

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Charleston County

S.C. Supreme Court

R. Markley Dennis, Jr., Circuit Court Judge

CORRIE D. BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001947

JOHNSON PETITION FOR WRIT OF CERTIORARI

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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QUESTION PRESENTED

Whether petitioner's guilty plea was coerced?

STATEMENT

On April 18, 2012, petitioner appeared before the Honorable Stephanie P. McDonald in Charleston County and pled guilty to criminal sexual conduct in the second degree. A seventeen (17) year sentence was imposed. Juan Talley, Esquire, was plea counsel. Adam D. Young, Esquire and Elizabeth Gordon, Esquire, were the assistant solicitors. (App. p. 1 – p. 318.)

Petitioner filed an application for post-conviction relief on January 24, 2013. (App. p. 319 – p. 326.) Respondent filed a return dated November 1, 2013. (App. p. 357 – p. 361.) An evidentiary hearing was held on April 14, 2014, before the Honorable R. Markley Dennis. Petitioner was present and was represented by William L. Runyon, Esquire, and Ashleigh Wilson was the assistant attorney general. Both petitioner and plea counsel testified at the hearing. (App. p. 362 – p. 407.) On August 28, 2014, Judge Dennis issued an order denying and dismissing the application for post-conviction relief. (App. p. 408 – p. 415.)

This petition follows.

ARGUMENT

Petitioner's guilty plea was coerced.

Petitioner's guilty plea failed to comply with the mandates set forth in *Boykin v. Alabama*.

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

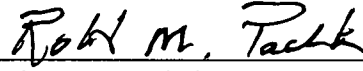
accusers. A valid waiver of these rights cannot be presumed from a silent record. 395 U.S. at 243, 89 S. Ct. at 1712. In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the court held that the “essence” of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure 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.

At the evidentiary hearing in this case, petitioner testified that the trial judge told him early on that if he were convicted he would be sentenced to thirty (30) years. (App. p. 378, lines 12-24.) He took the plea bargain of seventeen (17) years because he was scared of getting thirty (30) years. (App. p. 380, line 22 – p. 381, line 9.) Hence, petitioner’s guilty was involuntary. (App. p. 382, line 13 – p. 383, line 12.)

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 19th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

CORRIE D. BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001947

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Corrie D. 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 April 14, 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 Corrie D. Brown.

Respectfully submitted,

Robt M. Pachak

Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of March, 2015

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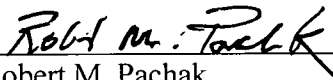
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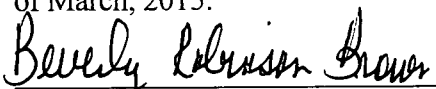
CERTIFICATE OF SERVICE

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 Corrie D. Brown, #246396, at Broad River Correctional Institution this 19th day of March, 2015.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of March, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: December 9, 2024.