

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Anderson County

Honorable J. Cordell Maddox, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT JOE FROST,

APPELLANT

FORWARDED

AUG 16 2017

South Carolina Appellate

APPELLATE CASE NO 2016-001828

ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in instructing the jury that a specific intent to kill is not an element of attempted murder?

## STATEMENT OF THE CASE

In April of 2013, the Anderson County Grand Jury indicted Appellant Frost for murder, possession of a weapon during the commission of a violent crime, attempted murder, burglary first degree and armed robbery, indictments #2013-GS-04-646-649. On August 22, 2016, Appellant proceeded to jury trial before the Honorable J. Cordell Maddox. In a hearing held on November 10, 2015, the Honorable R. Lawton McIntosh granted Appellant's motion to proceed *pro se*. (R. p. 17). Gregory Lee Cole, Jr. served as stand by counsel. Lauren D. Price prosecuted the case. The jury found Appellant guilty as charged. Judge Maddox sentenced Appellant to life without the possibility of parole for murder, attempted murder and burglary first with the sentence for attempted murder to be served consecutively. Judge Maddox also sentenced Appellant to thirty (30) years concurrent for armed robbery and five (5) years concurrent for the weapons charge. A timely notice of intent to appeal was served on September 1, 2016. This appeal follows.

## ARGUMENT

The trial judge erred in instructing the jury that a specific intent to kill is not an element of attempted murder.

The jury found Appellant guilty in the stabbing death of his step-father and attempted murder of his mother as well as an associated burglary first degree, armed robbery and weapons charge. During the jury charge on attempted murder the judge instructed the jury, “A specific intent to kill is not an element of attempted murder. But there must be a general intent to commit serious bodily harm.” (R. p. 669, lines 6-8). The trial judge erred.

S.C. Code §16-3-29, enacted in 2010, provides, “A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” In State v. King, 412 S.C. 403, 410, 772 S.E.2d 189, 193 (Ct. App. 2015), cert. granted March 28, 2016, this Court addressed the issue of whether attempted murder required a specific intent to kill writing:

The Legislature's use of the phrase “with intent to kill,” considered in light of our courts' prior rulings that specific intent is required for attempt crimes—particularly the supreme court's statement in Sutton, “Attempted murder would require the specific intent to kill”—indicates the Legislature intended to require the State to prove the specific intent to kill as an element of attempted murder. See also Elwell, 403 S.C. at 612, 743 S.E.2d at 806 (stating “penal statutes will be strictly construed against the state”); Jeffrey F. Ghent, Annotation, What Constitutes Attempted Murder, 54 A.L.R.3d 612, 622 (1973) (describing “the general rule that the ... elements of ... attempted murder [include] a specific intent to commit murder” (footnote omitted)).

In support of the finding that attempted murder requires a specific intent to kill this

Court examined other attempt crimes and wrote:

Before 2010, our courts held attempt crimes require the State to prove the defendant had specific intent to complete the attempted crime. See, e.g., State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) (stating “[a]ttempt is a specific intent crime” and “[t]he act constituting the attempt must be done with the intent to commit that particular crime” (first alteration in original) (quoting 21

Am.Jur.2d Criminal Law § 176 (1998)); State v. Thompson, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (Ct.App.2007) (“A person is guilty of attempted armed robbery if the person has a specific intent to commit armed robbery.”); State v. Nesbitt, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct.App.2001) (“Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime. In the context of an ‘attempt’ crime, specific intent means that the defendant consciously intended the completion of acts comprising the [attempted] offense. In other words, the completion of such acts is the defendant’s purpose.” (citations omitted)).

State v. King, 412 S.C. 403, 408–09, 772 S.E.2d 189, 192 (Ct. App. 2015), cert. granted March 28, 2016.

Specific attempt was an important factor in this case as Appellant argued in closing, “I did stab my dad whenever we got in that conflict, and my mama did get stabbed in it, but it was an argument, a family argument that got bad. I love my family. Like she said, I do. I love my family.” The judge erred in instructing the jury that attempted murder does not require a specific intent to kill. The error was not harmless.

**CONCLUSION**

Based on the above argument, Appellant's conviction and sentence for attempted murder should be reversed.



Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of August, 2017.

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V.

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APPELLANT

\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Robert Joe Frost states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge J. Cordell Maddox, which was held on August 22-25, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Robert Joe Frost.

Respectfully Submitted,



\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 16th day of August, 2017.

**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."

August 16, 2017.



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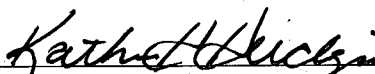
V.

ROBERT JOE FROST,

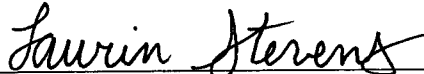
APPELLANT

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 Donald J. Zelenka, 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 Robert Joe Frost, #171218, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 16th day of August, 2017.

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR APPELLANT

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

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.