

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON
COUNTY

HON. KRISTI L. HARRINGTON
CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2016-000559

J'QUAN SCOTT #365229

APPELLANT,

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

RECEIVED

APR 06 2017

SC Court of Appeals

APPELLANT'S TIMELY FILED
RESPONSE TO MOTION FOR
DISMISSAL PURSUANT TO
ANDERS V. CALIFORNIA

1.

APPELLANT, MR. J'QUAN SCOTT HEREBY TIMELY FILE HIS RESPONSE TO THIS COURT ORDER ISSUED ON FEBRUARY 21, 2017 PURSUANT TO ANDERS V. CALIFORNIA 386 U.S. 738, 87 S.Ct 1396 (1967) WHICH GAVE APPELLANT 45 DAYS TO REPLY TO APPELLATE COUNSEL MOTION TO BE RELIEVED AS COUNSEL IN THIS APPELLATE COURT MATTER IN STATE V J'QUAN SCOTT.

THIS COURT HAVE GRANTED APPELLANT HIS RIGHT PURSUANT TO ANDERS V. CALIFORNIA TO SHOW UPON THIS COURT WHY APPELLANT'S APPEAL SHOULD NOT BECOME DISMISSED DUE TO APPELLATE COUNSEL FINDINGS THAT APPELLANT'S APPEAL LACK MERITS TO STAND GROUNDS FOR APPEAL. HOWEVER, APPELLANT COUNSEL FOR THE RECORD DID FILE UPON THIS COURT AN ANDERS BRIEF ADDRESSING THE FOLLOWING ISSUE ON APPEAL

THAT THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE JUDGE'S ORDER DENYING APPELLANT'S MOTION TO RECONSIDER THE SENTENCE'S IMPOSED UPON APPELLANT.

SEE EXHIBIT (A) ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE IS APPELLATE COUNSEL ANDERS BRIEF FILED ON FEBRUARY 16, 2017 IN THE CURRENT MATTER ON APPEAL.

APPELLANT HEREBY MOVES FORWARD AND PRESENT HIS SUFFICIENT REASONS WHY HIS APPEAL SHOULD NOT BECOME DISMISSED.

2. THE STATEMENT OF THE CASE

ON MAY 27, 2015 APPELLANT STOOD BEFORE THE HON. KRISTI L. HARRINGTON IN CHARLESTON COUNTY AND PLED GUILTY TO MURDER, ARMED ROBBERY, KIDNAPPING AND POSSESSION OF A WEAPON. SENTENCE WAS DEFERRED. JAMES BROWN, ESQ WAS PLEA COUNSEL. SCARLETT WILSON, ESQ WAS THE SOLICITOR.

ON AUGUST 26, 2015 APPELLANT APPEARED FOR SENTENCING AND WAS SENTENCED TO LIFE IMPRISONMENT FOR MURDER, THIRTY (30) YEARS FOR ARMED ROBBERY, THIRTY (30) YEARS FOR KIDNAPPING AND **FIVE** (5) YEARS FOR POSSESSION OF A WEAPON.

PLEA COUNSEL FILED A MOTION TO RECONSIDER THE SENTENCE'S ON SEPTEMBER 4, 2015. THAT COURT DENIED THE MOTION BY WRITTEN ORDER DATED OCTOBER 19, 2015. APPELLATE COUNSEL BRIEF ON APPEAL FOLLOWED ON FEBRUARY 16, 2017.

APPELLANT'S REASONS WHY HIS APPEAL SHOULD NOT BE DISMISSED

TRIAL COURT LACKED SUBJECT-MATTER JURISDICTION TO
IMPOSE A CONVICTION AND SENTENCE UPON INDICTMENT
NUMBER 2013-GS-1007419 FOR KIDNAPPING, VIOLATING
APPELLANT'S DUE PROCESS AND EQUAL PROTECTION RIGHTS
GUARANTEED BY THE 5TH & 14TH AMENDMENT OF THE U.S.
CONSTITUTION AND UNDER S.C. CONST; ART 1 § 3 & 11.

LACK OF SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY
 TIME. BROWN V. STATE 343 S.C. 342, 540 S.E.2d 846 (2001)
STATE V. FUNDERBURK 259 S.C. 256, 191 S.E.2d 520 (1972)
HOOKS V. STATE 353 S.C. 48, 577 S.E.2d 211 (2003)

THE APPROPRIATE ANALYSIS FOR DETERMINING WHETHER
 AN INDICTMENT DEPRIVES THE TRIAL COURT OF SUBJECT
 MATTER JURISDICTION IS WHETHER THE NATURE OF THE
 OFFENSE CHARGED WAS CHARGED BY A DEFECTIVE INDICTMENT,
 NOT WHETHER IT SURPRISED OR PREJUDICED THE DEFENDANT.
 THE MATERIAL CHARGER INFORM A DEFENDANT OF WHAT
 HE MUST BE PREPARED TO MEET. STATE V. SMAHIS 336 S.C.
 301, 519 S.E.2d 793 (1999) BROWNING V. STATE 465 SE 2d 358
 (1995) MOREOVER, LACK OF SUBJECT MATTER JURISDICTION
CANNOT BE WAIVED, NOT EVEN BY THE CONSENT OF THE
 PARTIES. HOOKS, SUPRA. ANDERSON V. ANDERSON 299 S.C. 110,
 382 S.E.2d 897 (1989).

WITHOUT A PROPER INDICTMENT THE CIRCUIT COURT LACKS
 SUBJECT MATTER JURISDICTION TO ENTER A CONVICTION OR
 IMPOSE A SENTENCE FOR A CRIME. PADGETT V. STATE 484
 SE2d 101 (1997) LOUNDS V. STATE 670 SE 2d 646 (S.C. 2008)

S.C. CODE ANN § 17-19-10; S.C. CONST ART I § 11. AN PROPER INDICTMENT IS GOOD IN LAW ONLY IF IT IS SUFFICIENT IN CHARGING THE ELEMENTS OF THE OFFENSE, IS RETURNED TRUE-BILLED BY THE GRAND JURY, OR PRESENTMENT IS WAIVED.

STATE V. BEACHUM 288 S.C. 325, 342 SE 2d 597 (1986)

STATE V. PRIMUS 564 SE 2d 103 (2002). AN INDICTMENT IS SUFFICIENT IN THE CHARGE, ONLY IF IT CONTAINS ALL OF THE NECESSARY ELEMENTS OF THE OFFENSE AND GIVES NOTICE OF WHAT A DEFENDANT MUST BE PREPARED TO MEET. STATE V. SMALLS SUPRA, BROWN V. STATE SUPRA, EMPHASIS OMITTED (QUOTING BROWNING V. STATE SUPRA (1995)). HENCE, IF THE INDICTMENT FAILS TO ALLEGE THE NECESSARY ELEMENTS OF THE OFFENSE CHARGED, THE INDICTMENT IS NOT SUFFICIENT AND THE COURT LACKS AUTHORITY TO ENTER A CONVICTION OR IMPOSE SENTENCES. BEACHUM, SUPRA.

NOW LETS REVIEW THE KIDNAPPING INDICTMENT PRESENTED BY THE STATE IN THIS CRIMINAL CASE.

STATE OF SOUTH CAROLINA V. J'QUAN MARQUEL SCOTT

INDICTMENT NO: 2013-GS-1007419

AT A COURT OF GENERAL SESSIONS, CONVENED ON DECEMBER 9, 2013, THE GRAND JURORS OF CHARLESTON COUNTY PRESENT UPON THEIR OATH:

KIDNAPPING

THAT IN CHARLESTON COUNTY, SOUTH CAROLINA, ON OR ABOUT OCTOBER 3, 2013 THE DEFENDANT, J'QUAN MARQUEL SCOTT, WHILE ACTING IN CONCERT WITH ANOTHER, DID UNLAWFULLY SEIZE, CONFINED, INVEIGLED, DECOYED, KIDNAPED, ABDUCT OR CARRY AWAY THE VICTIM, WILLIAM ALEXANDER APPS, WITHOUT AUTHORITY OF

LAW, ALL IN VIOLATION OF SECTION 16-3-910 OF THE SOUTH CAROLINA CODE OF LAWS (1976) AS AMENDED.

SEE EXHIBIT (B) ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE TO APPELLANT'S KIDNAPPING INDICTMENT, INDICTMENT NO: 2013-GS-1007419.

Clearly APPELLANT IS CERTAINLY NOT GUILTY OF KIDNAPPING BY THE STATE'S OWN INDICTMENT BECAUSE APPELLANT'S KIDNAPPING INDICTMENT FAILS TO CONTAIN THE NECESSARY ELEMENTS OF THE OFFENSE CHARGED. PURSUANT TO S.C. CODE ANN § 16-3-910 (KIDNAPPING) PROVIDES:

WHOEVER SHALL UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT OR CARRY AWAY ANY OTHER PERSON BY ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW, EXCEPT WHEN A MINOR IS SEIZED OR TAKEN BY A PARENT THEREOF, SHALL BE GUILTY OF A FELONY AND, UPON CONVICTION MAY BE SENTENCED NOT TO EXCEED THIRTY (30) YEARS UNLESS SENTENCED FOR MURDER AS PROVIDED IN SECTION 16-3-20.

THEREFORE A PROPER INDICTMENT FOR KIDNAPPING HAS FOUR ELEMENTS (1) INTENT (2) TO TAKE OR CARRY AWAY A VICTIM (3) BY FORCE OR THREAT AND (4) WITHOUT THE CONSENT OF THE VICTIM. STATE V. HALL (1983) 280 S.C. 74, 310 SE2d 429.

IN THIS PRESENT CASE APPELLANT'S KIDNAPPING INDICTMENT FAILS TO STATE ALL THE NECESSARY ELEMENTS OF THE OFFENSE CHARGED BECAUSE IT FAILS TO STATE (1) THAT APPELLANT HAD THE INTENT TO KIDNAP THE VICTIM AND (2) THAT APPELLANT HELD THE VICTIM AGAINST HIS OWN WILL OR WITHOUT THE CONSENT OF THE VICTIM.

APPELLANT ASCERTAINS THAT WITHOUT INTENT OR THE HOLDING OF THE VICTIM AGAINST HIS OWN WILL DOES NOT CONSTITUTE

KIDNAPPING PURSUANT TO S.C. CODE ANN § 16-3-910 THEREFORE THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO IMPOSE A CONVICTION AND SENTENCE UPON APPELLANT.

ANTHONY M. LOUNDS V. STATE OF SOUTH CAROLINA OPINION NO: 26571 SUBMITTED OCT 22, 2008 - FILED DEC 15, 2008, REVERSED AND REMANDED.

IN LOUNDS V. STATE SUPRA. THE SAME EXACT SITUATION OCCURRED LIKE APPELLANT'S SITUATION. LOUNDS KIDNAPPING INDICTMENT FAILED TO STATE THE NECESSARY ELEMENT OF [KIDNAPPING] WHICH IS [HELD THE VICTIM AGAINST HIS OWN FREE WILL] THEREFORE APPELLANT IS ENTITLED TO HIS KIDNAPPING CONVICTION AND SENTENCE REVERSED REMANDED AND VACATED. LOUNDS SUPRA. APPELLANT ASCERTAINS THAT WITHOUT A PROPER INDICTMENT THE COURT COULD NOT CONVICT AND SENTENCE HIM...

4.

APPELLANT FURTHER ASCERTAINS THAT HIS CONVICTION AND SENTENCE FOR KIDNAPPING IS VOID OR VOIDABLE BECAUSE THE CHARLESTON COUNTY COURT OF GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION TO IMPOSE A CONVICTION AND SENTENCE UPON APPELLANT.

APPELLANT WAS UNLAWFULLY AND UNCONSTITUTIONALLY CONVICTED AND SENTENCED OF THE CRIMINAL OFFENSE OF KIDNAPPING ON THE DATE OF AUGUST 26, 2015.

SEE EXHIBIT (C) ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE IS TRIAL TRANSCRIPT P. 52 L. 11-14.

IN THE KIDNAPPING INDICTMENT, MR. WILLIAM A. APPS IS ALLEGED THE VICTIM KIDNAPPED.

APPELLANT ASCERTAINS THAT HE WAS INDICTED BY THE CHARLESTON COUNTY GRAND JURY ON THE DATE OF DECEMBER 9, 2013 FOR

THE CRIMINAL OFFENSE OF MURDER AGAINST THE SAME SAID VICTIM, MR. WILLIAM ALEXANDER APPS.

SEE: EXHIBIT (D) ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE IS APPELLANT'S MURDER INDICTMENT.

APPELLANT PLED GUILTY ON THE DATE OF AUGUST 26, 2015 TO THE MURDER INDICTMENT NO: 2013-GS-1007416 AND WAS CONVICTED AND SENTENCED TO LIFE WITHOUT PAROLE.

SEE: EXHIBIT (E) ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE IS APPELLANT TRIAL TRANSCRIPT P. 52 L 15 - 17 .

Clearly this is a sufficient grounds of trial court lack subject matter jurisdiction to impose a conviction and sentence upon appellant because this court has already established in STATE V. PERRY (1983) 278 S.C. 490, 299 S.E. 2d 324, CERT DEN. THAT THE COURT COULD NOT CONVICT AND SENTENCE A DEFENDANT TO LIFE FOR THE OFFENSE OF KIDNAPPING WHEN THE DEFENDANT WAS ALREADY CONVICTED AND SENTENCED TO LIFE FOR MURDER.

PURSUANT TO S.C. CODE ANN § 16-3-910 PROVIDES: (2001)

WHOEVER SHALL UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT OR CARRY AWAY ANY OTHER PERSON BY ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW, EXCEPT WHEN A MINOR IS SEIZED OR TAKEN BY A PARENT THEREOF, SHALL BE GUILTY OF A FELONY AND, UPON CONVICTION, SHALL SUFFER THE PUNISHMENT OF, UP TO THIRTY (30) YEARS IMPRISONMENT UNLESS SENTENCED FOR MURDER AS PROVIDED IN § 16-3-20.

IN THIS PRESENT CASE, THE TRIAL COURT ERRED IN CONVICTING AND SENTENCING APPELLANT TO THIRTY (30) YEARS IMPRISONMENT ON THE KIDNAPPING INDICTMENT, VIOLATING S.C.

CODE ANN § 16-3-910; AND ITS STATUTE, THEREFORE THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO IMPOSE THE CONVICTION AND SENTENCE UPON APPELLANT BECAUSE APPELLANT WAS CONVICTED AND SENTENCED TO LIFE WITHOUT PAROLE FOR THE MURDER OF THE SAME ALLEGED KIDNAPPED VICTIM.

APPELLANT ASCERTAINS THAT DUE TO HIS RIGHTS BEING VIOLATED UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE 5TH & 14TH AMENDMENTS OF THE U.S. CONST AND UNDER S.C. CONST ART 1 § 3, 11 HE WAS PREJUDICED AND THAT HE IS RIGHTFULLY ENTITLED TO HIS KIDNAPPING **CONVICTION** AND SENTENCE TO BE REVERSED REMANDED AND VACATED.

5.

APPELLANT ASCERTAINS THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO IMPOSE A CONVICTION AND SENTENCE UPON HIM ON THE MURDER INDICTMENT NO: 2013-GS-1007416, VIOLATING APPELLANT'S DUE PROCESS AND EQUAL PROTECTION RIGHTS PURSUANT TO THE 5TH & 14TH AMENDMENT OF THE U.S. CONST AND UNDER S.C. CONST, ART 1 § 3 & 11.

APPELLANT ASCERTAINS THAT PURSUANT TO S.C. CODE ANN § 17-19-30, ALLEGATION SUFFICIENT FOR INDICTMENT FOR MURDER PROVIDES:

EVERY INDICTMENT FOR MURDER SHALL BE DEEMED AND ADJUDGED SUFFICIENT AND GOOD IN LAW WHICH, IN ADDITION TO SETTING FORTH THE TIME AND PLACE, TOGETHER WITH A PLAIN STATEMENT, DIVESTED OF ALL USELESS PHRASEOLOGY, OF THE MANNER IN WHICH THE DEATH OF THE DECEASED

WAS CAUSED, CHARGED THE DEFENDANT DID FELONIOUSLY,
WILLFULLY AND OF HIS MALICE AFORETHOUGHT KILL AND
MURDER THE DECEASED.

APPELLANT ASCERTAINS THAT THE TRIAL COURT LACKED SUBJECT
MATTER JURISDICTION TO IMPOSE A CONVICTION AND
SENTENCE UPON HIM FOR MURDER BECAUSE HIS MURDER
INDICTMENT AGAINST HIM FAILS TO STATE (2) NECESSARY
ELEMENTS WITHIN HIS INDICTMENT TO CONSTITUTE
MURDER.

APPELLANT ASCERTAIN THAT HIS MURDER INDICTMENT FAILS
TO STATE THAT APPELLANT FELONIOUSLY AND WILLFULLY
ACTED, VIOLATING S.C. CODE ANN § 16-3-20, S.C. CODE
ANN § 17-19-30.

NOW LETS REVIEW APPELLANTS MURDER INDICTMENT.

MURDER

INDICTMENT NO:

2013-GS-1007416

STATE OF SOUTH CAROLINA V. J'QUAN MARQUEL SCOTT

AT A COURT OF GENERAL SESSIONS, CONVENED ON DECEMBER
9, 2013 THE GRAND JURORS OF CHARLESTON COUNTY PRESENT
UPON THEIR OATH:

THAT IN CHARLESTON COUNTY ON OR ABOUT OCTOBER 3, 2013
WITH MALICE AFORETHOUGHT AND WHILE ACTING IN
CONCERT WITH ANOTHER, J'QUAN MARQUEL SCOTT DID

KILL AND MURDER WILLIAM ALEXANDER APPS BY MEANS OF SHOOTING HIM, AND THAT WILLIAM ALEXANDER APPS DID DIE IN CHARLESTON COUNTY AS A PROXIMATE RESULT THEREOF ON OCTOBER 3, 2013, IN VIOLATION OF SECTION 16-3-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976) AS AMENDED.

CLEARLY THIS IS LACK OF SUBJECT MATTER JURISDICTION BECAUSE WITHOUT A PROPER INDICTMENT THE TRIAL COURT CANNOT IMPOSE A CONVICTION OR SENTENCE.

IN THIS MATTER, APPELLANT ASCERTAINS THAT WITHOUT THE WORDS FELONIOUSLY AND WILLFULLY INCLUDED IN HIS MURDER INDICTMENT, THE MURDER INDICTMENT IS NO GOOD IN IT CHARGING BECAUSE IT LACKS THE NECESSARY ELEMENTS TO PROVE MURDER.

THE WORD FELONIOUSLY MEANS ONE WHO IS OR HAVE COMMITTED A SERIOUS CRIME.

THE WORD WILLFULLY MEANS THAT ONE HAVE INTENT TO CARRY OUT THE COMMON DESIGN OR PLAN BY ACTIONS WITH WILL → THE MENTAL POWER OR CAPABILITY OF CHOOSING OR DECIDING.

APPELLANT ASCERTAINS THAT TO TAKE AWAY FELONIOUSLY AND WILLFULLY FROM THE INDICTMENT, HE COULD NOT HAVE BEEN CONVICTED AND SENTENCED TO LIFE FOR MURDER. THEREFORE THE TRIAL COURT ERRED BY CONVICTING APPELLANT OF MURDER AND SENTENCING HIM TO LIFE IMPRISONMENT.

FOR THIS VIOLATION OF APPELLANT'S RIGHTS, APPELLANT REQUEST THAT HIS MURDER CONVICTION AND **SENTENCE** BE VACATED.

6.
JURISDICTION OF THIS
COURT OF APPEALS

APPELLANT ASCERTS THAT THIS COURT HAVE JURISDICTION TO ENTERTAIN APPELLANT'S CLAIMS OF THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO IMPOSE THE UNLAWFUL AND UNCONSTITUTIONAL CONVICTIONS AND SENTENCES UPON APPELLANT.

APPELLANT ASCERTS THAT THE VIOLATION OF HIS U.S. CONSTITUTIONAL RIGHTS AND UNDER S.C. CONST. RIGHTS PREJUDICED HIM AND TO CONTINUE THIS UNLAWFUL AND UNCONSTITUTIONAL RESTRAINT OF APPELLANT WOULD CONSTITUTE A GROSS MISCARPAGE OF JUSTICE. BUITER V. STATE SUPRA.

CONCLUSION

FOR THE LEGAL PRINCIPLES AND CASE LAW APPELLANT CASE SHOULD NOT BE DISMISSED AND APPELLANT COUNSEL FOR THE RECORD SHOULD NOT BE RELIEVED AS COUNSEL FOR THE RECORD AND SHOULD BE ORDER TO FILE A INTIL-BRIEF ADDRESSING APPELLANT'S CLAIM RAISED HEREIN AND OR GRANTED RELIEF AND VACATE CONVICTIONS AND SENTENCES.

THIS 28 DAY OF MARCH, 2017

S/ Juan M. Scott
JUAN M. SCOTT, PRO-SE

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

J'QUAN SCOTT,

APPELLANT

APPELLATE CASE NO 2016-000559

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

APR 06 2017

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether there was sufficient evidence to support the judge's order denying appellant's motion to reconsider the sentences?

STATEMENT OF THE CASE

On May 27, 2015, appellant appeared before the Hon. Kristi L. Harrington in Charleston County and pled guilty to murder, armed robbery, kidnapping, and possession of a weapon. Sentencing was deferred. James Brown, Esq. was plea counsel. Scarlett Wilson, Esq. was the solicitor.

On August 26, 2015, appellant appeared for sentencing. He was sentenced to life imprisonment for murder, to thirty (30) years for armed robbery, to thirty (30) years for kidnapping, and to five (5) years for possession of a weapon.

Plea counsel filed a motion to reconsider the sentences. The motion was dated September 4, 2015. The court denied the motion by written order dated October 19, 2015.

This appeal follows.

ARGUMENT

There was insufficient evidence to support the judge's order denying appellant's motion to reconsider the sentences.

The basis for plea counsel's motion to reconsider the sentences was as follows:

However, reconsideration is appropriate given the Court's misapprehension of facts related to the sentencing presentation made by undersigned counsel. For purposes of sentencing, undersigned counsel prepared a sentencing memorandum and a power point type presentation highlighting aspects of the sentencing memorandum. This presentation included several photos and video clips.

Unfortunately, the original courtroom to which this sentencing was assigned, 3E, was not equipped for any type presentation. Undersigned counsel endeavored to facilitate the presentation by contacting the clerk of court. Undersigned counsel offered to bring his own office television to use as a monitor for the presentation.

The clerk's office informed counsel that there was no table to position the TV. The clerk's office *also* informed counsel that no other courtrooms with monitors were available. In contrast, the Solicitor graciously offered counsel use of her office's projector.

On the day of sentencing, undersigned counsel could not get his presentation to work using the solicitor's projector. It was suggested by an IT tech employed with the Solicitor's office that the projector was not current enough to operate in conjunction with undersigned counsel's computer. Undersigned counsel

endeavored for more than an hour to reach a solution while the attendees and witnesses for the sentencing as well as the Court patiently waited.

At some point, counsel was directed to go to a different courtroom, 4B, with sufficient technological ability to allow for a presentation. This courtroom was dark and locked when counsel arrived. Within seconds of connecting to the monitor in that courtroom, the Defendant's presentation worked without problems.

The Court then moved the sentencing from courtroom 3E to 4B. The Court met with counsel in the hallway behind the courtroom, outside the presence of the Defendant, before the sentencing. During this off the record meeting, the Court chastised counsel for the Defendant, telling him that it was "all [his] fault" for the sentencing problems and that this could have been avoided if counsel would have let her office know about the presentation.

The Court then brought the mother of the deceased into the hallway. The Court apologized to her for what she was going through. This apology was not on the record and was outside the presence of the Defendant.

Apparently unknown to the Court at this time was the fact that undersigned counsel had previously informed the Judge, through email to her Law Clerk and the Solicitor, that a presentation was being offered and that a sentencing memorandum had been served. The Solicitor responded to this email that she had received her copy of the memorandum. The Court's copy had been delivered to the law clerk just minutes before the email. See attached email dated August 24, 2015.

It is urged that the sentencing of the Defendant was negatively affected by the problems with the presentation. It is clear from the comments made to counsel for the Defendant that the Court blamed the Defendant for these problems. In fact, the Court was obviously not aware of the email communication.

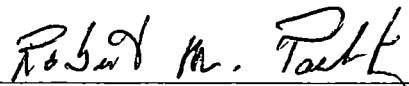
Therefore, because the Court overlooked or misapprehended the nature of undersigned counsel's efforts to effectively provide an effective sentencing presentation, the Defendant's sentences should be vacated and a proper sentencing proceeding conducted without negative attribution towards Defendant or his counsel.¹

The court's order denying the motion to reconsider merely concluded "After careful review of the record and materials submitted, Defendant's Motion to Reconsider Sentences is DENIED." That ruling was conclusory and without evidentiary support.

¹ Much of what is contained in the motion to reconsider sentences was discussed at the August 26, 2015 sentencing transcript at R. 97, line 21- p. 108, line 13)

CONCLUSION

Appellant's case should be remanded for resentencing.

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

J'QUAN SCOTT,

APPELLANT

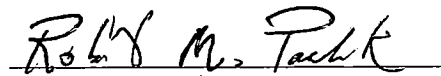
PETITION TO BE RELIEVED AS COUNSEL

Counsel for J'quan Marquel Scott 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 Kristi Lea Harrington, which was held on August 26, 2015 (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 J'quan Marquel Scott.

Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 16th day of February, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

J'QUAN SCOTT,

APPELLANT

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

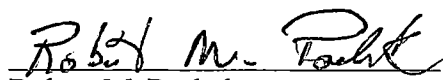
Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) May 27, 2015 transcript
- (3) August 26, 2015 transcript
- (4) Motion to Reconsider Sentences
- (5) Order Denying Motion
- (6) Amended Notice of Appeal
- (7) Indictments

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

February 16, 2017

[signature page follows]



Robert M. Pachak
Appellate Defender

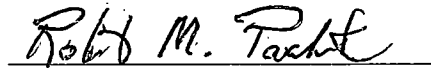
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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."

February 16, 2017.



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

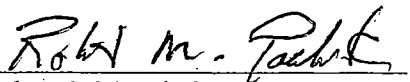
V.

J'QUAN SCOTT,

APPELLANT

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 and Designation of Matter have been served on J'quan Marquel Scott, #365229, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 16th day of February, 2017.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of February, 2017.

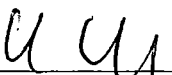
 (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025

Exhibit (B)

SOUTH CAROLINA)
COUNTY OF CHARLESTON)

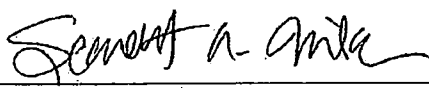
INDICTMENT

At a Court of General Sessions, convened on December 9, 2013, the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about October 3, 2013, the Defendant, **JQUAN MARQUEL SCOTT**, while acting in concert with another, did unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, William Alexander Apps, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SCARLETT A. WILSON
SOLICITOR

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APR 06 2017

SC Court of Appeals

R5 SAW 469

SAW20131007665

WITNESSES

Charleston County Sheriff's Office

AGENCY CASE NUMBER
2013014940B

ARREST WARRANT NUMBER
2013A1010205480

DATE OF ARREST

October 8, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: - DEC - 9 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1007419

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

December 2013 Term

THE STATE

vs.

JUAN MARQUEL SCOTT
DOB: 1993-12-08
B/M

Indictment for

KIDNAPPING

FILED

12/12/2013 11:38:27 AM
JULIE J. ARMSTRONG
CLERK OF COURT

R5 SAW 470

pre-sentence investigation.

2 Based upon everything that has been presented, it is
3 the Order of this Court on Indictment 2013 GS 10 7418 that
4 you be committed to the State Department of Corrections
5 for a term of thirty years. I will give you credit for
6 the time you have served.

7 It is the Order of the Court that on 2013 GS 10 7421
8 that you be committed to the State Department of Correc-
9 tions for a term of five years. I will give you credit
10 for the time you have served.

11 It is the Order of the Court that on 2013 GS 10 7419
12 that you be committed to the State Department of Correc-
13 tions for a term of thirty years. I have noted that this
14 is not a sexual offense.

15 It is the Order of the Court that on 2013 GS 10 7416
16 that you be committed to the State Department of Correc-
17 tions for a term of life.

18 Good luck to you, sir.

19 We'll take a small break before we continue.

20 SOLICITOR: What about Mr. Brown's . . .

21 THE COURT: We will take up the matters Mr. Brown is
22 wishing to put on the record after the break.

23 (Whereupon, the Court took a brief recess, after which
24 the matter was resumed) (Plea of CoDefendant Williams entered)

25 THE COURT: Out of courtesy to you, I know there were

1 THE COURT: I appreciate the information you have pre-
2 sented to the Court and the work you had done earlier in
3 the week, as well as the courtesy you have shown the Court.

4 Mr. Scott, one of the toughest things that I have to
5 do as a Judge is to impose sentence, and your attorney has
6 done an excellent job going through the sentences, the
7 philosophy behind sentencing, retribution and the protec-
8 tion of the public and all of those things.

9 I have listened to you plead guilty. I certainly
10 did not understand what had happened then, and I under-
11 stand less after hearing from your pastor, your friends,
12 plus your family members and their support.

13 Mr. Brown can probably tell you that I sentence peo-
14 ple every day and rarely do I have people that have grad-
15 uated high school and have had the support that you have
16 had throughout high school, the athletic abilities that
17 you have and the ability to go to college that you had.

18 Looking back, people have said very kind things and
19 supportive things about you, but I cannot get over the
20 facts of what you did.

21 I do not understand what you did. It makes absolutely
22 no sense to me, what you did. You had more than one oppor-
23 tunity to stop what you did.

24 You planned it based upon your text messages and the
25 information you gave to police officers as well as in the

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

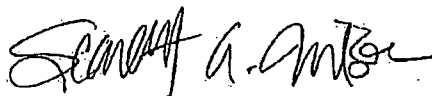
INDICTMENT

At a Court of General Sessions, convened on December 9, 2013, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about October 3, 2013, with malice aforethought and while acting in concert with another, **JQUAN MARQUEL SCOTT** did kill and murder William Alexander Apps by means of shooting him, and that William Alexander Apps did die in Charleston County as a proximate result thereof on October 3, 2013; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SCARLETT A. WILSON
SOLICITOR

SAW20131007665

WITNESSES

Charleston County Sheriff's Office

AGENCY CASE NUMBER
2013014940B

ARREST WARRANT NUMBER

2013A1010205478

DATE OF ARREST

October 8, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

DEC - 9 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1007416

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December 2013 Term

THE STATE

vs.

JQUAN MARQUEL SCOTT
DOB: 1993-12-08
B/M

Indictment for

MURDER

FILED

12/12/2013 11:38:27 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COURT OF APPEALS
Appeal From Charleston County
Court of General Sessions
Hon. Kristi L. Harrington

Indictment Numbers: 2013GS1007416, 418, 419, & 421
Appellate Case Number: 2016-000559

State of South Carolina, _____ Respondent.
V.

Juan Marquel Scott, _____ Appellant.

PROOF OF SERVICE

I, Juan M. Scott, certify that I served a copy of the response to Answer Brief with attachments upon this Court of Appeals by depositing a copy of this item in the United States Mail, postage prepaid, on March 29, 2017, addressed to this Court of Appeals, PO Box 11629, Columbia, SC 29211.

Juan M. Scott

March 29, 2017

Juan M. Scott
PO Box 205
Ridgeville, SC 29472

March 29, 2017

South Carolina Court of Appeals
The Honorable Jerry Abbott Kitchings
PO Box 11629
Columbia, SC 29211

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APR 06 2017

SC Court of Appeals

State v. Jquan M. Scott : 2016-000559

Ms. Kitchings,

PLEASE find enclosed response to this court order pursuant
to Anders Brief, indictments for murder charge and kidnapping,
Anders Brief, copy of page 52 of sentencing transcript, and
Proof of Service. Please let me know if there is any concerns.
Thank you for your assistance.

Sincerely,

Jquan Scott
Jquan Scott

GUAN MARQUEL Scott #365229
Lieber Correctional Institution
PO Box 205
Edgeville SC 29472

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
PO Box 11629
Columbia, SC 29211

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