

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County

R. Markley Dennis, Jr., Circuit Court Judge  
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S.C. Supreme Court

THOMPSON WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001776  
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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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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 in failing to pursue immunity under the Protection of Persons and Property Act?

## STATEMENT

On February 14, 2012, petitioner appeared before the Honorable Thomas L. Hughston, Jr., in Charleston County and pled guilty to voluntary manslaughter. A twelve (12) year sentence was imposed. Petitioner's sentence was amended to ten (10) years by order dated February 11, 2013. Andrew Savage, Esquire, was plea counsel. (App. p. 1 – p. 24; app. p. 99 – p. 100).

Petitioner filed an application for post-conviction relief on July 16, 2013. (App. p. 30 – p. 37). Respondent filed a return dated December 3, 2013. (App. p. 38 – p. 43). An evidentiary hearing was held on April 16, 2014, before the Honorable R. Markley Dennis. Petitioner was present and was represented by Rodney Davis, Esquire. Respondent was represented by Ashleigh Wilson, Esquire. Both petitioner and plea counsel testified at the hearing. (App. p. 44 – p. 87). On July 10, 2014, Judge Dennis issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 105 – p. 114).

This petition follows.

## ARGUMENT

Plea counsel was ineffective in failing to pursue immunity under the Protection of Persons and Property Act.

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 prejudice 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, hearsay, 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). Failing to properly investigate may lead to a claim of ineffective assistance of counsel. Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009). And counsel may be alleged ineffective for failing to fully cross-examine a witness. State v. Nance, 393 S.C. 289, 712 S.E. 2d 446(2011); Kirkpatrick v. State, 306 S.C. 359, 412 S.E. 2d 389(1991).

In this case, petitioner testified at the evidentiary hearing that there had been an altercation prior to the shooting. Some people had approached him at his residence and beat him up. A couple of minutes later, petitioner shot the victim. Petitioner said he could not recall plea counsel telling him about the defense of persons and property statute or the immunity defense statute or stand-your-ground. If he had a better understanding of that defense, he would not have pled guilty. (App. p. 54, line 3 – p. 55, line 22).

S.C. Code § 16-11-440 is entitled, “Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business.” Subsection A provides the following:

(A) A person is presumed to have a reasonable fear of imminent peril or death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

Subsection C provides:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

As can be seen from the above statute, plea counsel was ineffective in failing to pursue immunity.

CONCLUSION

Petitioner's writ should be granted and his guilty plea should be vacated.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of October, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHARLESTON COUNTY  
R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

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THOMPSON WHITE,

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PETITION TO BE RELIEVED AS COUNSEL

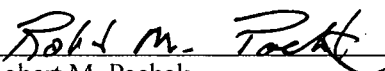
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Counsel for Thompson White states:

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 April 16, 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 Thompson White.

Respectfully submitted,

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 1st day of October, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County  
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THOMPSON WHITE,

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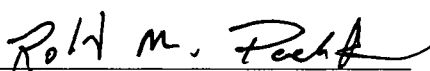
APPELLATE CASE NO. 2014-001776

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CERTIFICATE OF SERVICE

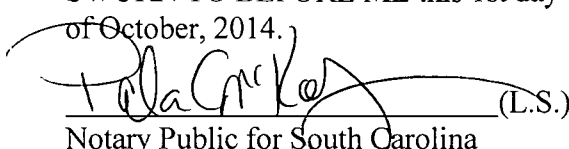
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Thompson White, #349723, at Macdougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472 this 1st day of October, 2014.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day  
of October, 2014.)

  
(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.