

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

EDMOND JEROME MAYES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001023

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
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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 incorrectly advising petitioner that the charges he was pleading guilty to were classified as non-violent and parole eligible?

STATEMENT

On February 8, 2011, petitioner appeared before the Honorable G. Edward Welmaker in Greenville County and pled guilty to resisting arrest with assault and trafficking in cocaine, second offense. Two concurrent ten (10) year terms of imprisonment were imposed. Scott D. Robinson, Esquire, was plea counsel. Julie J. Anders, Esquire, was the assistant solicitor. (App. p. 1 – p. 14).

Petitioner filed an application for post-conviction relief on April 18, 2011. (App. p. 16 – p. 39). Respondent filed a return dated June 22, 2011. (App. p. 40 – p. 45). An evidentiary hearing was held on February 13, 2013, before the Honorable William Jeffrey Young. Petitioner was present and was represented by Scarlet D. Moore, Esquire. Respondent was represented by Karen C. Ratigan, Assistant Attorney General. Petitioner and plea counsel testified, as did Larry H. Cooke, Esquire. (App. p. 47 – p. 86).

On March 15, 2013, Judge Young issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 88 – p. 95).

This petition follows.

ARGUMENT

Plea counsel was ineffective in incorrectly advising petitioner that the charges he was pleading guilty to were classified as non-violent and parole eligible.

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 plea counsel was ineffective in telling him that the charges he was pleading guilty to were non-violent and parolable offenses. (App. p. 22). At the evidentiary hearing, plea counsel testified that he had no independent recollection of telling petitioner about the charges being non-violent and parole eligible. He said as a rule, he does not know how the department of corrections is going to calculate things. (App. p. 57, lines 11 – 24; app. p. 58, line 24 – p. 59, line 10; app. p. 60, lines 1 – 13).

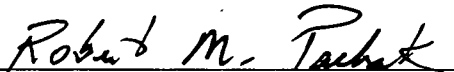
Petitioner testified that plea counsel told him that his sentence would be calculated as non-violent. Plea counsel told him this in person. (App. p. 82, line 9 – p. 83, line 12).

As can be seen from petitioner’s own testimony, plea counsel did not give petitioner correct advice about sentencing. Giving incorrect sentencing advice constitutes ineffective assistance of counsel. Hinson v. State, *supra*; Ray v. State, *supra*.

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 20th day of September, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
WILLIAM JEFFREY YOUNG, CIRCUIT COURT JUDGE

EDMOND JEROME MAYES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001023

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Edmond Jerome Mayes 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 February 13, 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 Edmond Jerome Mayes.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of September, 2013

STATE OF SOUTH CAROLINA
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Certiorari to Greenville County
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EDMOND JEROME MAYES,

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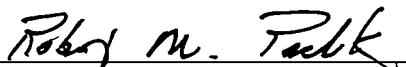
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STATE OF SOUTH CAROLINA,

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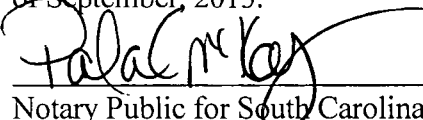
CERTIFICATE OF SERVICE

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 Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Edmond Jerome Mayes, #281710, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 20th day of September, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of September, 2013.


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