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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDREW L. BLACKMON,

APPELLANT

APPELLATE CASE NO. 2013-002440

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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STATEMENT OF ISSUE ON APPEAL

Whether appellant's guilty plea was voluntarily and knowingly entered into?

STATEMENT OF THE CASE

On November 5, 2013, appellant appeared before the Honorable William Jeffrey Young in Clarendon County and pled guilty to entering a bank with intent to steal. A fifteen (15) year sentence was imposed. King Cutter, Esquire, was plea counsel. Chris DuRant, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

Appellant's guilty plea was not voluntarily and knowingly entered into.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the accused had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea must be established by a complete record, and may be accomplished by colloquy between the court and the accused, between the court and the accused's counsel, or both. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000).

In this case, the transcript of the guilty plea started out with the court stating, "I understand your client wants to change his plea from not guilty to guilty?" Plea counsel responded, "Yes, your Honor." (R. p. 3, lines 1 – 3). Later, the following occurred during the plea:

Q. Are you aware of any physical, nervous or mental condition that would keep you from understanding what we're doing today?

A. I'm not quite sure. I got mental illnesses, but they haven't diagnosed me with my mental illnesses in this state, but I have been diagnosed in the past.

Q. But you've had tests done in this state. So you're not under—claiming to be insane or not knowing what's going on today, is that correct?

A. Not today, no.

Q. Okay. All right. And it's my understanding that you want to plead guilty under Indictment 2013-GS-14-070 which reads that, "In Clarendon County, South Carolina on or about January 25th, 2013, the defendant, Andrew Lee Blackmon, unlawfully did enter a building or part of a building occupied as a bank, depository or building and loan association with the intent to steal money or securities for money either by force, intimidation, threats all in violation of Section 16-11-380(A) of the South Carolina Code of Laws, 1976, as amended." Is what's stated in this indictment the truth, sir?

A. Under mental illness.

Q. And we're not going into that. Do you want to go to trial or do you—I'm not going to force you one way or the other, but do you want a trial or do you want to plead guilty and is what's stated in this indictment the truth?

A. No sir.

The Court: Okay. All right. Please bring our jury in.

Mr. Blackmon: But it's not true.

Mr. Cutter: Your Honor, can I get him to sign this?

The Court: Yes.

Mr. Cutter: All right.

(Off the record)

(Back on the record with Plea)

The Court: I understand there has been a change in the posture of the case. Is that correct?

Mr. DuRant: That's correct, Judge. I understand from Mr. Cutter that his client now intends to plead guilty to the negotiated fifteen (15) years.

The Court: All right. Is that correct, Mr. Cutter?

Mr. Cutter: That's my understanding, yes sir.

(R. p. 4, line 8 – p. 6, line 2).

Several pages later, the plea concluded with appellant being sentenced to fifteen (15) years. (R. p. 13, lines 7 – 10).

Plea counsel appealed the guilty plea under Rule 203(B)(iv), SCACR, with a four-page explanation for appealing. That explanation concluded with the following:

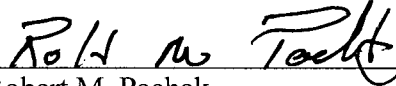
The Defendant contends that because of the inability to argue insanity to the jury or receive a second or independent evaluations, he did not enter his plea freely and voluntarily. After Monday November 4, 2013, the Defendant had options of going to trial facing thirty years with a substantial amount of evidence of his guilt or pleading guilty to fifteen years. In *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985), (cited with approval by *Bailey v. State*, 309 S.C. 455, 424 S.E.2d

503 (1992)). When an indigent defendant seeks psychiatric assistance to establish an insanity defense, and there is evidence this is a potentially viable defense, the state is constitutionally mandated to provide the defendant with access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense. Further, under S.C. Statute 44-23-410 (C), the Court may order the Defendant to be examined by an additional independent expert and designate the time and conditions of the evaluation. Here, the Defendant was in the Clarendon County Detention Center, had no intentions of attempting to bond out of jail and simply wanted an opportunity to fully explore his mental issues. That was not allowed, thereby, forcing Mr. Blackmon to enter into a plea that was not freely and voluntarily given.

CONCLUSION

As can be seen from the above, appellant's guilty plea should be vacated.

Respectfully submitted,

Handwritten signature of Robert M. Pachak in cursive script, written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2014.

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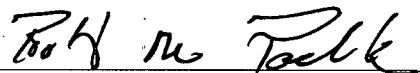
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Andrew L. Blackmon 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 William Jeffrey Young, which was held on November 5, 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 Andrew L. Blackmon.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2014.

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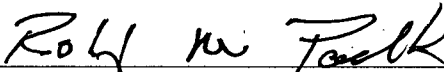
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) November 5, 2013, Guilty Plea Hearing Transcript

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

August 11th, 2014



Robert M. Pachak
Appellate Defender

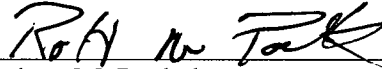
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

August 11, 2014



Robert M. Pachak
Appellate Defender

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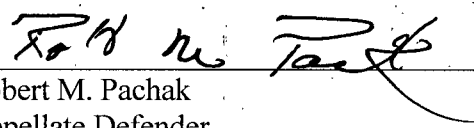
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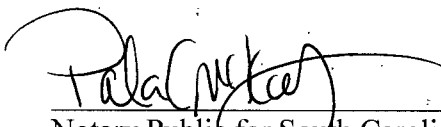
CERTIFICATE OF SERVICE

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 Andrew L. Blackmon, #357777 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 11th day of August, 2014.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of August, 2014.



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