

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

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S.C. Supreme Court

JOHN ALLEN HAGOOD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000480

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether defense counsel was ineffective in failing to adequately convey the dangers of proceeding to trial with an automatic life without parole sentence should he be found guilty as opposed to accepting a guilty plea offer with a sentence of twenty-five (25) years?

STATEMENT

Petitioner was convicted of first degree burglary and grand larceny, third or greater property offense after a jury trial held before the Honorable C. Victor Pyle, Jr., on February 9, 2011, in Greenville County. Respective sentences of life imprisonment without parole and ten (10) years were imposed. Amanda Lackland, Esquire, was trial counsel. Lauren Price, Esquire, and Sloan Ellis, Esquire, were the assistant solicitors. (App. p. 1 – p. 224). Petitioner appealed his convictions and they were affirmed by the Court of Appeals on July 11, 2012. State v. Hagood, Op.No. 2012-UP-407.

Petitioner filed an application for post-conviction relief on August 29, 2012. (App. p. 225 – p. 232). Respondent filed a return dated March 28, 2013. (App. p. 233 – p. 237). An evidentiary hearing was held on December 17, 2013, before the Honorable G. Edward Welmaker. Petitioner was present and was represented by Caroline Horlbeck, Esquire. Respondent was represented by Karen Ratigan, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. (App. p. 238 – p. 264). On January 30, 2014, Judge Welmaker issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 265 – p. 273).

This petition follows.

ARGUMENT

Defense counsel was ineffective in failing to adequately convey the dangers of proceeding to trial with an automatic life without parole sentence should he be found guilty as opposed to accepting a guilty plea offer with a sentence of twenty-five (25) years.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution 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). 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). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995). Trial counsel can be found ineffective for failing to object to an improper jury instruction or in failing to request a jury instruction that should have been given. He can be held ineffective for failing to object to the improper admission of character evidence, or prior bad acts, or illegally obtained statements, confessions, or improper searches. Failing to move for a continuance may also constitute ineffective assistance of counsel. Morris v. State, 371 S.C. 278, 639 S.E.2d 53 (2006).

The assistant solicitor advised the trial court at the beginning of the case that the case was a life without parole situation and that the defendant had been served with notice. (App. p. 12, line 23 – p. 13, line 1).

Petitioner testified at the evidentiary hearing that he had very limited reading and writing abilities. (App. p. 246, lines 21 – 24). He said the State offered him a twenty-five (25) year plea for something he didn't do. (App. p. 250, lines 19 – 23).

Defense counsel testified that she discussed the 25-year plea offer with petitioner. He did not want to take the offer. She did explain to him that, if he were found guilty at a trial, he would be sentenced to life imprisonment without the possibility of parole. (App. p. 258, line 22 – p. 259, line 19).

Totally absent from defense counsel's testimony was any indication of whether she went over the strength of State's case with petitioner and the dangers of proceeding to trial. In Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985), the Court wrote:

The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S.Ct. 160, 164, 27 L.Ed.2d 162 (1970); see *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969); *Machibroda v. United States*, 368 U.S. 487, 493, 82 S.Ct. 510, 513, 7 L.Ed.2d 473 (1962).

474 U.S. at 56, 106 S.Ct. at 369.

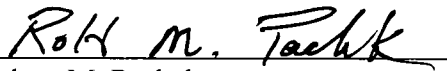
Was petitioner in this case informed enough to know to reject the 25-year plea offer? This Court has previously held that the Sixth Amendment right to the effective assistance of counsel applies to what happens during the plea bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). The Supreme Court of the United States recently decided the case of Lafler v. Cooper, __U.S.__, 132 S.Ct. 1376 (2012), which held that the petitioner in that case was prejudiced by counsel's deficient performance in advising that petitioner to reject a plea offer and go to trial. The Court also wrote that the Sixth Amendment requires the effective assistance of counsel and that "constitutional guarantee applies to pretrial critical stages

that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice." __U.S.__, 132 S.Ct. at 1385 (emphasis supplied).

CONCLUSION

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

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of July, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
G. EDWARD WELMAKER, CIRCUIT COURT JUDGE

JOHN ALLEN HAGOOD,

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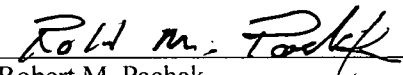
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Allen Hagood 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 December 17, 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 John Allen Hagood.

Respectfully submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of July, 2014

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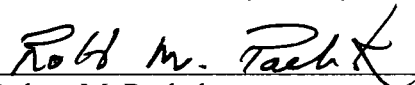
STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

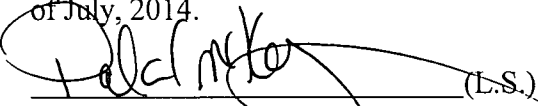
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and John Allen Hagood, #123067, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 8th day of July, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of July, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.