

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KADEEM JOHNSON

APPELLANT

APPELLATE CASE NO. 2012-212033

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's guilty plea complied with the mandates set forth in Boykin v.

Alabama?

STATEMENT OF THE CASE

On April 17, 2012, appellant appeared before the Honorable R. Jeffrey Young in Sumter County and pled guilty to three (3) armed robberies, two (2) counts of possession of a weapon, and one (1) count of attempted murder. Sentences of twenty-five (25) years were imposed on the armed robberies, five (5) year sentences were imposed on the possession of a weapon charges, and a twenty (20) year sentence was imposed for attempted murder. Charles Brooks, Esquire, was plea counsel. The assistant solicitor was John Meadows, Esquire.

This appeal follows.

ARGUMENT

Appellant'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.

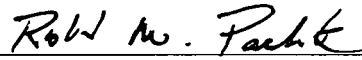
In Boykin, supra, the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of rights occurring with the guilty plea. This is because the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry V. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). The Boykin court went on to note that "a plea of guilty is more than an 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.

In this case, plea counsel filed a motion for reconsideration of the sentence on April 27, 2012. Plea counsel noted that appellant was sentenced to an aggregate sentence of twenty-five (25) years at his guilty plea. Appellant's co-defendant received a sentence of fifteen (15) years. Each was equally culpable and plea counsel contended that the disparity in the sentences was unfair to appellant. The plea judge even told appellant during the plea that he had already sentenced the co-defendant to fifteen (15) years. (Tr. p. 17, line 25 – p. 18, line 2). The disparity in sentencing violates the equal protection clause under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

Appellant's case should be remanded for re-sentencing.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2013.

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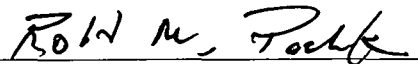
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kadeem Johnson 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 William Jeffrey Young, which was held on April 17, 2012, 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 Kadeem Johnson.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of March, 2013.

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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 Hearing Transcript (April 17, 2012)
- (3) Motion for Reconsideration of Sentence

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

March 18th, 2013

Robert M. Pachak

Robert M. Pachak
Appellate Defender

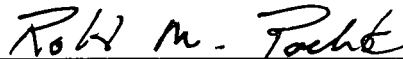
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

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 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."

March 18, 2013



Robert M. Pachak
Appellate Defender

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Attorney for Appellant

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CERTIFICATE OF SERVICE

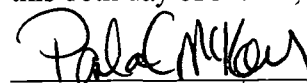
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and true copy of the Anders Brief of Appellant and Designation of Matter, and Record on Appeal, have been served on Kadeem Johnson, #350533 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 18th day of March, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of March, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.