

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Marion County  
Brooks P. Goldsmith, Circuit Court Judge  
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JUN 19 2015

S.C. Supreme Court

CODY INMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000363  
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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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South Carolina Commission on Indigent Defense  
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel was ineffective in giving incorrect sentencing advice?

## STATEMENT

On May 25, 2011, petitioner appeared before the Honorable J. Michael Baxley in Marlboro County and pled guilty to assault and battery with intent to kill. He was sentenced to six (6) years imprisonment to run consecutively to an existing prison sentence. Emily Crayton, Esq. was plea counsel. Kernard Edward Redmond, Esq. was the solicitor. (App. p. 1- p. 17)

Petitioner filed an application for post-conviction relief on November 2, 2011. (App. p. 18- p. 34) Respondent filed a return dated February 15, 2012. (App. p. 35- p. 39) An evidentiary hearing was held on January 9, 2013, before the Honorable Brooks P. Goldsmith. Petitioner was present and was represented by J. Marshall Biddle, Esq. Respondent was represented by Tyson A. Johnson, Sr., Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 40- p. 133) On January 30, 2013, Judge Goldsmith issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 134- p. 141)

This petition follows.

## ARGUMENT

Plea counsel was ineffective in giving incorrect sentencing advice. 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.


Petitioner testified at the evidentiary hearing that plea counsel initially told him the solicitor offered 5 years nonviolent concurrent to the sentence he was already serving. He told pleas counsel that he did not want a plea, he wanted to go to trial. (App. p. 46, l. 25- p. 47, l. 16) When he showed up at the courthouse on May 25, 2011, he thought he was going to trial. Instead, plea counsel told him he was there for a guilty plea. She and the solicitor met him in the holding cell. She told him he would get 10 years non-violent and concurrent with the sentence he was already serving. He thought it was a negotiated sentence. Plea counsel encouraged him to take the plea. Petitioner took the plea but the judge gave him 6 years consecutive to what he was already serving. He said if he had known that was going to be the sentence he would not have plead guilty. (App. p. 48, l. 18- p. 52, l. 21)

Plea counsel was ineffective in giving incorrect sentencing advice.

CONCLUSION

Petitioner's writ should be granted and his guilty plea should be vacated.

Respectfully submitted,

  
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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 19<sup>th</sup> day of June, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO MARION COUNTY  
BROOKS P. GOLDSMITH, CIRCUIT COURT JUDGE

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CODY INMAN,

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APPELLATE CASE NO. 2015-000363

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PETITION TO BE RELIEVED AS COUNSEL

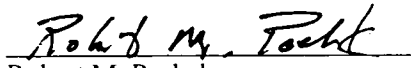
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Counsel for Cody Inman states:

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 January 9, 2013. 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 Cody Inman.

Respectfully submitted,

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 19<sup>th</sup> of June, 2015

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IN THE SUPREME COURT

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Certiorari to Marion County  
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P. Goldsmith, Circuit Court Judge

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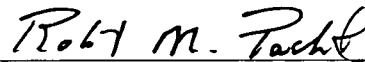
APPELLATE CASE NO. 2015-000363

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CERTIFICATE OF SERVICE

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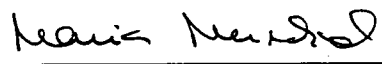
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Croom Hunter, Esquire and Cody Inman, #311682, at McCormick Correctional Institution this 19<sup>th</sup> day of June, 2015.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19<sup>th</sup> day  
of June, 2015.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.