

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge  
\_\_\_\_\_

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DEC 07 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

RAMONA DELORES GILMORE,

APPELLANT

APPELLATE CASE NO 2016-002032  
\_\_\_\_\_

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

STATE OF SOUTH CAROLINA

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred in refusing to find appellant was entitled to parole eligibility following service of one-fourth of her sentence under S.C. Code § 16-25-90 when she introduced evidence that she suffered from Battered Spouse's Syndrome and the victim had committed acts of domestic violence against her on prior occasions?

**STATEMENT OF THE CASE**

On August 9, 2016, appellant appeared before the Hon. Letitia H. Verdin in Greenville County and pled guilty to voluntary manslaughter. She was sentenced to a recommended sentence of eighteen (18) years. John Kenneth Erwin, Jr. was plea counsel. Kris Hodge was the assistant solicitor.

Whether appellant could be eligible for parole after serving one-fourth of her sentence was taken under advisement. On September 12, 2016, Judge Verdin issued an order finding that appellant was not entitled to parole eligibility after serving one-fourth of her sentence.

This appeal follows.

## ARGUMENT

**The plea court erred in refusing to find appellant was entitled to parole eligibility following service of one-fourth of her sentence under S.C. Code § 16-25-90 when she introduced evidence that she suffered from Battered Spouse's Syndrome and the victim had committed acts of domestic violence against her on prior occasions.**

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S. Ct. 2052 (1984); Stalk v. State, 383 S.C. 559, 681 S.E. 2d 592 (2009). With respect to a guilty plea the second prong above looks at whether defense counsel's deficient performance affected the outcome of the plea process. Stalk v. State, *supra*. This means that there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial. In Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985). This usually involves counsel's giving of incorrect sentencing advice or legal advice about the charges against his client. Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991); Pelzer v. State, 381 S.C. 217, 672 S.E. 2d 790 (Ct. App. 2009); Morris v. State, 371 S. C. 278, 639 S.E. 2d 53 (2006).

Besides attacking a guilty plea based on ineffective assistance of counsel, a defendant may challenge the guilty plea on other constitutional grounds. The United States Supreme Court explained in Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969) that "a plea of guilty is more than admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." 395 U.S. at 242-243, 89 S. Ct. at 1712. As the Court in Boykin held, 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 a jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. 395 U.S. at 243, 89 S. Ct. at 1712. In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the 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), the 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 this case plea counsel asked for a finding that appellant was entitled to parole eligibility after serving one-fourth of her sentence under S.C. Code § 16-25-90 which provides:

Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17-27-45.

Plea counsel told the court that this case involved battered women syndrome. Appellant was evaluated by Dr. Lois Veronen, a licensed clinical psychologist out of Rock Hill. Counsel had used her before in multiple battered women syndrome cases. (R. p. 19, lines 9-18). He handed the court a six page report. (R. p. 20, lines 1-4).

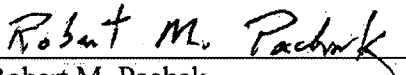
It was explained that the victim was a long distance truck driver and had many sexual contacts while he was on the road. Appellant found a separate cellphone that had text messages to various women. Appellant caught two sexually transmitted diseases from the victim. She also

suffered domestic violence in the past and there was a cycle of the victim beating her. (R. p. 23, lines 2-22).

Judge Verdin's written order dated September 12, 2016, found that appellant did not qualify for early parole because there was a lack of credible evidence of a history of criminal domestic violence.

**CONCLUSION**

The decision of the plea judge should not stand and appellant should be entitled to early parole eligibility.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of December, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ramona Delores Gilmore 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 Letitia H. Verdin, which was held on August 9, 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 Ramona Delores Gilmore.

Respectfully Submitted,



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 7th day of December, 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) Guilty plea transcript
- (3) Judge's 9/12/16 written order.

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

December 07, 2017

*Robert M. Pachak*

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Defense  
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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."

December 07, 2017.

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