

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**ORIGINAL**

Appeal from Aiken County

Honorable Edgar W. Dickson, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JOHN ANDREW FINCH,

APPELLANT

APPELLATE CASE NO 2018-002264

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ANDERS BRIEF OF APPELLANT

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**RECEIVED**  
DEC 02 2019  
SC Court of Appeals

ROBERT M. DUDEK  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by accepting appellant's guilty plea where defense counsel asserted the facts which established appellant had a viable case of self-defense since there was not a sufficient, factual basis for the court to accept the guilty plea of voluntary manslaughter under these circumstances?

## STATEMENT OF THE CASE

Appellant was indicted at the November 13, 2017 term of the Aiken County Grand Jury for the murder of George Dover. R. 311 – 312. Appellant appeared on October 16, 2018 before the Honorable Edgar W. Dickson and entered a plea of guilty to voluntary manslaughter. David Hayes represented appellant. Bradley McMillan was the assistant solicitor. R. 1; r. 3, l. 13 – 4, 10. At the conclusion of the guilty plea proceeding the judge sentenced appellant to twenty-five years imprisonment. R. 33, ll. 20 – 24.

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) . The record in a guilty plea hearing must establish a factual basis for the guilty plea. State v. Rikard, 371 S.C. 295, 300, 638 S.E.2d 72, 75 (Ct.App. 2006); LaPiano v. State, 270 S.C. 563, 569, 243 S.E.2d 448, 451 (1978); State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975).

## **ARGUMENT**

The court erred by accepting appellant's guilty plea where defense counsel asserted the facts which established appellant had a viable case of self-defense since there was not a sufficient, factual basis for the court to accept the guilty plea of voluntary manslaughter under these circumstances.

### **Relevant facts**

This is a strange case. The solicitor said on April 16, 2017 at 3:46 in the morning Aiken County 911 received a call from Julia Defore. Julia reported a shooting at 21 Dottie Road in Windsor in Aiken county. Ricky Sanders was the owner of the home there. Candy Newman confessed to the police "that she shot Mr. George Dover after he allegedly tried to rape her." R. 9, ll. 10 – 20.

Ricky Sanders told the police that he had left his house at around dusk and gone with Julia to get some beer. When he returned home, he found George Dover dead, and Candy Newman told Sanders she shot Dover in self-defense. R. 10, ll. 4 – 8.

However, the next day, Sanders and Julia claimed that appellant "pulled a revolver and shot Mr. Dover." R. 10, l. 14 – 11, l. 1.

The solicitor stated that an extraction was made from Julia's cell phone. There was a text message from appellant located there. That message was sent prior to the decedent coming over to the house that night. The text read: "Might go to jail tonight. Got a .410 cocked and loaded, and George [Dover] is on the way." R. 11, ll. 9 – 15. The solicitor maintained that shortly after this text message the decedent was found dead. R. 11, ll. 16 – 19.

The solicitor claimed the state's evidence would show that Dover approached a fire pit "where these people were standing, [and] that Mr. Finch [appellant] pulled out a gun and shot

him.” R. 12, ll. 14 – 19. The solicitor maintained, due to discrepancies in witnesses’ statements and difficulties proving the case, the state offered that appellant could plead guilty to voluntary manslaughter. R. 12, ll. 7 – 19.

Defense counsel Hayes conversely told the judge, “I believe there’s a legitimate argument for self-defense...” R. 21, ll. 7 – 12. “I don’t believe that he [appellant] is of the kind of person that committed a cold-blooded, senseless act and has no emotion [afterward].” R. 21, ll. 17 – 19.

Further, there was evidence that Ricky Sanders and appellant were both afraid of the decedent because Dover “had a propensity to fight and be a little bit angry.” R. 22, l. 19 – 23, l. 1. Appellant had not met the decedent at this time, but Sanders had told appellant that the decedent was a violent man “and that he had [the decedent] attacked him before and had been abusive and that there was some bad blood and that he had said some things about Mr. Finch and was going to attack him.” R. 23, ll. 2 – 7. Hayes maintained there was strong evidence appellant shot the decedent in self-defense. R. 23, l. 22 – 24, l. 13. Hayes also told the judge that the defense had looked at a “stand your ground” immunity hearing where appellant could be found immune from prosecution. However, Hayes reasoned since appellant was not a resident of the home, which belonged to Sanders, that he did not believe appellant had standing as a guest to assert he was immune from prosecution for “standing his ground.” R. 25, ll. 10 – 20; r. 29, ll. 13 – 19.

## **Discussion**

The record in a guilty plea hearing must establish a factual basis for the guilty plea. State v. Rikard, 371 S.C. 295, 300, 638 S.E.2d 72, 75 (Ct.App. 2006); LaPiano v. State, 270 S.C. 563, 569, 243 S.E.2d 448, 451 (1978); State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891

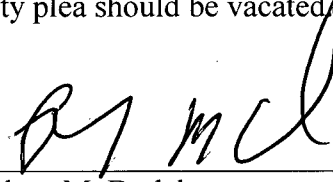
(1975). Further, before a guilty plea is accepted, the defendant must understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and the record must reflect a factual basis for the guilty plea. Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001).

Self-defense is a complete defense to a crime, including murder and voluntary manslaughter. Once the defense has adequately raised the issue of self-defense, the state must disprove self-defense beyond a reasonable doubt. State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000).

Here, defense counsel Hayes told the judge that appellant had a very viable self-defense case. It appeared appellant shot and killed the decedent when he feared for his life or from suffering great bodily harm. Appellant had been warned the decedent was a very violent man, and had stated his intention to attack appellant. Under the highly unusual facts of this case, the trial judge erred by accepting appellant's guilty plea to voluntary manslaughter, where the state did not overcome trial counsel's assertion of a viable defense of self-defense at the time of the guilty plea.

**CONCLUSION**

By reason of the foregoing argument, appellant's guilty plea should be vacated.



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Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of December, 2019.

STATE OF SOUTH CAROLINA  
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Appeal from Aiken County

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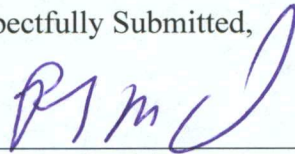
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Andrew Finch 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 Edgar W. Dickson, which was held on October 16, 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 John Andrew Finch.

Respectfully Submitted,



Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

This 2nd day of December, 2019.

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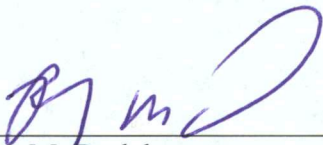
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

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

- (1) True-billed indictment(s):
- (2) Transcript of guilty plea hearing held October 16, 2018
- (3) Order denying defense motion for reconsideration

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

December 2, 2019

  
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Robert M. Dudek  
Chief Appellate Defender

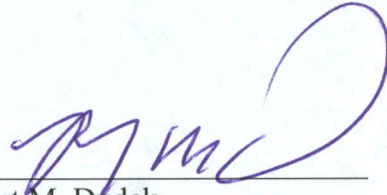
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ATTORNEY FOR APPELLANT

**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."

December 2, 2019.



Robert M. Dudek  
Chief Appellate Defender

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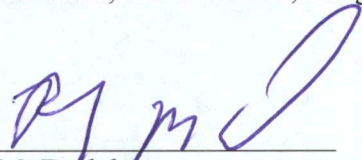
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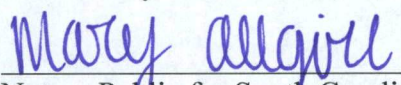
APPELLANT

\_\_\_\_\_  
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 William M. Blich, 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 John Andrew Finch, 317760, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 29th day of October, 2019.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 2nd day of December, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.