

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County

**S.C. Supreme Court**

Robin B. Stilwell, Circuit Court Judge  
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ORLANDO PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-001911  
\_\_\_\_\_

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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Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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QUESTION PRESENTED

Whether defense counsel was ineffective in failing to learn that the codefendant had once claimed ownership of the drugs that petitioner was convicted of?

## STATEMENT

Petitioner was convicted of trafficking in cocaine after a jury trial held before the Honorable Edward Miller on June 23-24, 2011, in Greenville County. A thirty (30) year sentence was imposed. Richard Warder, Esquire, was trial counsel. Ryan Holloway, Esquire, was the assistant solicitor. (App. p. 1 – p. 229.) Petitioner appealed his conviction and it was affirmed by the Court of Appeals on May 8, 2013. State v. Parker, Op. No. 2013-UP-180 (App. p. 230 – p. 294.)

Petitioner filed an application for post-conviction relief on August 2, 2013. (App. p. 295 – p. 305.) Respondent filed a return dated April 8, 2014. (App. p. 306 – p. 311.) An evidentiary hearing was held on June 18, 2014, before the Honorable Robin B. Stilwell. Petitioner testified and presented the testimony of Shatana Alexander. Trial counsel testified for respondent. (App. p. 312 – p. 340.) On August 1, 2014, Judge Stilwell issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 341 – p. 348.)

This petition follows.

## ARGUMENT

Defense counsel was ineffective in failing to learn that the codefendant had once claimed ownership of the drugs that petitioner was convicted of.

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 prejudiced 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, 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).

In some instances counsel may be held ineffective without a showing of prejudice when he fails to subject the prosecution's case to a meaningful adversarial testing. In such cases prejudice is presumed. Nance v. Ozmit, 367 S.C. 547, 626 S.E.2d 878 (2006).

Petitioner, in this case, alleged in his attachment to his application that trial counsel failed to research and investigate his case. (App. p. 302.) At the evidentiary hearing, PCR counsel advised

the court they were going to submit testimony from both petitioner and the codefendant, Shatana Alexander, that she had previously admitted to the DEA that the drugs were hers. This would have been relevant on cross-examining her. (App. p. 314, line 21 – p. 315, line 1.)

Petitioner testified that he told trial counsel that when he and the codefendant were arrested they were taken to the DEA and questioned separately. He said he told counsel he was under the impression that the co-defendant had claimed responsibility for everything and that he needed to investigate that. Counsel never asked the co-defendant about this at trial. (App. p. 319, line 9 – p. 320, line 9.)


The co-defendant testified that she claimed possession of the drugs to the DEA agent, even though the drugs were not hers. She did not testify at trial that the drugs were hers. She said she was never questioned at trial about her claiming to the DEA agent that the drugs were hers. (App. p. 327, line 15 – p. 328, line 13.)

In Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) the court wrote that a criminal defense attorney has a duty to investigate. This includes interviewing potential witnesses. The failure to investigate can lead to a failure of effective cross-examination of a witness which can result in ineffective assistance of counsel. Trial counsel in petitioner's case should also be held ineffective for failing to learn that the co-defendant once claimed ownership of the drugs so he could have cross-examined her on that issue.

CONCLUSION

Petitioner's writ should be granted and he should be given a new trial.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of March, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
ROBIN B. STILWELL, CIRCUIT COURT JUDGE

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ORLANDO PARKER,

PETITIONER,

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STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-001911

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PETITION TO BE RELIEVED AS COUNSEL

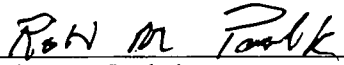
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Counsel for Orlando Parker states:

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 June 18, 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 Orlando Parker.

Respectfully submitted,

  
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Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 10th day of March, 2015

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ORLANDO PARKER,

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CERTIFICATE OF SERVICE  
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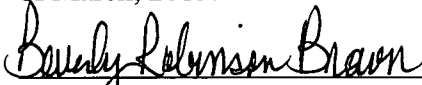
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire and Orlando Parker, #346628, at Lee Correctional Institution this 10th day of March, 2015.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day  
of March, 2015.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: December 9, 2024.