

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVIS JACQUEESE MCFADDEN,

APPELLANT

APPELLATE CASE NO 2016-002531

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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STATEMENT OF ISSUE ON APPEAL

Whether appellant's guilty plea was knowingly and voluntarily entered when he did not have a realistic picture of the sentencing possibilities?

STATEMENT OF THE CASE

On November 18, 2013, appellant appeared before the Honorable W. Jeffrey Young in Sumter County and pled guilty to voluntary manslaughter, common law robbery, and criminal conspiracy. He was sentenced to thirty (30) years for voluntary manslaughter, to fifteen (15) consecutive years for common law robbery, and to five (5) concurrent years for criminal conspiracy.

A motion to reconsider the sentence dated November 20, 2013, was filed on November 21, 2013. A hearing on the motion was held on December 12, 2016. The motion was denied by written order dated January 26, 2017. Sharon Clark, Esq. was plea counsel and Eddie Donald, Esq. was the assistant solicitor.

This appeal follows.

ARGUMENT

Appellant's guilty plea was not knowingly and voluntarily entered because he did not have a realistic picture of the sentencing possibilities.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), this Court held that the "essence" of Boykin, was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the states. In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), this Court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it.

In Boykin, supra, the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of rights occurring with the guilty plea.

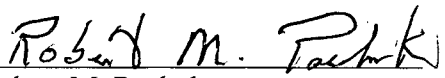
In this case appellant was indicted on an eleven count indictment on charges surrounding the armed robbery of a convenience store. Seven defendants were listed on the indictment. Appellant pled down from murder to voluntary manslaughter, from armed robbery to strong armed robbery, and to conspiracy. He did not plea to the other charges which included two attempted murder charges. The plea judge did explain what the maximum sentences were and that he could order them to be served consecutively. (11/18/13 tr. p. 10, line 16- p. 11, line 10).

It was not until the hearing on appellant's motion to reconsider the sentence that we find out the assistant solicitor had agreed to a twenty year sentence on voluntary manslaughter with all the sentences to be concurrent. (12/16/16 tr. p.4, lines 12-14). Plea counsel also testified that the assistant solicitor had recommended a twenty year sentence and that some of the codefendants got ten year sentences that were suspended. (12/16/16 tr. p. 9, lines 5-16).

In Gaines v. State, 335 S.C. 376, 517 S.E.2d 439(1999) this Court acknowledged that in State v. Armstrong cited above that at a guilty plea a judge should give a "realistic picture of all the sentencing possibilities." It is obvious appellant came into the guilty plea with knowledge that the assistant solicitor had recommended a twenty year sentence and that plea counsel passed this information on to appellant. Appellant thereby expected a twenty year sentence and not the forty-five year sentence he did receive. His plea was, therefore, not knowingly and voluntarily made.

CONCLUSION

Petitioner's guilty plea should be vacated.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of July, 2017.

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Counsel for Travis Jacquese McFadden 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 William Jeffrey Young, which was held on November 18, 2013 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 Travis Jacquese McFadden.

Respectfully Submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 3rd day of July, 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) True-billed indictment(s):
- (2) November 18, 2013 transcript
- (3) November 20, 2013 Motion to Reconsider the Sentence
- (4) December 16, 2016 Motion Hearing Transcript
- (5) Order denying motion filed February 8, 2017

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

July 3, 2017

Robert M. Pachak

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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."

July 3, 2017.

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