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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DEWAYNE MACK,

APPELLANT

APPELLATE CASE NO. 2013-000664

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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TABLE OF AUTHORITIES

Statutes

S.C. Code §17-25-60 3, 5

STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred in bringing appellant back before it to change his sentence when former convictions were not considered because S.C. Code §17-25-60 mandates the issuance of a rule to show cause first?

STATEMENT OF THE CASE

On December 3, 2012, appellant appeared before the Honorable D. Craig Brown in Florence County and pled guilty to shoplifting, \$10,000 or more. He was sentenced to eighteen (18) months' imprisonment. Scott P. Floyd, Esquire, was plea counsel John Jepertinger, Esquire, was the deputy solicitor. At the time appellant pled guilty, he identified himself as Willie Lee Mack.

On March 6, 2013, appellant was brought before Judge Brown by the department of corrections because it became known that his real name was Dewayne Travon Mack. Based on Dewayne Travon Mack's prior criminal record as opposed to Willie Lee Mack's prior criminal record, appellant's sentence was increased to four (4) years' imprisonment. He was also found in direct contempt of court for perpetrating a fraud on the court and bringing the administration of the law into disrespect. He was sentenced to three (3) consecutive months for the contempt charge.

This appeal follows.

ARGUMENT

The plea court erred in bringing appellant back before it to change his sentence when former convictions were not considered because S.C. Code § 17-25-60 mandates the issuance of a rule to show cause before one can be resentenced.

When appellant appeared at his guilty plea on December 3, 2012, he appeared under the name Willie Lee Mack. The charge he was pleading guilty to was shoplifting with the value of property \$10,000 or more. It carried a sentence of up to ten (10) years. The State's recommendation was not more than five (5) years. (R. 7, lines 16 – 23). The only record Willie Lee Mack had was a prior possession of cocaine. (R. 11, lines 24 – 25). On the basis of the shoplifting charge and the prior conviction for possession of cocaine, appellant was sentenced to eighteen (18) months' imprisonment.

On March 6, 2013, appellant was brought back before the same judge because the department of corrections learned that appellant was really Dewayne Travon Mack. Appellant's brother was Willie Lee Mack. (R. 22, line 9 – R. 24, line 24). It turned out appellant had a very long criminal history. (R. 26, line 24 – R. 29, line 8). Based on this prior record, the judge changed appellant's sentence to four (4) years. (R. 35, lines 9 – 13). Plea counsel objected to the sentence being changed and the court noted the objection and stated that the matter could be appealed. (R. 36, line 20 – R. 38, line 1). Plea counsel filed a notice of intent to appeal and explained that he was appealing the sentence of March 6, 2013, because it was an illegal sentence which exceeded the court's authority.

S C. Code §17-25-60 is titled, "Change of sentence when former convictions were not considered at time of imposition." The Statute provides:

If during the service of any such sentence, it is made to appear to the court that the defendant had been convicted of one or more crimes which were not

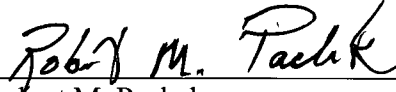
taken into account at the time of the imposition of the original sentence, the court is authorized to issue a rule directed to the defendant requiring him to show cause before the court, not less than ten days from the granting of the rule, why the former sentence should not be revoked and the defendant be sentenced as required if all of the convictions had been brought to the attention of the court at the time of the imposition of the original sentence.

Because the court in this case failed to issue a rule to show cause, it was without authority to change appellant's sentence.

CONCLUSION

Appellant's original sentence of eighteen (18) months should be reinstated.

Respectfully submitted,

Handwritten signature of Robert M. Pachak in black ink, written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of May, 2014.

STATE OF SOUTH CAROLINA
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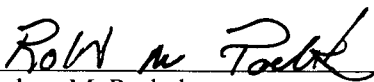
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dewayne Mack 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 D. Craig Brown, which was held on March 6, 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 Dewayne Mack.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of May, 2014.

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IN THE COURT OF APPEALS

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D. Craig Brown, Circuit Court Judge

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APPELLATE CASE NO. 2013-000664

**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) December 3, 2012 transcript
- (3) March 6, 2013 transcript
- (4) Notice of Intent to Appeal

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

May 20th, 2014

Robert M. Pachak

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

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."

May 20, 2014



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
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Columbia, South Carolina 29211-1589

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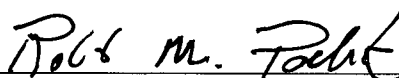
V.

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CERTIFICATE OF SERVICE

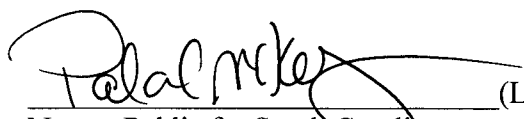
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Dewayne Mack, #244510 at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 20th day of May, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of May, 2014.



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