

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Georgetown County

Kristi Lea Harrington, Circuit Court Judge

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S.C. Supreme Court

ARCHIE AZIKIWE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002399

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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(803) 734-1343

ATTORNEY FOR PETITIONER

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QUESTION PRESENTED

Whether trial counsel was ineffective in failing to communicate plea offers to petitioner?

## STATEMENT

Petitioner was convicted of distribution of crack cocaine after a jury trial held on February 28 – March 1, 2011, before the Honorable Steven H. John in Georgetown County. A fifteen (15) year sentence was imposed. Richard F. Colvin, Esquire, was trial counsel. Nancy Cote', Esquire and Scott Hixson, Esquire were the assistant solicitors. (App. p. 1 – p. 228.) Petitioner appealed his conviction and the appeal was dismissed by the Court of Appeals on February 20, 2013. State v. Archie, Op. No. 2013-UP-075.

Petitioner filed an application for post-conviction relief on June 5, 2013, along with an attachment. (App. p. 229 – p. 243.) Respondent filed a return dated May 20, 2014.) Respondent filed a return dated May 20, 2014, (App. p. 244-249.) An evidentiary hearing was held on August 29, 2014, before the Honorable Kristi L. Harrington. Petitioner was present and was represented by Tristan M. Shaffer, Esquire. Respondent was represented by Joshua L. Thomas, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. (App. p. 250 – p. 331.) On October 7, 2014, Judge Harrington issued an order denying and dismissing the application for post-conviction relief. (App. p. 332 – p. 342.)

This petition follows.

## ARGUMENT

### Trial counsel was ineffective in failing to communicate plea offers to petitioner.

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).

In this case, petitioner testified at the evidentiary hearing that counsel never conveyed a plea offer to him. The first time he learned about it was the day of trial. He was told about a three-year plea offer that the solicitor had offered and she said that counsel had turned it down. (App. p. 288,

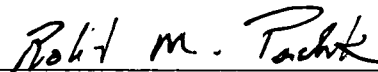
lines 2-24.) Counsel had initially told him he was facing ten to twenty years. (App. p. 290, lines 5-9.) Petitioner testified that he asked the solicitor to allow him to accept the three-year plea offer and she said it was off the table. (App. p. 292, lines 12-24.) He said if a three-year offer had been made to him, he would have accepted it. (App. p. 296, lines 22-24.)

In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the court held an attorney ineffective when he failed to communicate a plea offer to his client. Counsel in petitioner's case should likewise be held ineffective.

CONCLUSION

Petitioner's writ should be granted and his conviction should be reversed.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of March, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GEORGETOWN COUNTY  
KRISTI LEA HARRINGTON, CIRCUIT COURT JUDGE

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ARCHIE AZIKIWE,

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PETITION TO BE RELIEVED AS COUNSEL

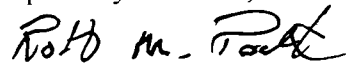
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Counsel for Azikiwe Archie states:

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 August 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 Azikiwe Archie.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 25th day of March, 2015

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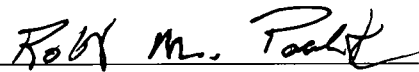
APPELATE CASE NO. 2014-002399

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CERTIFICATE OF SERVICE

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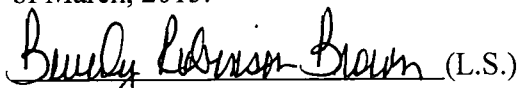
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Azikiwe Archie, #269814, at Turbeville Correctional Institution this 25th day of March, 2015.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 25th day  
of March, 2015.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: December 9, 2024.