

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Greenville County
Edward W. Miller, Circuit Court Judge

S.C. Supreme Court

LAMONT V. POOLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000427

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel was ineffective in giving incorrect sentencing advice?

STATEMENT

On June 17, 2010, petitioner appeared before the Honorable Robin B. Stilwell in Greenville County and pled guilty to two (2) counts of possession with intent to distribute cocaine, second offense, two (2) counts of possession with intent to distribute marijuana, second offense, and unlawful conduct towards a child. Petitioner was sentenced to eight (8) years on each drug offense and to five (5) years on the unlawful conduct charge. Patrick Mangrum, Esquire, was plea counsel. Katrina Salisbury, Esquire, was the solicitor. (App. p. 1 – p. 21).

Petitioner filed an application for post-conviction relief on May 23, 2011. (App. p. 23 – p. 29). Respondent filed a return dated September 20, 2011. (App. p. 30 – p. 36). An evidentiary hearing was held on December 20, 2012, before the Honorable Edward W. Miller. Petitioner was present and was represented by Caroline Horlbeck, Esquire. Respondent was represented by Karen C. Ratigan, Assistant Attorney General. Petitioner testified in his own behalf and he presented the testimony of Sandra Poole Nesbitt. Patrick Mangrum testified in respondent's behalf. (App. p. 37 – p. 54).

On January 11, 2013, Judge Miller issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 56 – p. 61).

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,

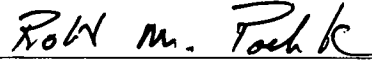
89 S. Ct. at 1712. In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the court held that the “essence” of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the States. In State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), the court 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 gave him wrong information to get him to plead guilty. (App. p. 25). Petitioner testified at the evidentiary hearing that plea counsel told him and his family that if he pled guilty, he would receive a five-year sentence. (App. p. 41, line 24 – p. 42, line 15). Petitioner’s mother also testified that plea counsel also promised a five-year sentence. (App. p. 48, line 18 – p. 49; line 1). As noted earlier, it constitutes ineffective assistance of counsel to give incorrect sentencing advice. Hinson v. State, supra; Ray v. State, supra.

CONCLUSION

Petitioner's guilty plea should be vacated.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of June, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
EDWARD W. MILLER, CIRCUIT COURT JUDGE

LAMONT V. POOLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000427

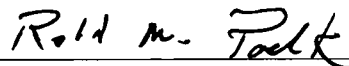
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lamont V. Poole 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 December 20, 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 Lamont V. Poole.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 4th day of June, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Edward W. Miller, Circuit Court Judge

LAMONT V. POOLE,

PETITIONER,

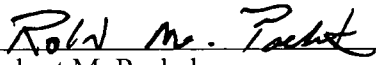
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

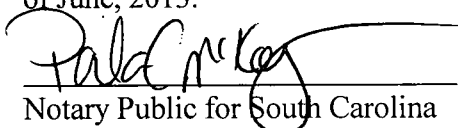
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lamont V. Poole, #265389, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 4th day of June, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

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



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