

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Greenwood County
Frank R. Addy, Circuit Court Judge

S.C. Supreme Court

GERALD GAINES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000219

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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ISSUE PRESENTED

Whether petitioner's guilty plea was knowingly and voluntarily entered when he thought he was going to receive a sentence of 13 years not the 20 years he did receive?

STATEMENT

On May 14, 2012, petitioner appeared before the Honorable J. Cordell Maddox, Jr. in Greenwood County and pled guilty to failure to stop for law enforcement resulting in death, two counts of felony DUI, and manufacturing methamphetamine. Sentences totaling 20 years were imposed. Petitioner was represented by Christopher Pracht, Esq. and Sarah Drawdy, Esq. Matt Swilley, Esq. and Demetri Andrews, Esq. were the assistant solicitors. (App. p. 1- p. 44)

On April 9, 2013, petitioner filed an application for post-conviction relief. (App. p. 45- p. 51) Respondent filed a return dated June 19, 2013. (App. p. 52- p. 56) On October 13, 2014, an evidentiary hearing was held before the Honorable Frank R. Addy, Jr. Petitioner was present and was represented by Jennings Anderson, Esq. Respondent was represented by J. Rutledge Johnson, Assistant Attorney General. Petitioner and both plea counsels testified at the hearing. (App. p. 57- p. 120) On November 26, 2014, Judge Addy issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 121- p. 132)

This petition follows.

ARGUMENT

Petitioner's guilty plea was not knowingly and voluntarily entered because he thought he was going to receive a sentence of 13 years not the 20 years he did receive.

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 petitioner testified that he was first appointed a public defender, Shane Goranson, on his charges. He met with him one time. He received a letter from the public defender that if a plea was offered to him, he would have until the end of the working day to make a decision whether to accept the plea. Shortly after that he hired two private attorneys, Chris Pracht and Sarah Drawdy. (App. p. 62, l. 3- p. 63, l. 21) They told him the solicitor would give him 13 years if he would sign a plea agreement. It was laying on the table that day. He declined the offer because he was not sure. He said he was not sure because in the past he would usually get a second offer. Ms. Drawdy, however, told him she did not think there was going to be another offer. After he got back to the county jail he thought about the plea some more. He decided he needed the plea but could not get in touch with anybody. The next day was a Friday and he could not reach his attorneys. He finally got hold of Mr. Pracht on Monday. (App. p. 65, l. 5- p. 67, l. 23). Mr. Pracht told him it was too late. Petitioner said he was supposed to have until the end of the working day to make a decision. He sat down with the attorneys and they told him the State was going to try to make some type of offer and they said they would offer him the original plea. Petitioner said he would take it. Judge Maddox, however, ended up sentencing him to 20 years and he thought it was supposed to be 13 years. He would not have pled if he had known it was going to be 20 years. (App. p. 68, l. 2-7; App. p. 69, l. 10- p. 70, l. 16)

As can be seen from above, petitioner's guilty plea was not knowingly and voluntarily entered.

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 10th day of June, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENWOOD COUNTY
FRANK R. ADDY, CIRCUIT COURT JUDGE

GERALD GAINES,

PETITIONER,

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STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2015-000219

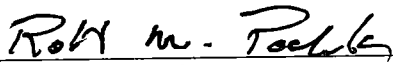
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gerald Gaines 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 October 13, 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 Gerald Gaines.

Respectfully submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 10th day of June, 2015

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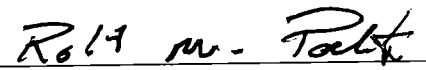
STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2015-000219


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 J. Rutledge Johnson, Esquire and Gerald Gaines, #222430, at Perry Correctional Institution this 10th day of June, 2015.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

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


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.