

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

\_\_\_\_\_  
Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge  
\_\_\_\_\_

RECEIVED  
MAR 22 2018  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EDRIAN WRIGHT,

APPELLANT

APPELLATE CASE NO 2017-001151  
\_\_\_\_\_

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 appellant's guilty plea was entered voluntarily and intelligently when he was not given a realistic picture of sentencing?

**STATEMENT OF THE CASE**

On August 5, 2015, appellant appeared before the Honorable Kristi L. Harrington in Charleston County and pled guilty to burglary in the first degree and burglary in the second degree. He was sentenced to respective terms of imprisonment of thirty (30) years and fifteen (15) years. Cantrell Frayer, Esq. was plea counsel. Richard Waring, Esq. was the assistant solicitor.

Appellant filed a motion to reconsider the sentence on August 11, 2015. The motion to reconsider was denied by and order filed on May 9, 2017.

This appeal follows.

## ARGUMENT

Appellant's guilty plea was not entered voluntarily and intelligently because he was not given a realistic picture of sentencing. Petitioner's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama.

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 jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), this 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), this 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 Boykin, supra, the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of rights occurring with the guilty plea.

In the amended notice of appeal counsel wrote the following:

Pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules, Counsel for the Appellant provides the following explanation showing the issues which can be reviewed on appeal: Counsel for the Appellant is filing this Amended Notice of Appeal in response to the Defendant's express wish to exercise his right to appeal. Counsel was instructed by the Appellant to initiate these appellate proceedings, and is of the belief that he is ethically bound to assist the Appellant in doing so. The grounds for the Defendant's appeal are that the sentence imposed by the Court was

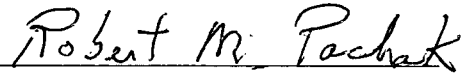
unnecessarily severe and the Court did not meaningfully consider the mitigating evidence submitted on behalf of the Defendant in the Memorandum in Support of the Motion to Reconsider Sentence and forensic psychological evaluation.

At the guilty plea the assistant solicitor told the judge, “there is no formal recommendation but the State is requesting twenty years active, concurrent.” The court asked plea counsel if that was her understanding of what the State was going to do here today? She replied in the affirmative. The court then advised that it did not have to go along with the recommendation. (R. p. 8, lines 6-22)

It is obvious from the above conversation that appellant thought he was going to receive a twenty (20) year sentence. The State “requested” it and plea counsel was aware of it and obviously told appellant about it. Why would he not believe it was going to happen? His plea was not voluntarily and intelligently entered.

**CONCLUSION**

Appellant's guilty plea should be vacated.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of March, 2018.

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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Edrian Wright 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 5, 2015, 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 Edrian Wright.

Respectfully Submitted,

Robert M. Pachak  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 22nd day of March, 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) Sentencing Sheets:
  - (2) Guilty Plea Transcript
  - (3) Motion to Reconsider Sentence
  - (4) Order denying Motion
  - (5) Amended Notice of Appeal
- Sealed Documents at the Court of Appeals:**
- (6) State's Memorandum in Opposition to Defendant's Motion
  - (7) Defendant's March 1, 2107, Memorandum in Support of Defense Motion for Reconsideration of Sentence.
  - (8) Dr. Susan Knight's Forensic Psychological Assesment.

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

March 22, 2018

  
Robert M. Pachak  
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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."

March 22, 2018.



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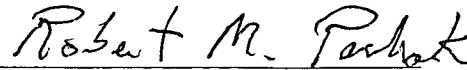
V.

EDRIAN WRIGHT,

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 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 Edrian Wright, 325701, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 22nd day of March, 2018.



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 22nd day of March, 2018.

 (L.S)

Notary Public for South Carolina  
My Commission Expires: May 12, 2027.