

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

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SEP 15 2014

S.C. Supreme Court

DARNELL HUDSON

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000407

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

INDEX

INDEX 1

ISSUE PRESENTED 2

STATEMENT 3

ARGUMENT 4

CONCLUSION 6

ISSUE PRESENTED

Whether the PCR court erred in allowing petitioner to proceed pro se when it did not advise him of his right to counsel and the dangers and disadvantages of self-representation?

STATEMENT

On October 26, 1995, petitioner appeared before the Honorable Marc Westbrook in Greenville County and pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced under the Youthful Offender Act to concurrent terms not to exceed six (6) years for armed robbery and not to exceed six (6) years suspended to five (5) years' probation for ABHAN. He was represented by Hal W. Roach, Esquire. (App. p. 42).

Petitioner filed an application for post-conviction relief on February 19, 2013. (App. p. 1 – 7). Respondent filed a return and motion to dismiss on August 5, 2013. Respondent argued that petitioner's application should be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10, et. seq. (2003). (App. p. 42 – p. 46). On August 8, 2013, the Honorable D. Garrison Hill issued a conditional order of dismissal giving petitioner twenty (20) days to show why the order should not become final. (App. p. 47 – p. 49). Petitioner responded to the conditional order of dismissal. (App. p. 51 – p. 73).

An evidentiary hearing was held on December 19, 2013, before the Honorable G. Edward Welmaker. Petitioner was present and represented himself. Respondent was represented by Karen Ratigan, Assistant Attorney General. (App. p. 74 – p. 96). On January 22, 2014, Judge Welmaker issued an order denying and dismissing petitioner's application for post-conviction relief.

ARGUMENT

The PCR court erred in allowing petitioner to proceed pro se when it did not advise him of his right to counsel and the dangers and disadvantages of self-representation.

The following was the dialog on petitioner's right to counsel:

MS. RATIGAN: So we would argue that the entire matter should be dismissed because it's untimely and Mr. Hudson does not have counsel, so he'll be arguing for himself today.

THE COURT: All right. Mr. Hudson, be glad to hear from you.

MR. HUDSON: Hey, how you doing? All right.

(App. p. 78, lines 15 – 20).

The PCR court never advised petitioner of his right to counsel or the dangers and disadvantages of self-representation.

Rule 71.1(d), SCRPC, provides:

If, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent....

In Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992), the court wrote:

In our view, the plain and unambiguous language of Rule 71.1(d) mandates the appointment of counsel for indigent PCR applicants whenever a PCR hearing is held to determine questions of law or fact. Therefore, we hold that when a PCR application is not dismissed *before* a hearing is held, the PCR judge must appoint counsel or obtain a knowing and intelligent waiver of that right by the applicant. To establish a valid waiver of the right to counsel, the PCR applicant must be made aware of the right to counsel and the dangers of self-representation. *See. e.g., Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990).

In Prince v. State cited above, the court held that in the absence of a specific inquiry by the judge addressing the disadvantages of a pro se defense, the Supreme Court, in determining whether

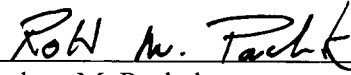
there was a valid waiver of counsel, will look to the record to determine whether petitioner had sufficient background or was appraised of his rights by some other source. In that case, the Court found that the defendant was not sufficiently aware of the dangers of self-representation to make an informed decision to proceed pro se, where the defendant was mentally disturbed and exhibited little understanding of criminal proceedings. As a result, the order dismissing Whitehead's PCR application was reversed and the case was remanded for a new PCR hearing.

Because the PCR court failed to advise petitioner of both the right to counsel and the dangers and disadvantages of self-representation, and because it cannot be determined from the record that petitioner had a sufficient background or was appraised of his rights by some other source, the order of dismissal should be reversed and his case should be remanded for a new PCR hearing with the appointment of counsel.

CONCLUSION

Petitioner's writ should be granted.

Respectfully submitted,

Handwritten signature of Robert M. Pachak in black ink, written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

DARNELL HUDSON

PETITIONER,

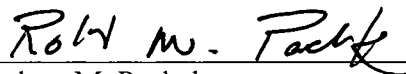
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

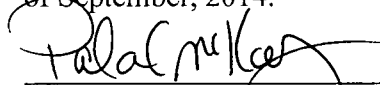
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of September, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day
of September, 2014.

 (L.S.)

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