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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Williamsburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RECEIVED
OCT 08 2018
SC Court of Appeals

V.

HAKEEM [REDACTED] EDWIN,

APPELLANT.

APPELLATE CASE NO. 2017-002602

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred by refusing to allow appellant to speak and refute the police investigator's claim that appellant intended to kill the man in the barbershop during the robbery, since specific intent to kill was an element of the charge of attempted murder, which was the subject of the guilty plea, and appellant had a right of allocution at the time of sentencing?

STATEMENT OF THE CASE

Appellant was indicted at the March 7, 2017, term of the Williamsburg County Grand Jury for the offenses of attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime. R. 20-21. Appellant appeared on September 19, 2017, before the Honorable Benjamin H. Culbertson, and entered a guilty plea to the offenses of attempted murder and armed robbery. Appellant was represented by Doward Harvin. Warren Anderson was the assistant solicitor. R. 1; R. 3, ll. 7-16.

At the conclusion of the guilty plea proceeding, Judge Culbertson sentenced appellant to concurrent terms of thirty years imprisonment. R. 18, ll. 5-16. Appellant, through counsel, thereafter filed a motion for reconsideration. An order denying the motion for reconsideration was filed on February 14, 2017, finding appellant's arguments "unpersuasive." R. 21-22.

This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Nesbitt, 411 S.C. 194, 199, 768 S.E.2d 67, 70 (2015) (quoting State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)). This Court has held that there is no reversible error if the defendant is allowed to make the point he intended to make. State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997).

ARGUMENT

The plea court erred by refusing to allow appellant to speak and refute the police investigator's claim that appellant intended to kill the man in the barbershop during the robbery, since specific intent to kill was an element of the charge of attempted murder, which was the subject of the guilty plea, and appellant had a right of allocution at the time of sentencing.

A defendant's statutory right of allocution refers to the common law practice of the court formally inquiring of the defendant whether he has anything to say as to why the sentence and judgment should not be pronounced after being found guilty by the trier of fact but before the judge pronounces sentence. See State v. Stokes, 345 S.C. 368, 548 S.E.2d 292 (2001).

In the different context of the statutory right to allocution, this Court has held that there is no reversible error if the defendant is allowed to make the point he intended to make. State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997). Plea allocutions are among the core testimonial statements that the confrontation clause plainly meant to exclude against another defendant. See People v. Woods, 779 N.Y.S.2d 494 (N.Y. App. Div. 2004).

In State v. Holmes, 320 S.C. 259, 464 S.E.2d 334 (1995), the dissenting Chief Justice held that the failure to accord defendant Holmes his right to allocution required, at a minimum, that the case be remanded for resentencing. State v. Holmes, 320 S.C. 259, 268, 454 S.E.2d 334, 339 (1995).

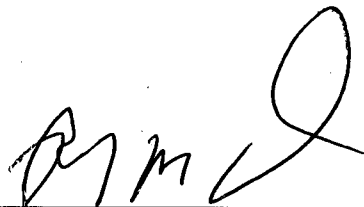
Appellant realizes it is rare where a defendant is refused his right to allocution. Here, that right came at an important place during the guilty plea where appellant wanted to refute the investigator's claim that appellant had a specific intent to kill, an element of attempted murder.

Appellant was not allowed to make his point, and refute the "specific intent to kill" allegation by the investigator. Therefore, this was error under the State v. Bennett, 328 S.C. 251,

493 S.E.2d 845 (1997) standard. Given the highly unusual facts of this case, and the denial of appellant's right to allocution on an important point, appellant's case should be remanded for resentencing.

CONCLUSION

By reason of the foregoing argument, appellant's case should be remanded for resentencing.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of October, 2018.

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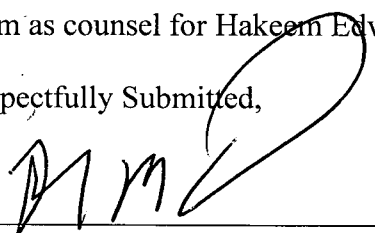
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Hakeem Edwin states:

1. He is Chief 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 Benjamin H. Culbertson, which was held on September 19, 2017, 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 Hakeem Edwin.

Respectfully Submitted,


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 8th day of October, 2018.

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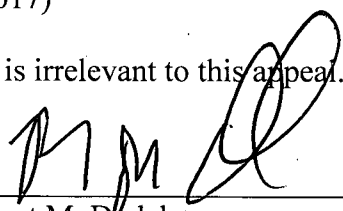
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment:
- (2) Transcript (September 19, 2017)

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

October 8, 2018


Robert M. Dudek
Chief Appellate Defender

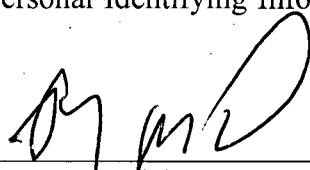
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ATTORNEY FOR APPELLANT

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."

October 8, 2018.



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Chief Appellate Defender

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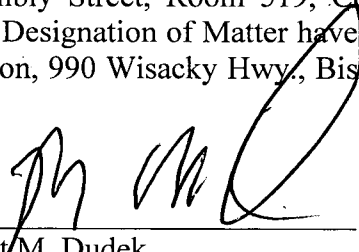
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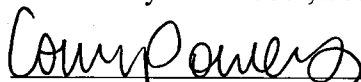
APPELLANT.

CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on Hakeem Edwin, 365620, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 8th day of October, 2018.


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me,
this 8th day of October, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.