

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RECEIVED

MAR 16 2017

SC Court of Appeals

MICHAEL LEE MATEO,

APPELLANT

APPELLATE CASE NO. 2016-001489

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

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....3

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL.....6

TABLE OF AUTHORITIES

Cases

State v. Gosnell, 262 S.C. 345, 204 S.E. 2d 391 (1974)..... 4

STATEMENT OF ISSUE ON APPEAL

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

STATEMENT OF THE CASE

Appellant was indicted for assault and battery in the second degree by the Horry County Grand Jury. On June 28, 2016, he appeared before the Honorable Deadra L. Jefferson and pled guilty to the charge. He was sentenced to three (3) years imprisonment. Plea counsel was James C. Galmore, III, Esq. The assistant solicitor was Scott A. Gaustein, Esq.

On June 30, 2016, appellant appeared for a motion to reconsider the sentence. That motion was denied by Judge Jefferson on the same date.

This appeal follows.

ARGUMENT

The trial court erred in denying appellant's motion to reconsider the sentence.

Appellant's assault and battery charge stemmed around an altercation he had with his disabled veteran brother. The assistant solicitor explained.

MR GAUSTEIN: Army. And he -- so, he had some physical disabilities at the time of this incident. They were riding in the car together along with the victim's fiancée. They got into an argument and the Defendant struck the Defendant while he was driving the vehicle and causing the Defendant to have -- the victim to have to pull over to the side of the road. The victim told the Defendant to get out of his car. At first, he wouldn't. Then it kind of degenerated from there and they got into a fight because on the road there, the Defendant struck the victim several times causing injury to, to his nose and had some injuries to his face. He didn't have to -- he wasn't transported by EMS but his fiancée did take him to the hospital to get checked out following the incident.

THE COURT: Sir, do you agree or disagree with the facts?

MR. MATEO: Agree.

(R. 14, ll. 10-24).

At the hearing on the motion to reconsider the sentence, plea counsel said he thought the victim did not understand what they were trying to do at the guilty plea. The family was trying to get some services through the probate court. (R. 35, ll. 7-24). He had a probate court processing at the time and was waiting on bed space. He wanted to be examined for competency and possible anger management issues. If appellant were to go to the Department of Corrections he would be kicked out of the probate process. (R. 36, ll. 1-13).

The assistant solicitor explained his position to the court:

MR. GRAUSTEIN: As previously stated, Your Honor, after talking -- speaking with the victim yesterday, the State would ask for a probationary sentence to be -- with special conditions that the bed -- the ordered bed at Just Care becomes available, the Defendant must participate in Just Care, no contact with the victim

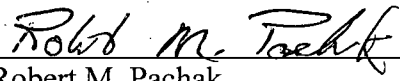
and those would be the special conditions that the State would request with any probationary sentence.

(R. 46, ll. 11-18).

The lower court in this case erred in denying appellant's motion to reconsider the sentence. The court abused its discretion because there was no evidentiary support for its factual conclusions. State v. Gosnell, 262 S.C. 345, 204 S.E. 2d 391 (1974). In fact the lower court's order was just conclusory in nature and was not supported by evidentiary support.

CONCLUSION

Appellant's case should be remanded for resentencing.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of March, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 16 2017

SC Court of Appeals

Appeal from Horry County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL LEE MATEO,

APPELLANT

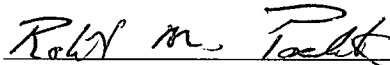
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Lee Mateo 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 June 30, 2016, 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 Michael Lee Mateo.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of March, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL LEE MATEO,

APPELLANT

**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) June 28, 2016 transcript,
- (3) June 30, 2016 transcript,
- (4) Order Denying Motion to Reconsider Sentence.

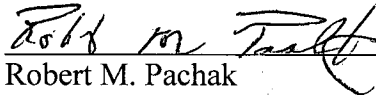
RECEIVED

MAR 16 2017

SC Court of Appeals

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

March 16, 2017


Robert M. Pachak
Appellate Defender

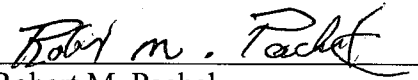
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

March 16, 2017.


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

RECEIVED
MAR 16 2017
SC Court of Appeals