

2011-187272

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Roger L. Couch, Special Circuit Court Judge

JAMES KEITH GRINDLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether defense counsel was ineffective in failing to call witnesses?

STATEMENT

Petitioner was convicted of criminal sexual conduct with a minor in the first degree after a jury trial held before the Honorable J. Mark Hayes, II on December 6, 2008, in Cherokee County. A sentence of thirty (30) years was imposed. Trent N. Pruett, Esquire was trial counsel.

Petitioner appealed his conviction and it was affirmed by the Court of Appeals on November 10, 2008. State v. Grindle, Op. No. 2008-UP-618.

Petitioner filed an application for post-conviction relief on December 5, 2008. An evidentiary hearing was held on January 14, 2010, before the Honorable Roger L. Couch. Petitioner was present and was represented by Sheryl C. Bland, Esquire. Respondent was represented by Suzanne H. White, Assistant Attorney General. Petitioner testified in his own behalf and presented the testimony of Charlene Grindle, his mother. Trent N. Pruett testified in respondent's behalf. A disposition of Deborah Howard was also submitted to the court.

On February 10, 2011, Judge Couch issued an order denying and dismissing petitioner's application for post-conviction relief.

This petition follows.

ARGUMENT

Defense counsel was ineffective in failing to call witnesses.

Petitioner testified at the evidentiary hearing that defense counsel failed to call Debbie and Scott Howard as witnesses. They would have testified that the victim and his mother were living in North Carolina during the time frame petitioner was accused of criminal sexual conduct in South Carolina. (App. p. 432, lines 1-22). The mother and the victim moved to North Carolina around March 21, 2003. The mother was never called as a witness. (App. p. 438, line 8 – p. 439, line 6).

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 prejudice by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court has previously ruled that it constitutes ineffective assistance of counsel for failing to call witnesses. Grier v. State, 299 S.C. 321, 384 S.E.2d 722 (1989); contra, Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

CONCLUSION

Petitioner's writ should be granted and his conviction should be reversed.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of June, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County
Roger L. Couch, Special Circuit Court Judge

JAMES KEITH GRINDLE,

PETITIONER,

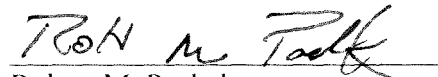
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

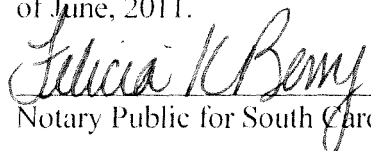
CERTIFICATE OF SERVICE

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 Suzanne H. White, Esquire this 7th day of June, 2011.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of June, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.