

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
L. Casey Manning, Circuit Court Judge  
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S.C. Supreme Court

ROBERT L. DICKERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213661  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel was ineffective in giving petitioner incorrect sentencing advice?

## STATEMENT

Petitioner appeared before the Honorable G. Thomas Cooper, Jr., in Richland County on August 31, 2010, and pled guilty to murder and armed robbery. He was sentenced to forty (40) years imprisonment on each charge. J. Rhodes Bailey, Esquire, and Jay Cooper, Esquire, were plea counsels. Luck Campbell, Nicole Simpson, and Joanna McDuffie were the assistant solicitors. (App. p. 1 – p. 33).

Petitioner filed an application for post-conviction relief on May 20, 2011. (App. p. 35 – p. 39). Respondent filed a return dated February 1, 2012. (App. p. 40 – p. 45). An evidentiary hearing was held on May 25, 2012, before the Honorable L. Casey Manning. Petitioner was present and was represented by R. Scott Wallinger, Jr., Esquire. Respondent was represented by Robert D. Corney, Assistant Attorney General. Both petitioner and J. Rhodes Bailey testified at the hearing. (App. p. 47 – p. 165).

On November 19, 2012, Judge Manning issued an order denying and dismissing petitioner's application for post-conviction relief.

This petition follows.

## ARGUMENT

Plea counsel was ineffective in giving petitioner incorrect sentencing advice.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S. Ct. 2052 (1984); Stalk v. State, 383 S.C. 559, 681 S.E. 2d 592 (2009). With respect to a guilty plea the second prong above looks at whether defense counsel's deficient performance affected the outcome of the plea process. Stalk v. State, *supra*. This means that there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial. In Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985). This usually involves counsel's giving of incorrect sentencing advice or legal advice about the charges against his client. Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989); Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991); Pelzer v. State, 381 S.C. 217, 672 S.E. 2d 790 (Ct. App. 2009); Morris v. State, 371 S. C. 278, 639 S.E. 2d 53 (2006).

Besides attacking a guilty plea based on ineffective assistance of counsel, a defendant may challenge the guilty plea on other constitutional grounds. The United States Supreme Court explained in Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969) that "a plea of guilty is more than admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." 395 U.S. at 242-243, 89 S. Ct. at 1712. As the Court in Boykin held, due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by a jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. 395 U.S. at 243,

89 S. Ct. at 1712. In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the court held that the “essence” of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the States. In State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), the court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it.

In this case, petitioner alleged in his application for post-conviction relief that his attorney led him to believe he would receive a twenty (20) year sentence if he pled guilty. (App. p. 36). Petitioner testified about this at the evidentiary hearing as well. (App. p. 119, lines 11 – 14). As previously noted, giving incorrect sentencing advice constitutes ineffective assistance of counsel. Hinson v. State, *supra*; Ray v. State, *supra*.

CONCLUSION

Petitioner's guilty plea should be vacated.

Respectfully submitted,

*Robert M. Pachak*

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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of June, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
L. CASEY MANNING, CIRCUIT COURT JUDGE

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ROBERT L. DICKERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213661

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PETITION TO BE RELIEVED AS COUNSEL

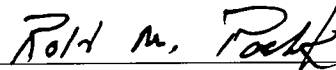
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Counsel for Robert L. Dickerson states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on May 25, 2012. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Robert L. Dickerson.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 4th day of June, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County  
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ROBERT L. DICKERSON,

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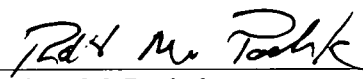
RESPONDENT

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CERTIFICATE OF SERVICE

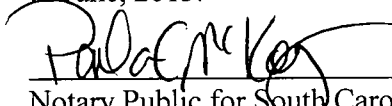
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Robert L. Dickerson, #113793, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 4th day of June, 2013.

  
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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day  
of June, 2013.

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