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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

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FEB 16 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

J'QUAN MARQUEL 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
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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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.

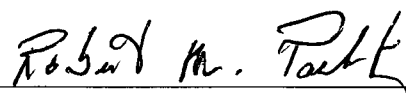
Therefore, because the Court overlooked or misapprehended the nature of undersigned counsel's efforts to effectively provide an effective sentencing presentation, the Defendant's sentences should be vacated and a proper sentencing proceeding conducted without negative attribution towards Defendant or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



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of February, 2017.

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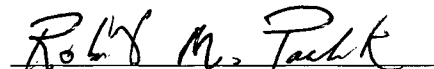
SC Court of Appeals

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.

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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) 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

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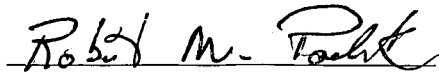
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I certify that this designation contains no matter which is irrelevant to this appeal.

February 16, 2017

[signature page follows]



Robert M. Pachak
Appellate Defender

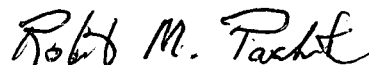
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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.



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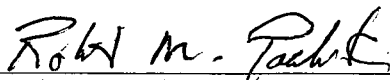
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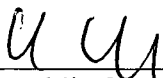
CERTIFICATE OF SERVICE

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 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

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