

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

William Jeffrey Young, Circuit Court Judge

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JUL 18 2013

S.C. Supreme Court

CASIO M. RICHARDSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000872

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 failing to advise petitioner of the defense of self-defense?

STATEMENT

On March 11, 2010, petitioner appeared before the Honorable Clifton Newman in Lexington County and pled guilty to assault and battery with intent to kill and conspiracy. He was sentenced to respective sentences of thirteen (13) years and five (5) years. Casey Cornwell, Esquire, was plea counsel. Shawn Graham, Esquire, was the assistant solicitor. (App. p. 1 – p. 24).

Petitioner filed an application for post-conviction relief on October 22, 2010. (App. p. 26 – p. 31). Respondent filed a return dated December 30, 2010. (App. p. 32 – p. 36). An evidentiary hearing was held on August 13, 2012, before the Honorable W. Jeffrey Young. Petitioner was present and was represented by M. Brooks Biediger, Esquire. Respondent was represented by Kaelon E. May, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 37 – p. 67).

On March 13, 2013, Judge Young issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 74 – p. 81).

This petition follows.

ARGUMENT

Plea counsel was ineffective in failing to advise petitioner of the defense of self-defense.

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, it was alleged that plea counsel did not advise petitioner of the defenses he could have raised. Because he was unaware of those defenses, he ended up pleading guilty rather than going to trial. Thus, his guilty plea was not knowingly and intelligently entered. (App. p. 39, line 24 – p. 40, line 16). At the evidentiary hearing, petitioner said the victim was acting strange on the night of the shooting. He found out later that he was high on crack cocaine. The victim started using profane language towards him in a threatening manner. The victim went for a firearm. Petitioner said he pulled his firearm and shot the victim before he could shoot petitioner. When he shot him, he was in fear of his life. He believed he acted in self-defense when he shot the victim. (App. p. 42, line 11 – p. 43, line 22).

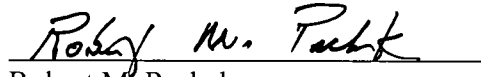
Petitioner said the first time he talked to plea counsel, counsel mentioned a plea bargain. He did not ask petitioner what was his side of the case. They did not talk about self-defense at all. Counsel did not advise him of anything other than pleading. (App. p. 44, lines 11 – 22). Petitioner said if he had known about raising self-defense, he would not have pled guilty. (App. p. 45, lines 15 – 17).

As can be seen from petitioner’s own testimony, plea counsel was ineffective in failing to advise petitioner of the defense of self-defense.

CONCLUSION

Petitioner's writ should be granted and his guilty plea should be vacated.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of July, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
WILLIAM JEFFREY YOUNG, CIRCUIT COURT JUDGE

CASIO M. RICHARDSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2013-000872

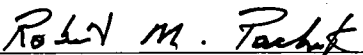
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Casio M. Richardson 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 August 13, 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 Casio M. Richardson.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of July, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

William Jeffrey Young, Circuit Court Judge

CASIO M. RICHARDSON,

PETITIONER,

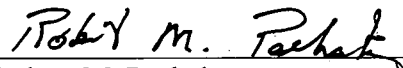
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

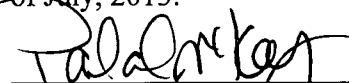
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on John Walt Whitmire, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Casio M. Richardson, #339735, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 18th day of July, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of July, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.