

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID MYERS,

APPELLANT

FINAL 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) 734-1343

ATTORNEY FOR APPELLANT

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SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

CERTIFICATE OF COUNSEL8

TABLE OF AUTHORITIES

Cases

Griffin v. California, 380 U.S. 609, 85 S.Ct. 1229 (1965) 5

State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986)..... 5

State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995)..... 5

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in sentencing appellant to a maximum of ten (10) years because he took his case to trial?

STATEMENT OF THE CASE

Appellant was convicted of shoplifting, third or subsequent offense, after a jury trial held before the Honorable Thomas A. Russo in Florence County on June 29, 2011. A sentence of ten (10) years was imposed. Scott P. Floyd, Esquire, was trial counsel.

This appeal follows.

ARGUMENT

The trial court erred in sentencing appellant to a maximum of ten (10) years because he took his case to trial.

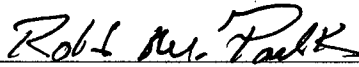
At sentencing, the solicitor noted that appellant took this case to trial and he should get the maximum sentence. Defense counsel noted that just a week before appellant was offered a four (4) year sentence to plead guilty and he should not be penalized for going to trial. (ROA P. 105, line 24 – p. 106, line 24) The trial judge sentenced appellant to the maximum. (ROA P. 110, lines 4-6) That sentence was in error.

In State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995) the Court held that considering a defendant's exercise of his jury trial right when sentencing him is an abuse of discretion. A defendant has a right to "put the State to its proof." State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986); Griffin v. California, 380 U.S. 609, 85 S.Ct. 1229 (1965).

CONCLUSION

Appellant's case should be remanded for sentencing.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of January, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID MYERS,

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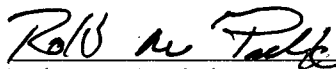
PETITION TO BE RELIEVED AS COUNSEL

Counsel for David Myers 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 Thomas A. Russo, which was held on June 29, 2011, 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 David Myers.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

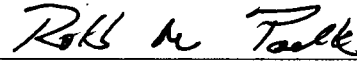
ATTORNEY FOR APPELLANT

This 4th day of January, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 4th, 2012



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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IN THE COURT OF APPEALS

Appeal from Florence County
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

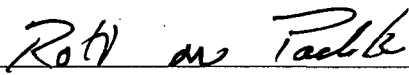
V.

DAVID MYERS,

APPELLANT


CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on David Myers, #298686 at Kirkland Correctional Institution, this 4th day of January, 2012.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of January, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020.