

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Chester County

Brian M. Gibbons, Circuit Court Judge

KEITH RAMON KEENER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000510

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel was ineffective for failing to investigate?

STATEMENT

On June 18, 2012, petitioner appeared before the Honorable Brooks P. Goldsmith in Chester County and pled guilty to voluntary manslaughter, possession of a firearm, and carrying a pistol. Respective sentences of twenty-seven (27) years, five (5) years, and one (1) year were imposed. Michael Lifsey, Esquire, was plea counsel. Doug Barfield was the solicitor. (App. p. 1 – p. 51).

Petitioner filed an application for post-conviction relief on November 2, 2012. (App. p. 52 – p. 59). Respondent filed a return dated November 12, 2013. (App. p. 60 – p. 65). On February 3, 2014, an evidentiary hearing was held before the Honorable Brian P. Gibbons. Petitioner was present and was represented by Vanessa Cason, Esquire. Respondent was represented by Mary S. Williams, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 66 – p. 88). On February 23, 2014, Judge Gibbons issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 89 – p. 95).

This petition follows.

ARGUMENT

Plea counsel was ineffective for failing to investigate.

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.

Petitioner testified at the evidentiary hearing in this case that he received statements that different witnesses had made, but one was only a partial statement. He did not get the rest of that statement until the week of his trial. His attorney did not discuss this with him. (App. p. 72, lines 12 – 22). There was a statement by one witness who said she was 65% sure that it was petitioner who pointed the gun. Petitioner said 65% was no good, it had to be 100%. He did not think his attorney ever interviewed this witness. If they had gone to trial, they could have impeached this witness with her statement since she was only 65% sure. (App. p. 73, line 2 – p. 74, line 2).

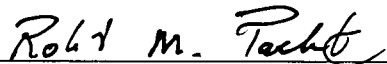
Deputy Faile did a lineup of petitioner, but it said on the front of the lineup that he could identify petitioner as the shooter. In his statement, however, he said he knew petitioner from an earlier incident. (App. p. 74, lines 3 – 22).

If plea counsel could have better investigated the statements, petitioner would not have pled guilty, but would have gone to trial. (App. p. 76, lines 17 – 18).

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 18th day of July, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHESTER COUNTY
BRIAN M. GIBBONS, CIRCUIT COURT JUDGE

KEITH RAMON KEENER,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000510

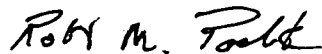
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Keith Ramon Keener 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 February 3, 2014. 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 Keith Ramon Keener.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of July, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Chester County
Brian M. Gibbons, Circuit Court Judge

KEITH RAMON KEENER,

PETITIONER,

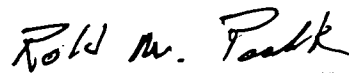
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

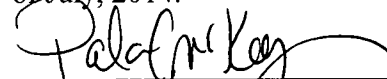
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Keith Ramon Keener, #321935, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 18th day of July, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of July, 2014.

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