

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

DEC 9 2014

S.C. Supreme Court

\_\_\_\_\_  
Certiorari to Spartanburg County  
J. Derham Cole, Circuit Court Judge  
\_\_\_\_\_

DEANGELO YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001841

\_\_\_\_\_  
JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

# INDEX

INDEX.....	1
ISSUE PRESENTED.....	2
STATEMENT.....	3
ARGUMENT.....	4
CONCLUSION.....	6
PETITION TO BE RELIEVED AS COUNSEL.....	7

ISSUE PRESENTED

Whether petitioner's decision to plead guilty was knowingly and voluntarily made because counsel failed to review the discovery with petitioner?

## STATEMENT

On September 11, 2012, petitioner appeared before the Honorable Letitia H. Verdin in Spartanburg County and pled guilty to trafficking in crack cocaine, trafficking in cocaine, and habitual traffic offender. He was sentenced to seven (7) years on each trafficking offense and to five (5) years for habitual traffic offender. He was represented by James A. Check, Esquire, and Robert B. Hall, Esquire. The assistant solicitors were Amy Goulding, Esquire, Abel O. Gray, Esquire, and Jennifer A. J. Johnson, Esquire. (App. p. 1 – p. 17.)

Petitioner filed an application for post conviction relief on January 25, 2013. Respondent filed a return dated March 3, 2014. (App. p. 18 – p. 30.) On April 10, 2014, an evidentiary hearing was held before the Honorable J. Derham Cole. Petitioner was present and was represented by Leah B. Moody, Esquire. Respondent was represented by Suzanne H. White, Assistant Attorney General. Petitioner and Robert B. Hall, Esquire, testified at the hearing. (App. p. 31 – p. 66.) On July 25, 2014, Judge Cole issued an order denying and dismissing petitioner's application for post conviction relief. (App. p. 67 – p. 72.)

This petitioner follows.

## ARGUMENT

Petitioner's decision to plead guilty was not knowingly and voluntarily made because counsel failed to review the discovery with petitioner.

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. 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 or failure to investigate. 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); Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007); Stalk v. State, *supra*. The post-conviction relief court will normally consider the guilty plea transcript as well as the evidence presented at the post-conviction relief hearing in looking at guilty plea issues. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Besides attacking a guilty plea based on ineffective assistance of counsel, a defendant may challenge the voluntariness of the plea. The difference "between a valid guilty plea and a invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). 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. The Court went on to note:

Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth. Mallory v. Hogan, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed 2d 653. Second, is the right to trial by jury. Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491. Third, is the right to confront one’s accusers. Pointer v. Texas, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923. We cannot presume a waiver of these three important federal rights from a silent record.

395 U.S. at 243, 89 S. Ct. 1712.

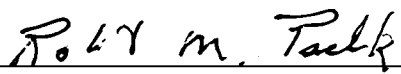
In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the court held that the “essence” of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the States. In State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), the court held that for there 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 testified at the evidentiary hearing that he did not see Mr. Hall until the day of his guilty plea. He did not receive any discovery until after he was sent to prison. (App. p. 40, lines 9-21.) Because he only saw counsel on the day of the plea and because he did not get to review his discovery with counsel, petitioner’s decision to plead guilty was not knowingly and voluntarily made.

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 9th day of December, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO SPARTANBURG COUNTY  
J. DERHAM COLE, CIRCUIT COURT JUDGE

---

DEANGELO YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001841

---

PETITION TO BE RELIEVED AS COUNSEL

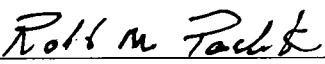
---

Counsel for DeAngelo Young 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 10, 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 DeAngelo Young.

Respectfully submitted,

  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 9th day of December, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Spartanburg County  
J. Derham Cole, Circuit Court Judge

---

DEANGELO YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

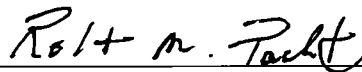
APPELLATE CASE NO. 2014-001841

---

CERTIFICATE OF SERVICE

---

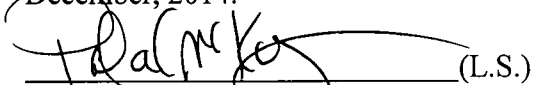
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire; and DeAngelo Young, #352340, at Livesay Pre-Release Center, this 9th day of December, 2014:



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

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



(L.S.)

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