

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenwood County

Thomas A. Russo, Circuit Court Judge  
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S.C. Supreme Court

OTIS BLAND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002622  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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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 trial counsel was ineffective when he failed to subject the State's case to meaningful adversarial testing?

## STATEMENT

Petitioner was convicted of attempted armed robbery, attempted burglary in the first degree and possession of a weapon after a jury trial held before the Honorable W. Jeff Young on May 18 – 19, 2010, in Greenwood County. Respective sentences of twenty (20) years, twenty (20) years, and five (5) consecutive years were imposed. Lance Sheek, Esquire, was trial counsel. Patricia Bolen, Esquire, and Demetrios G. Andrews, Esquire, were the attorneys for the State. (App. p. 1 – p. 291).

Petitioner appealed his convictions and they were affirmed by the Court of Appeals on July 18, 2012. State v. Bland, 399 S.C. 220, 730 S.E.2d 909 (2012).

Petitioner filed an application for post-conviction relief on February 5, 2013. (App. p. 292 – p. 298). Respondent filed a return dated May 8, 2013. (App. p. 299 – p. 304). An evidentiary hearing was held on October 31, 2013, before the Honorable Thomas A. Russo. Petitioner was present and was represented by Joshua S. Nasrollahi, Esquire. Respondent was represented by J. Rutledge Johnson, Assistant Attorney General. Petitioner testified in his own behalf and presented the testimony of Deidre Bland. Trial counsel testified in respondent's behalf. (App. p. 305 – p. 359). On November 12, 2013, Judge Russo issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 360 – p. 369).

This petition follows.

## ARGUMENT

Trial counsel was ineffective when he failed to subject the State's case to meaningful adversarial testing.

Petitioner testified at the evidentiary hearing that trial counsel was appointed to represent him. (App. p. 310, lines 16 – 18). The following exchange took place between PCR counsel and petitioner with respect to trial.

Q. Okay. Before going in front of the judge, did you ever meet with Mr. Sheek?

A. No, sir.

Q. Okay. Did Mr. Sheek ever communicate with you about your charges?

A. No, sir.

Q. Okay. Did he ever send you any discovery material?

A. No.

Q. Okay. Prior to trial, did you have the opportunity in any other way to review the discovery material in your case?

A. No.

Q. Okay. Did you ever read the incident report in this case or ---

A. No, sir.

Q. Okay. Now, taking a step back, around the time that you were arrested on these charges, did you give a statement to law enforcement?

A. Yes, sir.

Q. Okay. Do you recall giving that statement to law enforcement?

A. Yes, sir.

Q. Okay. Who wrote that statement?

A. Me.

Q. Okay. Now, did you ever discuss that statement with Mr. Sheek?

A. No, sir.

Q. Okay. Did Mr. Sheek ever explain to you the ramifications of that written statement?

A. You said – would you repeat yourself?

Q. Did he ever explain to you what the consequences of your statement to law enforcement was?

A. No, sir.

Q. Okay. Did any of your codefendants in your case give a – a statement to law enforcement?

A. Yes, sir.

(App. p. 312, line 4 – p. 313, line 14).

Q. Okay. Did you and Mr. Sheek ever discuss the potential testimony of your codefendants?

A. No, sir.

Q. Okay. Did he ever explain to you what the consequences of their testimony against you would be?

A. No, sir.

Q. Okay. Let me take another step back. How far did you go in school?

- A. To the tenth grade.
- Q. Did you complete the tenth grade?
- A. No, sir.
- Q. Okay. While you were in school, what kind of classes were you in?
- A. Learning disability.
- Q. Okay. Do you have a learning disability?
- A. Yes, sir.
- Q. Okay. What is your learning disability?
- A. I'm not sure.
- Q. Okay. How long were you in special education classes?
- A. All I can remember.
- Q. Okay. Did you ever discuss the fact that you were in special education classes with Mr. Sheek?
- A. Yes, sir.
- Q. Okay. Did he ever advise you as to how that could impact your case?
- A. No, sir.

(App. p. 315, line 11 – p. 316, line 11).

As can be seen from petitioner's testimony, defense counsel was deficient in many respects. In Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) this Court observed how prejudice may be presumed in the context of ineffective assistance of counsel:

The Supreme Court also recognized in both Strickland and Cronic that in certain circumstances "prejudice is presumed" because prejudice "is so likely that case-by-case inquiry...is not worth the cost." Strickland, 466 U.S. at 692, 104 S.Ct. 2052 (citing Cronic,

466 U.S. at 658, 104 S.Ct. 2039). In \*552 Cronic, the Court identified three distinct situations in which a presumption of prejudice is appropriate. First, prejudice is presumed when the defendant is completely denied counsel “at a critical stage of his trial.” Cronic, 466 U.S. at 659, 104 S.Ct. 2039. Second, per-se prejudice occurs if there has been a constructive denial of counsel. This happens when a lawyer “entirely fails to subject the prosecution’s case to meaningful adversarial testing,” thus making “the adversary process itself presumptively unreliable.” *Id.* Third, the Court identified certain instances “when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.” *Id.* (citing Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932)). A finding of per-se prejudice under any of these three prongs is “an extremely high showing for a criminal defendant to make.” Brown v. French, 147 F.3d 307, 313 (4<sup>th</sup> Cir. 1998).

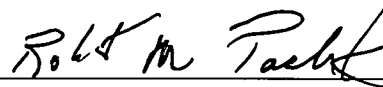
367 S.C. at 551-552, 626 S.E.2d at 880.

Trial counsel in this case was ineffective because he failed to subject the State’s case to any meaningful adversarial testing.

CONCLUSION

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

Respectfully submitted,

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

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of April, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENWOOD COUNTY  
THOMAS A. RUSSO, CIRCUIT COURT JUDGE

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OTIS BLAND,

PETITIONER,

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002622

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PETITION TO BE RELIEVED AS COUNSEL

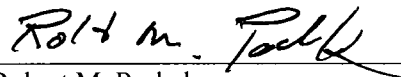
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Counsel for Otis Bland states:

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 October 31, 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 Otis Bland.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 17th day of April, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenwood County  
Thomas A. Russo, Circuit Court Judge

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OTIS BLAND,

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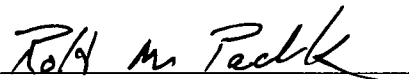
APPELLATE CASE NO. 2013-002622

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CERTIFICATE OF SERVICE

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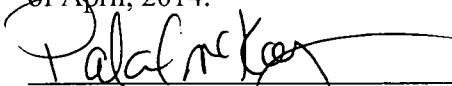
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Otis Bland, #340910, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 17th day of April, 2014.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day  
of April, 2014.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: July 24, 2022.