

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 21 2016

SC Court of Appeals

Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALE MACK FEASTER,

APPELLANT

APPELLATE CASE NO 2016-000470

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) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in determining it could not sentence appellant to less than three (3) years for failure to register as a sex offender, third or subsequent offense?

STATEMENT OF THE CASE

On February 24, 2016, appellant appeared before the Honorable Brian M. Gibbons in Chester County and pled guilty to failure to register as a sex offender, third or subsequent offense. A three (3) year sentence was imposed. Devon Nielson, Esquire was plea counsel. Karen Fryar, Esquire was the solicitor.

This appeal follows.

ARGUMENT

The trial court erred in determining it could not sentence appellant to less than three (3) years for failure to register as a sex offender, third or subsequent offense.

The factual basis for appellant's guilty ples was as follows:

MS. FRYAR: Your Honor, Mr. Feaster was released from the South Carolina Department of Corrections, I believe, on October the 5th, on October the 6th he reported to the Chester County Office for sex offender registration, which was required of him. Mr. Feaster did request some help with the form and Officer McKenzie was going to help him fill out the form, but before he could do that Mr. Feaster left. So at that time the sheriff's department folks called the contact information listed on Mr. Feaster's SCDC release as well as the beginning of the sex offender registry form that he was filling out and she spoke to his mother, Ms. Mattie Feaster and - - he had indicated that he was going to be living in Chester County at a particular address where she lived. Well, when they called his mom she said that she would tell him if she seen him. Well, later on, Your Honor, they contacted her again - - she came up there actually and they said he needs to return before 5:00 today, this is on October 6th, or the first thing in the morning, October 7th, to complete the registration, and at that time his mother indicated she would tell Mr. Feaster. He did not come. Captain Robinson called and talked to Ms. Feaster again at 12:00 on that day since Mr. Feaster had not reported back, and again she said she would tell him if she saw him that but that he was living in Columbia. Mr. Feaster had, of course, said he was living at 744 Kelsey Street in Chester. So they could not locate him, they tried for awhile and finally on October the 19th when he hadn't shown up a warrant was issued for his arrest for failing to register as a sex offender. He was located, Your Honor, November 5, 2015 in Fairfield County and was turned over to the sheriff's department.

THE COURT: Did you hear what she said?

THE DEFENDANT: Yes, sir.

THE COURT: Is that what happened?

THE DEFENDANT: Yes, sir.
(R. p. 6, l. 7 – p. 7, l. 16)

Plea counsel responded:

MR. NIELSON: Yes, Your Honor. I represent Mr. Feaster. Mr. Feaster - - I would like for the record - -for record keeping purposes to put on the record that I do believe this could be suspended to time served. The way I read the statute is different than Your Honor, I understand that, Your Honor had already made a ruling that the way that you read that statute you must give him three years, but for appellate and down the road purposes I would like to put on the record that I believe it can be suspended to time served. This man tried to register, he tried to do everything he could, he thought he had registered when he left the office that day. There was no maliciousness on him on not registering, and my plan this morning was to come before Your Honor asking for time served based on the fact that the way our statutes are written usually they say something to something when the legislature intends to give a minimum amount of time, and so that would be what I would ask you to do. I understand Your Honor is going to do that, I've advised my client as to that, he is still wishing to plead guilty but I would like all of that on the record and Your Honor - -

THE COURT: We don't have conditional guilty pleas in South Carolina. I mean, if he's pleading guilty he understands that I could give him up to five.

MR. NIELSON: He understands that, Your Honor.

(R. p. 7, l. 23 – p. 8, l.22)

The plea judge gave appellant three (3) years imprisonment under his interpretation of the statute. The relevant portion of S.C. Code §23-3-470 reads as follows:

(A) It is the duty of the offender to contact the sheriff in order to register, provide notification of change of permanent or temporary address, or notification of change of employment, or in attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school, or junior

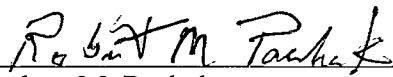
high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school. If an offender fails to register, provide notification of change of address, or notification of permanent or temporary change in employment, or attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, as required by this article he must be punished as provided in subsection (B).

(3) A person convicted for a third or subsequent offense is guilty of a felony and must be imprisoned for a mandatory period of five years, three years of which shall not be suspended or probation granted.

As can be seen from the above the plain and ordinary meaning of the statute would allow a sentence of time served.

CONCLUSION

Appellant's case should be remanded for resentencing.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of October, 2016.

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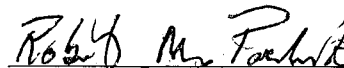
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dale Mack Feaster 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, which was held on February 24, 2016 (Guilty plea), 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 Dale Mack Feaster.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of October, 2016.

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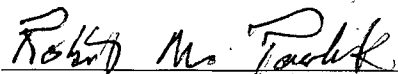
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Guilty Plea Transcript Dated February 24, 2016:
- (2) True Billed Indictment

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

October 21, 2016


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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 21, 2016.

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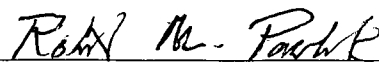
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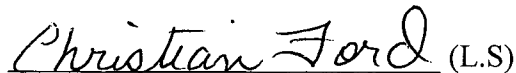
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. 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, Designation of Matter, and Record on Appeal have been served on Dale Mack Feaster, 273780, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 21st day of October, 2016.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2016.

 (L.S)

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