

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

FEB 26 2014

S.C. Supreme Court

MELEIK LAMONT ROACH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001527

JOHNSON PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

ROBERT M. PACHAK
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel was ineffective in allowing petitioner to plead guilty to assault and battery of a high and aggravated nature (ABHAN) when he was not petitioner's counsel of record on that charge?

STATEMENT

Petitioner adopts the statement set forth in the petition for writ of certiorari dealing with the granting of this belated PCR appeal.

ARGUMENT

Plea counsel was ineffective in allowing petitioner to plead guilty to ABHAN when he was not petitioner's counsel of record on that charge.

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 pled guilty on September 8, 2009, to two (2) counts of armed robbery and one (1) count of ABHAN. Plea counsel, James Galmore, Esquire, represented petitioner at the plea. (App. p. 2, lines 1 – 8). On August 26, 2010, an application for post-conviction relief was filed alleging an involuntary guilty plea and ineffective assistance of counsel. (App. p. 19 – p. 25). At the evidentiary hearing, petitioner testified that William Monckton, III, Esquire, actually represented him on the ABHAN charge. He was not in the courtroom on the day of the plea. When petitioner’s mother contacted him, he told her he did not get notice of the court dates. (App. p. 34, lines 14 – 23). Petitioner had retained Mr. Monckton on that charge. (App. p. 35, lines 1 – 2). Petitioner said Galmore told him that if he did not plead guilty to the three charges that day, the assistant solicitor was going to take everything off the table and that he would get a life sentence. (App. p. 35, line 21 – p. 36, line 24).

Petitioner testified that Galmore did not have a file on the ABHAN charge. Monckton had all the information on that charge. Petitioner did not know of any substitution of counsel and he did not agree to Galmore taking over that case. He did not waive his right to have Monckton present. (App. p. 43, line 5 – p. 45, line 2).

Galmore testified that he was not the attorney of record on the ABHAN charge. He said the assistant solicitor wanted petitioner to plead to all three charges that day. They had discussed the

ABHAN charges a few times and he did have a file on that charge. He remembered petitioner wanting Monckton on the ABHAN charge and he told him if he did not plea to the charge, the plea offer would go away and he would face a trial on the armed robberies. (App. p. 53, line 25 – p. 55, line 14). Galmore testified that he was prepared to go to trial, but he did not want to because he thought they would lose and he did not want petitioner to get a more severe sentence. He explained this to petitioner. (App. p. 59, lines 4 – 10).

On cross-examination, Galmore said as a result of the plea, the following other charges were dismissed:

1 count, use of a vehicle without consent,
2 counts, possession of a weapon during a violent crime,
2 counts, forgery,
2 counts, bank fraud,
1 count, ABHAN

(App. p. 61, line 1 – p. 62, line 16).

Totally absent from petitioner's guilty plea transcript is any mention by Gilmore, as an officer of the court, that he was not counsel of record on the ABHAN charge and that petitioner was represented by another attorney on that charge. Galmore should have informed the plea court of this fact. It would have prevented a collateral proceeding such as this one. This was where he was ineffective. His failure to advise the court that he was not counsel of record deprived petitioner of his right to counsel on the ABHAN charge.

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 26th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO HORRY COUNTY
LARRY B. HYMAN, JR., CIRCUIT COURT JUDGE

MELEIK LAMONT ROACH,

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V.

STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2013-001527

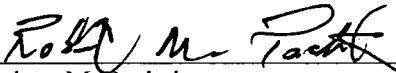
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Meleik Lamont Roach 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 April 24, 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 Meleik Lamont Roach.

Respectfully submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 26th day of February, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
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MELEIK LAMONT ROACH,

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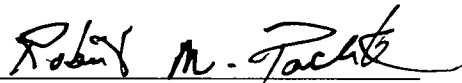
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

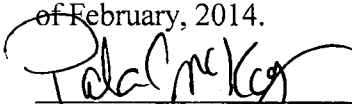
I certify that a true copy of the Johnson petition for writ of certiorari pursuant to Austin v. State and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Meleik Lamont Roach, #336878, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 26th day of February, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 26th day
of February, 2014.



_____ (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.