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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

J'QUAN SCOTT,

APPELLANT

APPELLATE CASE NO 2016-000559

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JAN 12 2018

SC Court of Appeals

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

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT3

CONCLUSION.....4

TABLE OF AUTHORITIES

Cases

<u>Brightman v. State</u> , 336 S.C. 348, 352 S.E.2d 614 (1999)	3
<u>Owens v. State</u> , 331 S.C. 582, 584 S.E.2d 462 (1998)	3
<u>State v. Copeland</u> , 278 S.C. 572, 597 S.E.2d 63 (1982)	3
<u>State v. Livingston</u> , 282 S.C. 1, 8 S.E.2d 129 (1984)	3
<u>State v. McCall</u> , 304 S.C. 465, 470 S.E.2d 414 (Ct. App. 1991).....	3
<u>State v. Perry</u> , 278 S.C. 490, 495 S.E.2d 324 (1983).....	3
<u>State v. Vick</u> , 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009).....	1, 2, 3

Statutes

S.C. Code Ann. §16-3-910 (2003)	3
§16-3-910 of the South Carolina Code (2015)	1, 2, 3

STATEMENT OF ISSUE ON APPEAL

Did the circuit court err by sentencing Scott to thirty years' imprisonment for kidnapping in light of section 16-3-910 of the South Carolina Code (2015) and *State v. Vick*, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009)?

STATEMENT OF THE CASE

On May 27, 2015, appellant appeared before the Honorable 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.

On December 15, 2017, the Court issued an order directing the parties to brief the following issue:

Did the circuit court err by sentencing Scott to thirty years' imprisonment for kidnapping in light of section 16-3-910 of the South Carolina Code (2015) and *State v. Vick*, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009)?

ARGUMENT

The circuit court erred by sentencing appellant to thirty years' imprisonment for kidnapping in light of section 16-3-910 of the South Carolina Code (2015) and *State v. Vick*, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009).

In *State v. Vick* this Court wrote:

Section 16-3-910 of the South Carolina Code provides as follows:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.

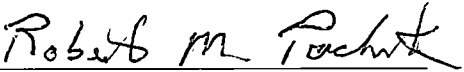
S.C. Code Ann. §16-3-910 (2003) (emphasis added). Our courts have long held, where an appellant has been sentenced for murder of a victim, this code section precludes a sentence for kidnapping of that victim, and any such sentence should be vacated. *Owens v. State*, 331 S.C. 582, 5584-85, 503 S.E.2d 462, 463 (1998); *State v. McCall*, 304 S.C. 465, 470, 405 S.E.2d 414, 416-17 (Ct. App. 1991), overruled on other grounds by *Brightman v. State*, 336 S.C. 348, 352, 520 S.E.2d 614, 616 (1999); *State v. Livingston*, 282 S.C. 1, 8, 317 S.E.2d 129, 133 (1984); *State v. Perry*, 278 S.C. 490, 495, 299 S.E.2d 324 (1983); *State v. Copeland*, 278 S.C. 572, 597, 300 S.E.2d 63, 77-78 (1982).

384 S.C. at 202, 682 S.E.2d at 281.

Because appellant was sentenced to life imprisonment for murder of the victim, he could not be sentenced to thirty years for kidnapping.

CONCLUSION

Appellant's kidnapping sentence should be vacated.



Robert M. Pachak
Appellate Defender

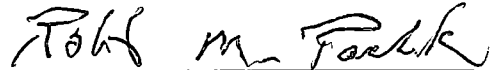
ATTORNEY FOR APPELLANT

This 12th day of January, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this 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."

January 12, 2018



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Appellant 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 Brief of Appellant has been served on J'quan Marquel Scott, #365229, at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 12th day of January, 2018.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of January, 2018.

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