

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LIONEL QUINN HAYNES,

APPELLANT

APPELLATE CASE NO 2016-002434

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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South Carolina Commission on Indigent Defense
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STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred in not giving appellant credit for time served while he was on house arrest?

STATEMENT OF THE CASE

Appellant was indicted for armed robbery at the July 2014 term of the Dorchester County grand jury. On November 17, 2016, he appeared before the Honorable Diane S. Goodstein and pled guilty to common law robbery/ strong armed robbery. He was sentenced to nine (9) years and was given credit for 131 days of time served. Christopher Murphy, Esq. was plea counsel. Donald Sorenson, Esq. was the assistant solicitor.

This appeal follows.

ARGUMENT

The plea court erred in not giving appellant credit for time served while he was on house arrest.

The indictment charging appellant with armed robbery alleged the following:

That on or about December 13, 2013, in Dorchester County, the defendant, Lionel Quinn Haynes did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/ or monies from the person or presence of the victim, Peter Cook, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a handgun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Appellant was allowed to plead to the lesser included offense of strong arm robbery because he did not have a gun. During sentencing plea counsel reminded the judge that she ordered appellant on house arrest. Appellant spent 885 days on house arrest with ankle monitoring. S.C. Code §24-13-40 allows house arrest to be considered as time served (R. p. 23, lines 13-19).

The assistant solicitor opposed giving credit for house arrest by saying the following:

THE COURT: Very well. All right. With regards to the house arrest, does the State have a position regarding the 885 days?

AST SOL. SORENSON: I mean, we would objective to him getting any credit for that, Your Honor. This isn't a situation where he's just been confined to his house for two and a half years. I mean he's been out and about. I've gotten – shared every time I've gotten something from the GPS monitoring company. But, I mean, probably at least a half a dozen complaints about him not complying in various shapes and forms over the last year especially. And I don't think it's appropriate for him to get credit, I mean, as if he's been sitting in jail that whole time. Because he is

definitely not been in that same boat. So we would object to that. Obviously, I think he gets credit for the time he was pre-trial detained.

(R. p. 25, lines 10-25)

The plea judge declined to give appellant any credit for being on house arrest. (R. p. 27, lines 19-25). That ruling was in error. S.C. Code § 24-13-40 provides:

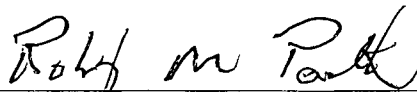
The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of service of the sentence. **In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest.** Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense. (emphasis supplied)

Plea counsel gave the following explanation for appealing the guilty plea under Rule 203(d)(B)(iv) SCACR:

The appellant, Lionel Haynes, appeals the Honorable Diane S. Goodstein's decision to not grant him credit for time served while he was on house arrest pursuant to Section 24-13-40 of the South Carolina Code of Laws. At the time of the guilty plea and sentencing, appellant did provide evidence of and argued for credit on house arrest pursuant to Section 24-13-40 of the South Carolina Code of Laws. The State objected to the consideration of credit being based on the appellant's violations of the terms and conditions of house arrest.

CONCLUSION

The plea judge erred and abused her discretion in refusing to give appellant credit for time served during house arrest. Appellant's case should be remanded for resentencing.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of June, 2017.

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Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

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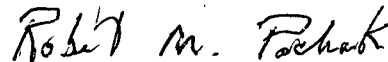
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lionel Quinn Haynes 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 Diane Schafer Goodstein, which was held on November 17, 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 Lionel Quinn Haynes.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of June, 2017.

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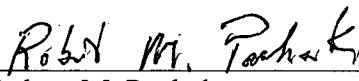
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Guilty Plea Transcript dated November 17, 2016
- (2) True-billed indictment
- (3) Sentencing sheet

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

June 08, 2017



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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."

June 08, 2017.

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