

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County

Honorable Clifton Newman, Circuit Court Judge

RECEIVED

OCT 11 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM BRIAN MCCANTS,

APPELLANT

APPELLATE CASE NO 2015-001794

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
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the plea judge erred and abused his discretion in denying appellant's motion for reconsideration?

STATEMENT OF THE CASE

On June 24, 2015, appellant appeared before the Honorable Clifton Newman in Williamsburg County and pled guilty to receiving stolen goods, third or subsequent offense. A five (5) year sentence was imposed. A motion for reconsideration was filed on June 24. It was denied on July 25. Doward Harvin, Esquire was plea counsel. Julie Swilley, Esquire was the assistant solicitor.

This appeal follows.

ARGUMENT

The plea judge erred and abused his discretion in denying appellant's motion for reconsideration.

At the beginning of appellant's guilty plea for receiving stolen goods, third or subsequent offense the assistant solicitor recommended a sentence of ten (10) years suspended to drug court.

(R. p. 2, ll. 4-14) The assistant solicitor explained further:

MS. SWILLEY: Thank you very much, Your Honor. In August of 2001, he was convicted of a burglary second non-violent. And he received 15 years suspended to 3 years probation. And also a forgery at the same time he was convicted, and received concurrent time. In 2003, he was convicted of burglary third. 2004, he was convicted of a burglary third. 2004, November 2004, shoplifting. 2004 also, burglary second. 2008, he had his probation revoked. He was on probation for that earlier burglary, for a new burglary charge. 2012, he had a petty larceny conviction. He was revoked on his parole. He was released from prison August of 2014.

And since August of 2014, he has had 6 convictions in the magistrate court locally. And that is what lead us to enhance his property crimes to a felony. Mr. McCants has a drug addiction problem of crack cocaine. The State believes that this is the reason behind his continual property theft. He's familiar with the victim. He knows the victim would like to speak to you. The reason why we have a recommendation, we would hope to give the defendant an opportunity to have his drug addiction issues addressed and to hopefully stop.

(R. p. 6, l. 10 – p. 7, l. 9)

Instead of following the recommendation the plea judge sentenced appellant to five (5) years imprisonment. (R. p. 33, ll. 13-16) Plea counsel moved for reconsideration of the sentence based on the following:

The Defendant pled guilty on the charge of Receiving Stolen Goods less than \$2,000 with a Property Enhancement for it being a Third or Subsequent Property

Offense before Judge Newman. The court sentenced the Defendant to 5 years in the South Carolina Department of Corrections.

The Defendant would move for a reconsideration of the sentence for the following reasons:

1. The Defendant's father died on the day of sentencing and that information was not presented to the Court because it was unknown at the time of sentencing;
2. The Defendant's family was unable to be present at the sentencing hearing because they were dealing with the recent death of the Defendant's father and;
3. The Defendant's family needs him at home during their time of bereavement.

WHEREFORE, the Defendant respectfully requests and prays that this Honorable Court do:

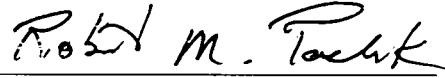
1. Reduce his sentence to a probationary sentence to include the drug court program;
2. Allow the Defendant to spend time with his family and attend his father's funeral.

(Motion for Reconsideration)

The plea judge denied the motion without giving any reason for doing so. (Order Denying Defendant's Motion for Reconsideration). That unexplained ruling was an abuse of discretion and violated due process of law.

CONCLUSION

Appellant's case should be remanded for a full and detailed reconsideration of his sentence.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of October, 2016.

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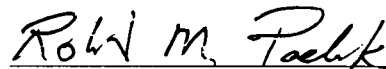
SC Court of Appeals

Counsel for William Brian McCants 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 June 24, 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 William Brian McCants.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of October, 2016.

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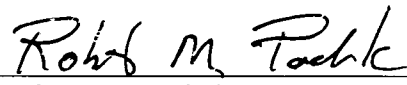
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Guilty Plea Transcript;
- (2) Indictment;
- (3) Motion for Reconsideration;
- (4) Denial of Motion

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

October 11, 2016



Robert M. Pachak
Appellate Defender

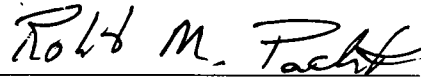
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ATTORNEY FOR APPELLANT

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."

October 11, 2016.



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CERTIFICATE OF SERVICE

The undersigned 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 have been served on William Brian McCants, 301674, at 611 South Cedar Street, Andrews, SC 29510, this 11th day of October, 2016.

Robert M. Pachak

Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

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

Christian Ford (L.S)

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