

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

\_\_\_\_\_  
Certiorari to Greenville County

FEB - 4 2014

D. Garrison Hill, Circuit Court Judge  
\_\_\_\_\_

S.C. Supreme Court

THOMAS GINISKI PIERCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001818  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX.....1

ISSUE PRESENTED .....2

STATEMENT .....3

ARGUMENT .....4

CONCLUSION .....6

PETITION TO BE RELIEVED AS COUNSEL.....7

ISSUE PRESENTED

Whether plea counsel was ineffective in giving petitioner incorrect sentencing advice?

## STATEMENT

On April 27, 2009, petitioner appeared before the Honorable Eugene C. Griffith in Greenville County and pled guilty to voluntary manslaughter. A twenty-four (24) year sentence was imposed by the Honorable Robin B. Stilwell on September 8, 2010. R. Mills Arial, Jr., Esquire, was plea counsel. Leigh B. Paoletti, Esquire, was the assistant solicitor. (App. p. 1 – p. 36).

Petitioner filed an application for post-conviction relief on August 3, 2011, and an amendment was filed on May 22, 2012. (App. p. 37 – p. 69). Respondent filed a return dated December 30, 2011. (App. p. 70 – p. 75). An evidentiary hearing was held on June 19, 2013, before the Honorable D. Garrison Hill. Petitioner was present and was represented by Brian P. Johnson, Esquire. Respondent was represented by Karen C. Ratigan, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 76 – p. 126). On August 1, 2013, Judge Hill issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 150 – p. 158).

This petition follows.

## ARGUMENT

### Plea counsel was ineffective in giving 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,

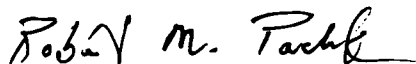
89 S. Ct. at 1712. In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the court held that the “essence” of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the States. In State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), the court 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 testified at the evidentiary hearing that plea counsel told him to go ahead and plead guilty and he would get him sentenced in front of Judge Griffith, who was a close friend of his. He was a golf buddy of his. Counsel said he would get him fifteen (15) years. But, Judge Griffith only took the plea. Sentencing was deferred about a year and Judge Stilwell sentenced him to twenty-four (24) years. As noted above, giving incorrect sentencing advice constitutes ineffective assistance of counsel. Hinson v. State; 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 4th day of February, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO GREENVILLE COUNTY  
D. GARRISON HILL, CIRCUIT COURT JUDGE

---

THOMAS GINISKI PIERCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001818

---

PETITION TO BE RELIEVED AS COUNSEL

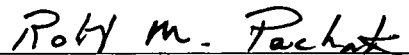
---

Counsel for Thomas Giniski Pierce 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 June 19, 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 Thomas Giniski Pierce.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 4th day of February, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Greenville County

D. Garrison Hill, Circuit Court Judge

---

THOMAS GINISKI PIERCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

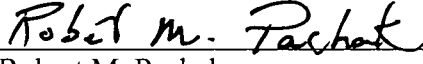
RESPONDENT

---

CERTIFICATE OF SERVICE

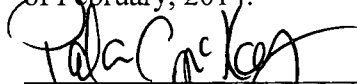
---

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 Thomas Giniski Pierce, #201290, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 4th day of February, 2014.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day  
of February, 2014.

  
\_\_\_\_\_(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.