

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA WILKS,

APPELLANT

APPELLATE CASE NO. 2013-001827

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's sentence was disproportionate to the nature of his defense?

STATEMENT OF THE CASE

On August 13, 2013, appellant appeared before the Honorable Paul M. Burch in Lancaster County and pled guilty to armed robbery. A twenty (20) year sentence was imposed. Mark Grier, Esquire, was plea counsel. Douglas Barfield, Esquire, was the solicitor.

This appeal follows.

ARGUMENT

Appellant's sentence was disproportionate to the nature of his offense.

At the time appellant committed the armed robbery, he was only seventeen (17) years old. He had no prior arrests as an adult. (August 13, 2013, Tr. p. 76, lines 11 – 14). Plea counsel asked for the mandatory minimum sentence of ten (10) years in light of appellant's age and no prior adult record. (August 13, 2013, Tr. p. 79, lines 14 – 20). Also, appellant used a pellet gun in the robbery. (August 13, 2013, Tr. p. 80, lines 1 – 3).

Plea counsel explained further:

All that being said, Your Honor, I am asking you to consider the minimum because I think that is why we have a mandatory minimum. It is for folks who run afoul of the law and it is serious crime. He is going to do 85% of it, and you know it is non-parolable. And you know if the Court feels like the mandatory minimum is simply not enough I would ask the Court to consider a sentence that would allow Mr. Wilks to remain under some sort of supervision for some period of time with any balance of the mandatory ten, so that we can find out what kind of person Mr. Wilks is going to be when he gets through doing his time. And if he is not able to he has talked about – he understands there are opportunities, I would say for him to get electrical, plumbing all kinds of vocational and he's expressed that is how he will use his time and to use that time to do what he can to better himself and

ask the Court if you believe that beyond ten years is something that you have to do, then I ask that you suspend that time. Test Mr. Wilks through some kind of probationary sentence that would allow him to keep from serving that time if he is able to do what he is says he is going to do which is get turned around. There is no reason to believe he can't do that.

Your Honor, we are asking that you sentence him to mandatory minimum. I think that would be appropriate under the circumstance..

(August 13, 2013, Tr. p. 80, line 14 – p. 81, line 15).

In spite of plea counsel's request for a minimum sentence, the Court gave appellant a twenty (20) year sentence. Plea counsel appealed for this reason. He explained as follows:

Defendant is informed and believes that the sentence imposed is excessive and unconstitutional pursuant to the Eighth Amendment prohibition of "cruel and unusual punishment" espoused in the United States Constitution.

The crime of Armed Robbery carries a potential sentence ranging from a minimum ten (10) years to a potential thirty (30) years and should be vacated due to the failure of the Court to properly apply the Proportionality Principle to the uncontested mitigating factors applicable in this case. The Proportionality Principle was first recognized

by the United State Supreme Court in *Weems v. United States*, 217 U.S. 349 (1910). This tenet was interpreted to prohibit sentencing “grossly disproportionate to the nature of the offense” in *Solem v. Helm*, 463 U.S. 277 (1983).

The minimum sentence that could have been imposed was ten (10) years and would logically be applicable to cases where there are momentous mitigating factors to be considered. In the instant case the undisputed mitigating factors presented by the Defendant during his plea were:

- 1) Defendant was seventeen (17) years of age at the time of the crime; and
- 2) Defendant had no criminal record; and
- 3) Defendant used a toy gun in the commission of the crime and did not expose the victim to genuine danger:

The South Carolina Legislature mandated a harsh minimum sentence of ten (10) years for the serious crime of Armed Robbery. It is hard to imagine more significant mitigating factors than are present in the instant case. Therefore the imposition of a twenty (20) year sentence in this case constitutes cruel and unusual punishment prohibited by the Eight Amendment to the United [States] Constitution and said sentence should be vacated.

CONCLUSION

Based on the above argument, appellant's sentence should be vacated and the case should be remanded for resentencing.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of December, 2013.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joshua Wilks 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 Paul M. Burch, which was held on August 13, 2013, 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 Joshua Wilks.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of December, 2013.

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APPELLATE CASE NO. 2013-001827

**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) August 12, 2013, Transcript;
- (3) August 13, 2013, Transcript;
- (4) Explanation of Appeal

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

December 30th, 2013



Robert M. Pachak
Appellate Defender

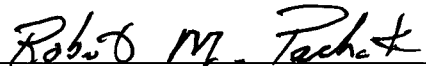
South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1343

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."

December 30, 2013



Robert M. Pachak
Appellate Defender

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Columbia, South Carolina 29211-1589

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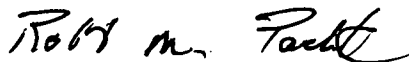
V.

JOSHUA WILKS,

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CERTIFICATE OF SERVICE

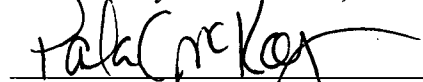
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Joshua Wilks, #356599 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 30th day of December, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of December, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.