

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lancaster County  
William Jeffrey Young, Circuit Court Judge  
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DEC 5 2014

S.C. Supreme Court

AARON J. DONALDSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002108  
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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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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 in failing to investigate?

## STATEMENT

On April 15, 2013, petitioner appeared before the Honorable J. Ernest Kinard, Jr., in Lancaster County and pled guilty to armed robbery. A ten (10) year sentence was imposed. William P. Frick, Esquire, was plea counsel. William Nowiki, Esquire, was the assistant solicitor. (App. p. 1 – p. 11).

Petitioner filed an application for post-conviction relief on September 6, 2013. Respondent filed a return dated March 19, 2014. (App. p. 12 – p. 27). An evidentiary hearing was held on July 29, 2014, before the Honorable W. Jeffrey Young. Petitioner was present and was represented by W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Croom Hunter, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 28 – p. 54). On September 16, 2014, Judge Young issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 55 – p. 63).

This petition follows.

## ARGUMENT

### Plea counsel was ineffective in 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.

In this case, petitioner was accused of committing armed robbery by taking money from Judy Baker at Williams Financial Services. At the evidentiary hearing, petitioner testified that he had a strong case and there were a lot of facts in his case that would have proved him not guilty. One witness wrote a statement saying that petitioner did not match the description of the suspect. The video surveillance camera showed the suspect putting his hands on the door and the fingerprints that were left there were not petitioner’s. No weapon was found. The victim also said petitioner did not match the suspect’s description. And there was no photo lineup. (App. p. 34, lines 1 – 25). In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Court found a defense attorney ineffective for failing to investigate. Plea counsel in this case should also be held ineffective for failing to investigate.

CONCLUSION

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

Respectfully submitted,

  
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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of December, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO LANCASTER COUNTY  
WILLIAM JEFFREY YOUNG, CIRCUIT COURT JUDGE

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AARON J. DONALDSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002108

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PETITION TO BE RELIEVED AS COUNSEL

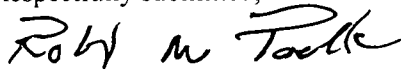
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Counsel for Aaron J. Donaldson states:

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 July 29, 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 Aaron J. Donaldson.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 5th day of December, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lancaster County  
William Jeffrey Young, Circuit Court Judge

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AARON J. DONALDSON,

PETITIONER,

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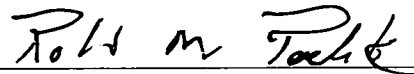
APPELLATE CASE NO. 2014-002108

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CERTIFICATE OF SERVICE

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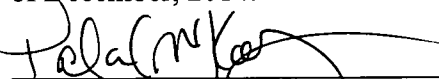
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Croom Hunter, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Aaron J. Donaldson, #355077, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827 this 5th day of December, 2014.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 5th day  
of December, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.