

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 28 2014

Certiorari to Florence County
William H. Seals, Jr., Circuit Court Judge

S.C. Supreme Court

JAMIE B. GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 201~~4~~⁴-000026

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether defense counsel was ineffective in failing to investigate?

STATEMENT

On August 2, 2012, petitioner appeared before the Honorable Michael G. Nettles in Florence County and pled guilty to two (2) counts of felony driving under the influence resulting in death and one (1) count of felony driving under the influence resulting in great bodily injury. Twelve (12) year sentences were imposed on each charge. Henry M. Anderson, Jr., Esquire, was plea counsel. Todd Tucker, Esquire, was the assistant solicitor. (App. p. 1 – p. 34).

Petitioner filed an application for post-conviction relief on November 12, 2012, and an amended application on January 7, 2013. (App. p. 35 – p. 47). Respondent filed a return dated February 7, 2013. (App. p. 48 – p. 52). An evidentiary hearing was held on October 7, 2013, before the Honorable William H. Seals, Jr. Petitioner was present and was represented by Robert T. King, Esquire. Respondent was represented by Joshua Thomas, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 53 – p. 83). On November 25, 2013, Judge Seals issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 84 – p. 92).

This petition follows.

ARGUMENT

Defense counsel was ineffective in failing to investigate petitioner's case.

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 defense counsel failed to talk to any corroborating witnesses on his behalf. He did not spend enough time on the case. He got the case in June and petitioner pled on August 2. Petitioner said he gave counsel the names of two witnesses who could testify in his behalf. They were Lafayette Bradford and Robin Green. Counsel never indicated that he spoke with either witness. There was never any discussion about an autopsy report on the cause of death of one of the victims, Melissa Harrold. That issue was not investigated. There was a husband and wife who had gotten into a big fight on the night of the accident and that also was not investigated. (App. p. 61, line 4 – p. 63, line 20). A weather report on the night of the accident said that the roads had ice on them, but the state trooper’s report said the roads were dry. Counsel never advised petitioner that he discussed or retained an accident reconstruction expert. (App. p. 65, line 5 – p. 66, line 8).

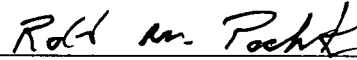
In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Court held a defense attorney ineffective for failing to investigate. The Court noted that “at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” 372 S.C. at 331, 642 S.E.2d at 597, quoting Troedel v. Wainwright, 667 F.Supp. 1456, 1461 (S.D. Fla. 1986) (emphasis in original).

Defense counsel in petitioner’s case should also be held ineffective for failing to investigate.

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 28th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO FLORENCE COUNTY
WILLIAM H. SEALS, JR., CIRCUIT COURT JUDGE

JAMIE B. GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000026

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamie B. Green 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 7, 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 Jamie B. Green.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 28th day of April, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
William H. Seals, Jr., Circuit Court Judge

JAMIE B. GREEN,

PETITIONER,

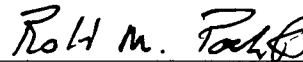
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

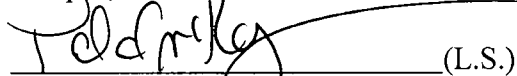
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Jamie B. Green, #229373, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 28th day of April, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 28th day
of April, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.