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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAY 14 2014

SC Court of Appeals

Appeal from Marlboro County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS RANDALL EDGE,

APPELLANT

APPELLATE CASE NO. 2013-002579

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

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

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's case should be remanded for resentencing because his conviction was for an accommodation sale of the drugs?

STATEMENT OF THE CASE

Appellant was convicted of distribution of schedule II drugs, oxycodone, after a jury trial held before the Honorable Edward B. Cottingham on December 2 – 3, 2013, in Marlboro County. He was sentenced to ten (10) years' imprisonment. Brandon Steen, Esquire, and Nicolas Lewis, Esquire, were the trial attorneys. Mia David, Esquire, and Mary Thomas Johnson Lee, Esquire, were the assistant solicitors.

This appeal follows.

ARGUMENT

Appellant's case should be remanded for resentencing because his conviction was for an accommodation sale of the drugs.

Ira Dease, a narcotics investigator for the Bennettsville Police Department, testified that on October 5, 2012, he met with a confidential informant to try to make a buy of drugs from appellant. He gave the informant \$120.00 to make the buy. The informant was Randolph Sutton. Audio and video equipment was placed on him. Detective Tim Hood was also there. Some of the money was photographed so the serial numbers could be traced. A little after noon, Dease went down to Cheraw Street to see the transaction. He saw appellant sitting in a car with his partner, Ruby Quick. The informant, Sutton, was in the back seat. Quick was in the driver's seat and appellant was in the front passenger seat. (R. p. 33, line 8 – p. 36, line 11). On cross-examination, Investigator Dease said Ruby Quick handed the drugs to appellant and appellant gave the drugs to the informant. (R. p. 42, lines 18 – 25).

At the conclusion of the State's case, defense counsel moved for a directed verdict because the State failed to prove appellant had control over the drugs. That motion was denied. (R. p. 78, line 4 – p. 79, line 4).

During deliberations, the jury sent in a question wanting to know if appellant had been in possession of the pill bottle. (R. p. 104, line 22 – p. 105, line 3).

The sentence for appellant's offense carried between zero (0) to ten (10) years. Appellant explained at sentencing that the drugs were handed to him. (R. p. 111, lines 5 – 15). The trial judge sentenced appellant to the maximum ten years' imprisonment.¹ At no

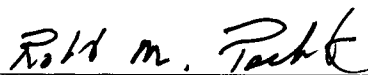
¹ Appellant is 60 years old.

time did the trial judge consider giving appellant a reduced sentence for an accommodation sale. S.C. Code § 44-53-460 allows for a reduced sentence in an accommodation sale. In State v. Cobb, 355 S.C. 98, 584 S.E.2d 371 (2003), the Court held that the defendant's conduct in that case constituted an accommodation and remanded the case for sentencing under the accommodation statute.

CONCLUSION

Appellant's case should be remanded for resentencing under the accommodation statute.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robt M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of May, 2014.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Thomas Randall Edge 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 Edward B. Cottingham, which was held on December 3, 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 Thomas Randall Edge.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of May, 2014.

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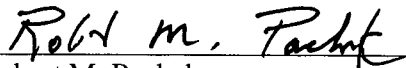
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (December 2 – 3, 2013)

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

May 14th, 2014



Robert M. Pachak
Appellate Defender

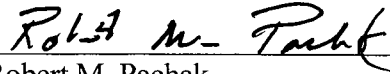
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 14, 2014



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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APPELLANT

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 Thomas Randall Edge, #108430 at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 14th day of May, 2014.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of May, 2014.

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