

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DESHON JERMAINE NORMAN,

APPELLANT

APPELLATE CASE NO. 2017-001239

ANDERS BRIEF OF APPELLANT

RECEIVED
FEB 01 2018
SC Court of Appeals

ROBERT M. PACHAK
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ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975) 1, 3, 4

Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990) 4

STATEMENT OF ISSUE ON APPEAL

Whether the plea court on March 3, 2017, erred in accepting appellant's guilty plea without counsel without advising appellant of the danger and disadvantages of proceeding pro se under Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975)?

STATEMENT OF THE CASE

Petitioner appeared for a suppression hearing and Jackson v. Denno hearing on February 27; March 2, 2017, before the Honorable J. Derham Cole in Spartanburg County. The motions on the hearing were denied and a bench trial started on the merits of the case. On March 3, 2017, after the State presented its case, appellant decided to plead guilty to trafficking in crack cocaine. A twelve (12) year sentence was imposed. (R. p. 206). On March 17, 2017, appellant made a motion to withdraw the guilty plea and to reconsider the denial of the motion to suppress. Those motions were denied. (R. p. 222). On May 15, 2017, appellant moved to reconsider the denial of his motion to withdraw his guilty plea. That motion was denied. (R. p. 229).

This appeal follows.

ARGUMENT

The plea court on March 3, 2017, erred in accepting appellant's guilty plea without counsel without advising appellant of the dangers and disadvantages of proceeding pro se under Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975).

During appellant's guilty plea the following transpired:

THE COURT: Are we ready or not?

MR. MAXEY: Your Honor, it's my understanding that defense counsel was unwilling to sign the sentencing sheet, so is unwilling to go forward with the plea.

THE DEFENDANT: So with me firing him would I -- with me firing him, Your Honor, I could go ahead and proceed with my plea?

THE COURT: You want to terminate his representation of you?

THE DEFENDANT: If he doesn't sign the paper. What -- what else goes on?

THE COURT: Well, I'm not all hung up on that paperwork signing. You've got to sign it. It doesn't mean anything to me if ya'll get up here and you plead guilty. That's -- I mean, I'll put your name on it if I have to.

THE DEFENDANT: I've done signed it. Waiting on him to sign it. He say he don't want to sign it.

THE COURT: Okay. Well, is he going to represent you in the guilty -- do you want him to represent you in the guilty plea? Do you want to plead guilty, first of all?

THE DEFENDANT: Yes. I'm going to go ahead and plead to what the state's --

THE COURT: All right. And he's been representing you. Do you want him to represent you in the guilty plea, or are you terminating his employment?

THE DEFENDANT: He's telling me to. I don't -- I don't really understand.

THE COURT: Well, no. That's your decision. It's not his decision. In other words, you get to decide if you want him to continue representing you or not. I'm assuming you've engaged him to represent you, and he's obligated to do so. If you don't want him to, then you don't have to. But if you want him to, he must.

(Pause)

(R. p. 188, l. 21 – 190, l. 4).

A little later the following transpired:

THE COURT: Okay. And have you had plenty of time to reflect upon that decision?

THE DEFENDANT: Yes, sir.

THE COURT: And, as I understand it, your lawyer doesn't agree with your decision. Is that right?

THE DEFENDANT: Yes, sir.

THE COURT: But you understand that whether he agrees or disagrees, it's always your decision. You get to make the decision.

He can give you advice, but it's always your decision as to how you want to proceed with your case.

THE DEFENDANT: Yes, sir.

THE COURT: Okay. And how do you want to proceed with your case?

THE DEFENDANT: Plead guilty.

(R. p. 191, ll. 10 – 24).


In Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990) the court wrote:

“To establish a valid waiver of counsel, Faretta requires the accused to be: (1) advised of the right to counsel; and (2) adequately warned of the dangers of self-representation.”

The record in this case shows that appellant was not warned at all of the dangers of self-representation.

CONCLUSION

Appellant's guilty plea should be vacated.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of February, 2018.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Deshon Jermaine Norman states:

1. He is an 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 J. Derham Cole, which was held on, March 3, 2017, 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 Deshon Jermaine Norman.

Respectfully Submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 1st day of February, 2018.

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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) February 27; March 2, 2017, transcript,
- (3) March 3, 2017, guilty plea,
- (4) March 17, 2017, transcript,
- (5) May 15, 2017, transcript.

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

February 1, 2018



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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."

February 1, 2018.



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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. Ben 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 Deshon Jermaine Norman, 371673, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 1st day of February, 2018.

Robt M. Pachak

Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of February, 2018.

Laurin Stevens (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.