

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

John C. Hayes, III, Circuit Court Judge

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AUG 27 2013

S.C. Supreme Court

ANTONIO PATTERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001190

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel was ineffective in misadvising petitioner of his parole eligibility and that he would only have to serve two and one-half (2 ½) years in prison?

STATEMENT

On October 5, 2011, petitioner appeared before the Honorable Lee S. Alford in York County and pled guilty to distribution of cocaine base, second offense and distribution of crack cocaine within proximity of a school. He was sentenced to five (5) years on the cocaine base offense and to ten (10) years suspended upon service of five (5) years for the proximity of a school charge. Michael Matthews, Esquire, was plea counsel. E. B. Springs, Esquire, was the assistant solicitor. (App. p. 1 – p. 24).

Petitioner filed an application for post-conviction relief on June 18, 2012. (App. p. 26 – p. 32). Respondent filed a return dated August 22, 2012. (App. p. 33 – p. 38). An evidentiary hearing was held on May 15, 2013, before the Honorable John C. Hayes, III. Petitioner was present and was represented by Leah Moody, Esquire. Respondent was represented by J. Rutledge Johnson, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 39 – p. 65).

On May 16, 2013, Judge Hayes issued an order denying and dismissing the application for post-conviction relief. (App. p. 67 – p. 71).

This petition follows.

ARGUMENT

Plea counsel was ineffective in misadvising petitioner of his parole eligibility and that he would only have to serve two and one-half (2 ½) years in prison.

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

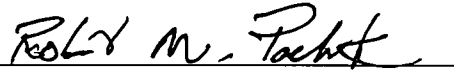
accusers. A valid waiver of these rights cannot be presumed from a silent record. 395 U.S. at 243, 89 S. Ct. at 1712. In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the court held that the “essence” of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure 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 testified at the evidentiary hearing that when he pled guilty, he asked plea counsel if he would have to serve 85%. Plea counsel told him no that he would only have to serve 2 ½ years. When petitioner got to the Department of Corrections, they told him he would have to serve 85%. (App. p. 45, lines 18 – 24). As previously noted, giving incorrect sentencing advice constitutes ineffective assistance of counsel. Hinson v. State; Ray v. State.

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 27th day of August, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY
JOHN C. HAYES, III, CIRCUIT COURT JUDGE

ANTONIO PATTERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2013-001190

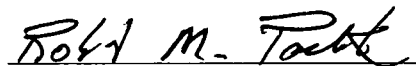
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antonio Patterson 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 15, 2013. 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 Antonio Patterson.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 27th day of August, 2013

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Certiorari to York County
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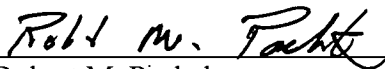
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STATE OF SOUTH CAROLINA,

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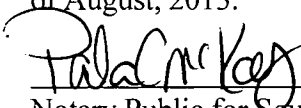
CERTIFICATE OF SERVICE

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 J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Antonio Patterson, #275449, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 27th day of August, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of August, 2013.


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