

2011 - 188054

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Edgar Dickson, Circuit Court Judge

CURTIS BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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

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ISSUE PRESENTED

- I. Whether there was any evidence to support the PCR judge's finding that petitioner was entitled to a belated appeal of his guilty plea?
- II. Whether plea counsel was ineffective in misadvising petitioner as to the sentence he would receive if he pled guilty?

STATEMENT

On June 12, 2007, petitioner appeared before the Honorable Diane S. Goodstein in Dorchester County and pled guilty to armed robbery. A fifteen (15) year sentence was imposed. Marva Hardee-Thomas was plea counsel.

Petitioner filed an application for post-conviction relief on June 12, 2008. An evidentiary hearing was held on December 10, 2009, before the Honorable Edgar Dickson. Petitioner was present and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Mary S. Williams, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing.

On March 1, 2011, Judge Dickson issued an order denying and dismissing petitioner's application for post-conviction relief. He did, however, grant petitioner a belated appeal of his guilty plea pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). This issue will be addressed in this petition along with any other issue which may have been raised. A separate brief will be filed addressing any direct appeal issues.

ARGUMENT I

There was evidence to support the PCR judge's finding that petitioner was entitled to a belated appeal of his guilty plea.

Petitioner alleged in his PCR application that plea counsel failed to advise him of his right to appeal or to consult with him about his desire to appeal. (App. p. 40). At the evidentiary hearing, petitioner testified that trial counsel failed to challenge his sentencing and that precluded him from being able to raise the issue on appeal which he requested after the plea. A letter was also sent to counsel and his parents tried to contact her to see if she had filed an appeal. They got no response. (App. p. 58, lines 1-9; app. p. 62, line 22 – p. 63, line 12).

Plea counsel testified that she had no recollection as to whether or not petitioner asked for an appeal. (App. p. 72, lines 18-21).

The PCR judge found that because petitioner requested an appeal and counsel was uncertain as to whether a request was made, petitioner did not knowingly and voluntarily waive his right to a direct appeal. Petitioner was therefore, entitled to a belated appeal. (App. p. 93 – p. 94).

This Court has repeatedly held that it must uphold the findings of the PCR judge if there is any evidence of probative value to support them. Roberts v. State, 361 S.C. 1, 602 S.E.2d 768 (2004); Caprood v. State, 335 S.C. 103, 525 S.E.2d 514 (2000); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986); Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985); Daniel v. State, 282 S.C. 155, 317 S.E.2d 746 (1984); Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984).

ARGUMENT II

Plea counsel was ineffective in misadvising petitioner as to the sentence he would receive if he pled guilty.

To prove ineffective assistance of counsel under the Sixth Amendment to the United States Constitution a defendant must show that counsel's advice was not within the range of competence of attorneys in criminal cases and 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, 56, 106 S.Ct. 366 (1985). Incorrect advice as to sentencing has been held to constitute ineffective assistance of counsel. 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).

Petitioner testified at the evidentiary hearing that when he pled guilty he thought he was going to receive a ten (10) year sentence. (App. p. 53, lines 20-24). He said there was a negotiated plea for ten (10) years. He even had a letter from the solicitor offering the ten (10) year sentence. (App. p. 54, lines 1-13; app. p. 42). Petitioner has by his own testimony shown that he received ineffective assistance of counsel from the incorrect sentencing advice he was given.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of July, 2011.

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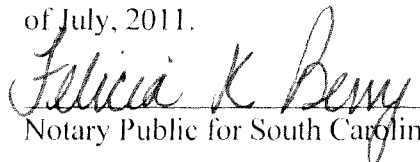
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Mary S. Williams, Esquire this 14th day of July, 2011.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of July, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.