

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Union County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEAH FOREST

APPELLANT

APPELLATE CASE NO. 2012-211826

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the sentencing judge erred in not ruling on appellant's motion to determine her claim of a history of criminal domestic violence at the hands of her victim?

STATEMENT OF THE CASE

Appellant was indicted for attempted murder at the October 2010 term of the Union County Grand Jury. On April 13, 2012, on the fourth day of trial, appellant pled guilty to assault and battery of a high and aggravated nature (ABHAN) before the Honorable Robin Stilwell. Appellant moved for one-fourth parole eligibility under S.C. Code § 16-25-90 because of evidence of criminal domestic violence. Judge Stilwell imposed an eighteen (18) year sentence and declined to rule on one-fourth parole eligibility leaving that issue for post-conviction relief.

This appeal follows.

ARGUMENT

The sentencing judge erred in not ruling on appellant's motion to determine her claim of history of criminal domestic violence at the hands of her victim.

Appellant was accused of shooting her live-in boyfriend after an argument that escalated and became physical. This was on the morning of June 7, 2010, in Jonesboro. Appellant got a .22 rifle out of the closet and shot the boyfriend twice—once in the abdomen and once in the back of the neck which severed his spine. (Tr. p. 74, line 5—p. 75, line 9). Appellant's defense was self-defense because the boyfriend's violent history and bad temper. Appellant was a battered woman who acted in self-defense. (Tr. p. 76, line 14 – p. 77, line 18).

While the original charge was for attempted murder, it was reduced to ABHAN in exchange for appellant's guilty plea. At the plea, defense counsel moved for a hearing under S.C. Code § 16-25-90, which allows for one-fourth parole eligibility in cases of domestic violence. The statute is as follows:

§ 16-25-90. Parole eligibility as affected by evidence of domestic violence suffered at hands of household member.

Notwithstanding any provisions of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17-27-45.

Defense counsel brought up the testimony of Brandon Howard during the trial. He was appellant's son. He testified that he saw the boyfriend flip appellant over in a chair. He saw him pick her up and slam her down. The boyfriend also abused Howard in front of appellant. Haley Forrest, appellant's young daughter, testified that she saw the boyfriend put his hands on appellant. He grabbed her by the shoulder and by the wrist. Vicky Burris, a social worker and expert witness, testified that she found that appellant suffered from post-traumatic stress disorder with a sub-set of battered spouse due to the trauma she endured being battered at the hands of the boyfriend. There was also the 9-1-1 call appellant made repeatedly saying she had been battered. Photographs were shown of appellant's injuries. Defense counsel noted the disparity in sizes in that the boyfriend is 5'9" tall and weighed 290 pounds, whereas appellant was 5'1" tall and weighed 150 pounds. (April 13, 2012, Tr. p. 232, line 17 – p. 234, line 25).

All of the above factors should have weighed in to show credible evidence of a history of criminal domestic violence. (April 13, 2012, Tr. p. 235, lines 2 – 10). The sentencing judge denied defense counsel's motion under S.C. Code § 16-25-90, but without prejudice so she could seek relief at a post-conviction relief hearing. The statute, however, gives an inmate who pleads guilty the right to seek one-fourth parole eligibility "at the time he pleads guilty." In addition, the judge is required to make specific findings on a history of domestic violence. State v. Blackwell-Selim, 392 S.C. 1, 707 S.E.2d 426 (2011).

CONCLUSION

Appellant's case should be remanded for specific findings on the subject of domestic violence

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of April, 2013.

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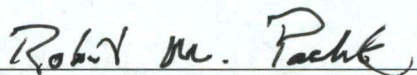
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Leah Forrest 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 Robin B. Stilwell, which was held on April 13, 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 Leah Forrest.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of April, 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) Entire Trial Transcript (April 10-13, 2012)

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

April 22nd, 2013

Robert M. Pachak
Robert M. Pachak
Appellate Defender

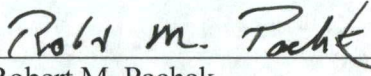
South Carolina Commission on Indigent Defense
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(803) 734-1343

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."

April 22, 2013


Robert M. Pachak
Appellate Defender

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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 Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Leah Forrest, #350575 at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 22nd day of April, 2013.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of April, 2013.

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