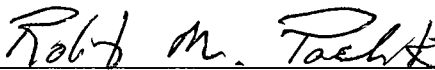
WALTER BROWN, III

APPELLANT

APPELLATE CASE NO 2015-001774

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 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 Walter Brown, III, #310400 at Evans Correctional Institution, this 7th day of April, 2016.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

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

 (L.S.)

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