

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**S.C. Supreme Court**

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Certiorari to Spartanburg County  
Roger L. Couch, Circuit Court Judge  
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JOSE REYES AREVALOS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001316  
\_\_\_\_\_

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  
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner's guilty plea was knowingly and voluntarily entered?

## STATEMENT

On July 12, 2010, petitioner appeared before the Honorable J. Derham Cole in Spartanburg County and pled guilty to accessory before the fact to burglary in the first degree and to two (2) counts of accessory after the fact of murder. Sentencing was delayed. (App. p. 1- p. 28) On May 23, 2012, petitioner appeared before the Honorable J. Mark Hayes II and was sentenced to consecutive respective sentences of thirty (30) years, fifteen (15) years and fifteen (15) years. Petitioner was represented by Patrick L. Mangrum, Esq. Barry Joe Barnette, Esq. was the solicitor. (App. p. 29- p. 61)

Petitioner filed an application for post-conviction relief on January 29, 2013. (App p. 62- p. 68) Respondent filed a return dated March 19, 2014. (App. p. 69- p. 74. An evidentiary hearing was held on September 16, 2014, before the Honorable Roger L. couch. Petitioner was present and was represented by J. Brandt Rucker, Esq. Respondent was represented by J. Clayton Mitchell, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 75- p. 133)

This petition follows.

## ARGUMENT

Petitioner's guilty plea was not knowingly and voluntarily entered.

Petitioner was indicted for accessory before the fact of burglary in the first degree and two counts of accessory before the fact of murder. He was allowed to plead guilty to accessory before the fact of burglary in the first degree and two counts of accessory after the fact of murder. There were straight up pleas without recommendation or negotiation. Petitioner's sentence would be deferred because he was to cooperate and his cooperation would be told to the court at sentencing. A Spanish interpreter was used to assist in the guilty plea. (App. p. 4, line 7- p. 5, line 22)

The solicitor gave a factual basis for the plea. Petitioner was associated with Juan Carlos Estrada-Vasquez. Mr. Vasquez had a disagreement with one of the victims involving a drug transaction. He believed the victim, Hugo del Carm Lugo-Hernandez, owed him \$50,000. Mr. Vasquez contacted Yesenia Cortez Ramirez in Atlanta to bring some people to help him. She brought five people with her. Petitioner drove some of these people to the victims' residence. Rudis Ventura, Jose Gomez, and Lewis Perez broke into the residence trying to locate the money or drugs or both. During the burglary they killed the victims, Mr. Hernandez and Ms. Martinez. Petitioner then picked up the co-defendants. (App. p. 21, line 11- p. 22, line 13) Petitioner gave three different statements to the police. (App. p. 23, lines 2-8)

At the PCR hearing an interpreter was also present. (App. p. 79, lines 7-9) Petitioner testified that plea counsel was retained. He met with counsel on two occasions. Once for about thirty minutes and another time for about ten minutes. He said there was a problem with the translator when he gave his statement. The translator was Puerto Rican and sometimes they could not understand each other. (App: p. 80, line 18- p. 81, line 20) He told plea counsel there were

problems with the translation. Counsel did not tell him that the statement he gave could be used against him. Counsel did not speak Spanish but he did have an interpreter. Petitioner said to his knowledge counsel did not attempt to investigate whether the translation of his statements was correct. (App. p. 82, lines 3-20)

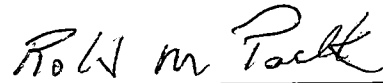
Petitioner testified that they never went over discovery or what evidence there was. On the day of the plea he only talked to counsel for two minutes. He believed that there was an agreement with the prosecution that he would not get a serious sentence. Counsel told him the sentence would be between zero to fifteen years. He was never told what evidence they had against him. He was never explained the difference between accessory before the fact and after the fact. Petitioner said he never went to school. (App. p. 83, line 1- p. 84, line 18)

A guilty plea is not entered into voluntarily and knowingly unless the record established that the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969) A complete record is needed to establish a knowing and voluntary plea. Reddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Petitioner's own testimony in this case shows that his guilty plea was not entered into knowingly and voluntarily.

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 17th day of September, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO SPARTANBURG COUNTY  
ROGER L. COUCH, CIRCUIT COURT JUDGE

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JOSE REYES AREVALOS,

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001316

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PETITION TO BE RELIEVED AS COUNSEL

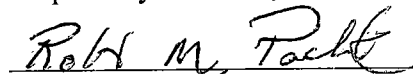
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Counsel for Jose Reyes Arevalos states:

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 September 16, 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 Jose Reyes Arevalos.

Respectfully submitted,

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 17th day of September, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
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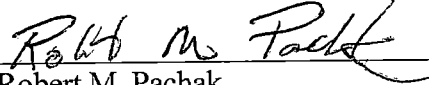
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CERTIFICATE OF SERVICE

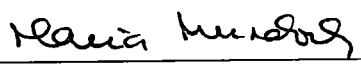
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Alicia Olive, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Jose Reyes Arevalos, # 351024, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 17th day of September, 2015.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day  
of September, 2015.

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