

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from York County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRAVIS SEMAJ HUTCHINSON,

APPELLANT

APPELLATE CASE NO 2018-000271

RECEIVED

JUL 10 2018

ANDERS BRIEF OF APPELLANT

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred in amending appellant's indictment from a second offense to a third offense because it increased appellant's sentencing range?

STATEMENT OF THE CASE

On February 13, 2018, appellant appeared before the Honorable Roger E. Henderson in York County and pled guilty to possession of heroin with intent to distribute, third offense, possession of cocaine, third offense, and escape. Respective sentences of fourteen (14) years, five (5) years, and one (1) year were imposed. Devon Nielson, Esq. was plea counsel. Marina Hamilton, Esq. was the assistant solicitor.

This appeal follows.

STANDARD OF REVIEW

Sentencing

“In criminal cases, the appellate court sits to review errors of law only.” State v. Vick, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009)(quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is “bound by the trial court’s factual findings unless they are clearly erroneous.” Id. (quoting Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court “does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court’s ruling is supported by any evidence.” State v. Slocumb, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

The plea court erred in amending appellant's indictment from a second offense to a third offense because it increased appellant's sentencing range.

Appellant was originally offered a plea with a two-year sentence but that was taken off the table (R. p. 2, line 23-p. 3, line 14). The assistant solicitor told the court the following:

The State has a recommendation in this case. This is a straight-up plea. Your Honor, I do want to address the matter as to the amendment of the CDR code which the State believes is merely a sentencing matter. Not anything that would go to the sufficiency of the indictment and I want to address that at that appropriate time.

(R. p. 7, lines 14-20)

The assistant solicitor then went on to talk about the amendment of the CDR code

And I did hand up and provide the defense the case the State verses Crivin (phonetics) which does go to the nature of what I just stated as to Indictments are sufficient to supply – confer subject matter jurisdiction on this Court in that the CDR code and the enhancement of the second or greater offense do not involve elements of the offense. The State would just ask the CDR code be amended on the Indictments as to the sentencing matter at this time.

(R. p. 8, lines 1-9)

Plea counsel responded:

THE COURT: All right. Mr. Nielson.

MR. NIELSON: Your Honor, we would object to that. We had previously asked that he be allowed to go forward as a second offense. There are some definite differences sentencing wise and what we can ask for and what he could get in the Department of Corrections that are changed by making it a third instead of a second. I understand his record is such that we have no argument that it is truly a third. We would just ask the solicitor to be allowed to plea as he was indicted or going to let Your Honor decide on that.

(R. p. 8, lines 10-20).

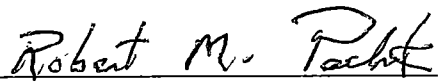
The court granted the motion to amend the indictment. (R. p. 8, line 23-p. 8, line 9). That brought the sentencing range for possession with intent to distribute heroin from between ten to thirty years. (R. p. 10, lines 18-23). Amending the indictment in this case was in error.

The court was giving too much emphasis to the CDR codes as opposed to the South Carolina Code of Laws. In State v. Bennett, 375 S.C. 165, 173, 650 S.E.2d 490, 495 (2007) the Court of Appeals explained:

While the codes were developed and are used to provide an administrative shortcut, they were never intended to replace statutory law. *Id.* The codes are normally listed after the statute on all warrants, indictments, and sentencing sheets. As the SCJD's website explains, the elements of a crime, its penalties and other related matters are governed by the Code of Laws and the common law alone. *Id.* Any errors in a CDR code do not affect the crime, its characterization as violent or non-violent, for example, or even if someone can be prosecuted for a crime. *Id.* The website further states in a disclaimer, "[t]he South Carolina Code of Laws is the controlling authority for classifications, definitions and penalties for criminal offenses, and **the statute itself should always be consulted.**" *Id.* (emphasis added); *see also* South Carolina Judicial Department, CDR Codes, <http://www.sccourts.org/cdr/index.cfm>.

CONCLUSION

Appellant's case should be remanded for resentencing.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of July, 2018.

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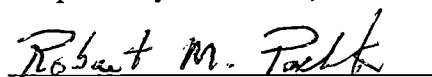
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Semaj Hutchinson 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 Roger E. Henderson, which was held on February 12 & 13, 2018, 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 Travis Semaj Hutchinson.

Respectfully Submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 10th day of July, 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(s):
- (2) February 13, 2018 Guilty Plea Transcript.

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

July 10, 2018


Robert M. Pachak
Appellate Defender

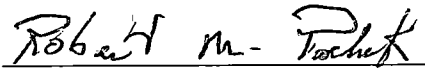
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ATTORNEY FOR APPELLANT

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."

July 10, 2018.



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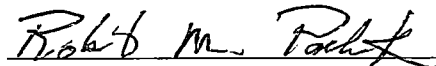
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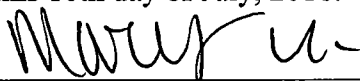
APPELLANT

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 Travis Semaj Hutchinson, 245544, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 10th day of July, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of July, 2018.



Notary Public for South Carolina
My Commission Expires: May 12, 2027.