

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
J. Mark Hayes, II, Circuit Court Judge  
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S.C. Supreme Court

JEFFREY EUGENE JETER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000215  
\_\_\_\_\_

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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Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

INDEX

INDEX ..... 1

ISSUE PRESENTED ..... 2

STATEMENT ..... 3

ARGUMENT ..... 4

CONCLUSION ..... 7

PETITION TO BE RELIEVED AS COUNSEL ..... 8

ISSUE PRESENTED

Whether plea counsel was ineffective in representing petitioner because he was operating under a conflict of interest because he was associated with the Spartanburg Community Memorial Committee, who was one of the victims of petitioner's forgery charges?

## STATEMENT

On October 28, 2010, petitioner appeared before the Honorable Roger L. Couch in Spartanburg County and pled guilty to and was sentenced on the following offenses:

2 counts receiving stolen goods	10 years
1 count obtaining money by false pretenses	10 years
1 count forgery	10 years
2 counts petit larceny	10 years

All of the above sentences were ordered to run concurrently. On four additional forgery charges, he was sentenced to ten (10) years on each count and those sentences were ordered to be served consecutively for a total sentence of forty (40) years. James Cheek, Esquire, was plea counsel. Matt Kendall, Esquire, was the assistant solicitor. (App. p. 1 – p. 35).

On December 17, 2010, there was a hearing on petitioner's pro se motion for resentencing that was denied. (App. p. 37 – p. 48).

Petitioner filed an application for post-conviction relief on May 2, 2011. (App. p. 50 – p. 60). Respondent filed a return dated May 2, 2012. (App. p. 61 – p. 64). On November 9, 2012, an evidentiary hearing was held before the Honorable J. Mark Hayes, II. Petitioner was present and was represented by Chris Bonds, Esquire. Respondent was represented by Suzanne White, Assistant Attorney General. Petitioner, Ryan Sauers, and plea counsel testified at the hearing. (App. p. 66 – p. 143).

On January 16, 2013, Judge Hayes issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 147 – p. 156).

This petition follows.

## ARGUMENT

Plea counsel was ineffective in his representation of petitioner because he was operating under a conflict of interest in that he was associated with the Spartanburg Community Memorial Committee, who was one of the victims of petitioner's forgery charges.

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. 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 or failure to investigate. 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); Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007); Stalk v. State, supra. The post-conviction relief court will normally consider the guilty plea transcript as well as the evidence presented at the post-conviction relief hearing in looking at guilty plea issues. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Besides attacking a guilty plea based on ineffective assistance of counsel, a defendant may challenge the voluntariness of the plea. The difference "between a valid guilty plea and a invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635,

675 S.E.2d 425, 427 (2009). 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. The Court went on to note:

Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth. Mallory v. Hogan, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed 2d 653. Second, is the right to trial by jury. Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491. Third, is the right to confront one’s accusers. Pointer v. Texas, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923. We cannot presume a waiver of these three important federal rights from a silent record.

395 U.S. at 243, 89 S. Ct. 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 the above conflict of interest of plea counsel in his application for post-conviction relief. (App. p. 58 – p. 60). At the evidentiary hearing, he explained that plea counsel wanted him to give a statement implicating Anthony Bell in the forgeries, but this would also implicate petitioner. There had also been a plea offer of five (5) years by the assistant solicitor. Petitioner said he refused and plea counsel told him he hoped he got the maximum on his charges. Plea counsel also told him he had worked for the Spartanburg Community Memorial Committee. (App. p. 74, line 12 – p. 77, line 7).

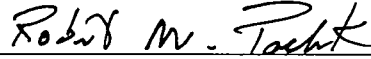
Petitioner said he was concerned about a conflict of interest since plea counsel had worked for the Committee. He wrote the circuit public defender, Clay Allen, Esquire, about his concerns. Mr. Allen wrote him back on this subject and stated he did not know if plea counsel was affiliated with the Committee, but there would be no conflict since plea counsel would not be a witness. The letter also indicated Andrea Price, Esquire, with the public defender's office would be handling petitioner's case. (App. p. 77, lines 9 – p. 80, line 1). At petitioner's plea, Ms. Price did not represent petitioner. Instead, plea counsel represented him and he told the court he had informed petitioner that he was the lawyer who helped set up the Committee and he was concerned about a conflict of interest. (App. p. 28, lines 6 – 19).

A conflict of interest does not just arise because an attorney representing a client may become a witness. A conflict also arises where an attorney owes duties to a party whose interests are adverse to the petitioner. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984); Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Petitioner has shown this by plea counsel's representation of the Committee who was a victim of the forgeries petitioner was charged with.

CONCLUSION

Petitioner's writ should be granted.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of June, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO SPARTANBURG COUNTY  
J. MARK HAYES, II, CIRCUIT COURT JUDGE

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JEFFREY EUGENE JETER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000215

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PETITION TO BE RELIEVED AS COUNSEL

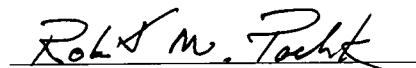
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Counsel for Jeffrey Eugene Jeter states:

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 November 9, 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 Jeffrey Eugene Jeter.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 28th day of June, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
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JEFFREY EUGENE JETER,

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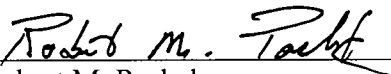
RESPONDENT

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CERTIFICATE OF SERVICE

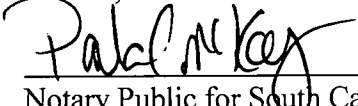
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Jeffrey Eugene Jeter, #131471, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 28th day of June, 2013.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 28th day  
of June, 2013.

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