

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Stephanie P. McDonald, Circuit Court Judge

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S.C. Supreme Court

STERLING DEVONTE BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000952

JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
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 rendered ineffective assistance in derogation of petitioner's Sixth Amendment right to counsel by failing to investigate and explain potential defenses, rendering petitioner's guilty plea unknowing and involuntary?

STATEMENT

On August 5, 2009, a Berkeley County grand jury indicted petitioner for armed robbery. App. 78. On May 16, 2011, petitioner pled guilty before the Honorable R. Markley Dennis, Jr. App. 1. Andre Dejeu represented the State. App. 1. Mitch Lanier represented petitioner. App. 1. Judge Dennis accepted the plea. App. 9, ll. 5 – 7. The court sentenced petitioner to ten years' imprisonment. App. 13, ll. 7 – 15. Petitioner did not appeal.

On January 23, 2012, petitioner filed a PCR application. App. 15. On February 27, 2012, petitioner filed an amendment to his PCR application. App. 24. On November 20, 2013, a hearing was held before the Honorable Stephanie P. McDonald. App. 36. Pamela J. Polzin represented petitioner. App. 36. Ashleigh R. Wilson represented the State. App. 36. Judge McDonald denied petitioner's application from the bench and asked the State to submit a proposed order. App. 62, l. 7 – 63, l. 6. On March 26, 2014, the court's Order of Dismissal was filed. App. 62. This petition follows.

ARGUMENT

Plea counsel rendered ineffective assistance in derogation of petitioner's Sixth Amendment right to counsel by failing to investigate and explain potential defenses, rendering petitioner's guilty plea unknowing and involuntary.

The PCR court erred in holding petitioner could not prove deficient performance or prejudice under the two-pronged approach of Strickland v. Washington, 466 U.S. 668 (1984). Petitioner's guilty plea was unknowing and unintelligent because his attorney failed to investigate the facts of his case and advise him of potential defenses. "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." Hill v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted). The Supreme Court has "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under Strickland." Id. at 1481 (quoting Strickland v. Washington, 466 U.S. 668, 689 (1984)).

Plea counsel failed to properly investigate the case and advise petitioner. Plea counsel never showed petitioner his discovery. App. 52, l. 23 – 53, l. 2. He only saw petitioner approximately 2-4 times. App. 52, ll. 20 – 22. Petitioner described his meetings with plea counsel as "more silence than anything." App. 53, ll. 7 – 17. Plea counsel would shuffle papers and ask petitioner how to pronounce his co-defendants' names. App. 53, ll. 7 – 17. When asked whether plea counsel ever explained potential defenses to him, petitioner responded, "Kind of, but not

really.” App. 53, ll. 21 – 22. Petitioner stated that plea counsel “didn’t really look into the fact that they didn’t have no type of evidence, because he—all he had was hearsay from the co-defendants.” App. 50, ll. 2 – 10. This lack of investigation was constitutionally deficient. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Petitioner felt strong-armed into accepting the plea deal. App. 46, ll. 5 – 23. He described his decision to plead guilty as “more of a coercion.” App. 46, ll. 5 – 23. Petitioner was inexperienced with the legal process. App. 46, ll. 5 – 23. Plea counsel told him “either you can take the plea and take this 10, or you are going to get 30.” App. 46, ll. 5 – 23.

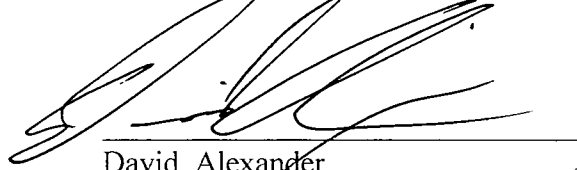
This Court has found counsel ineffective in similar situations for failing to investigate. In Martinez v. State, 304 S.C. 39, 41, 403 S.E.2d 113, 113-14 (1991), this court held trial counsel ineffective for failing to subpoena a witness who could have testified favorably for the defense. In Pauling v. State, 331 S.C. 606, 610, 503 S.E.2d 468, 470-71 (1998), trial counsel was held ineffective for failing to call a triage nurse in a rape case. This Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant’s trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. This Court found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

Plea counsel’s failure to investigate and failure to advise petitioner regarding potential defenses constitutes deficient performance that prejudiced petitioner under Strickland. Had plea counsel not rendered ineffective assistance, petitioner would not have pled guilty. App. 39, ll. 6 – 21. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari with the ultimate relief of allowing petitioner to withdraw his guilty plea.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO BERKELEY COUNTY
STEPHANIE P. MCDONALD, CIRCUIT COURT JUDGE

STERLING DEVONTE BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

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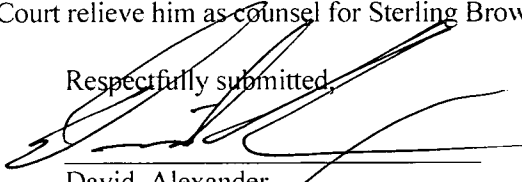
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sterling Brown 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 November 20, 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 Sterling Brown.

Respectfully submitted,



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 9th day of October, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Stephanie P. McDonald, Circuit Court Judge

STERLING DEVONTE BROWN,

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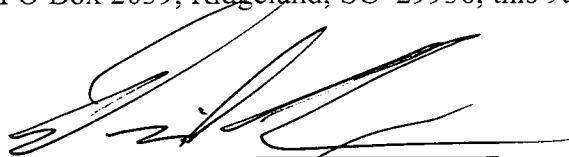
V.

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 Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Sterling D. Brown, #346227, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 9th day of October, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9th day
of October, 2014.

Marie Perreault (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.