

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Berkeley County

William Jeffrey Young, Circuit Court Judge

S.C. Supreme Court

WOODROW J. BAKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001320

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel was ineffective in failing to properly advise petitioner of the sentence he could receive if he pled guilty?

STATEMENT

On February 11, 2013, petitioner appeared before the Honorable Stephanie P. McDonald in Berkeley County and pled guilty to felony driving under the influence resulting in great bodily injury. He was sentenced to 13 years in prison and fined \$5, 100.00. Petitioner was represented by David Schwacke, Esquire. Respondent was represented by Jennifer Williams, Esq. (App. p. 1- p. 24)

Petitioner filed an application for post-conviction relief on September 5, 2013. (App. p. 25- p. 31) Respondent filed a return dated January 6, 2015. (App. p. 32- p. 36) An evidentiary hearing was held on April 22, 2015, before the Honorable W. Jeffery Young. Petitioner was present and was represented by Rodney D. Davis, Esquire. Respondent was represented by Elizabeth H. Neyle, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 37- p. 61) On May 6, 2015, Judge Young issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 62- p. 68)

This petition follows.

ARGUMENT

Plea counsel was ineffective in failing to properly advise petitioner of the sentence he could receive if he pled guilty.

Petitioner alleged in his application for post-conviction relief that the charge he pled guilty carried a maximum sentence of fifteen (15) years. He said he was told he would get no more than twelve (12) years but he was sentenced to thirteen (13) years. (App. p. 27)

Petitioner testified at the evidentiary hearing that his mother talked to plea counsel and he made it sound like he was going to go home with probation. (App. p. 43, line 23- p. 44, line 13) Petitioner said he thought the worse case scenario would be five (5) years since he had already been in the county jail for almost two (2) years. (App. p. 44, lines 14-18) At one time plea counsel told him he would get no more than twelve (12) years. (App. p. 45, line 9-14) Petitioner summarized as follows:

Q. Okay I have two final questions for Mr. Baker, I believe two final questions. Can you tell the Judge what things Mr. Schwacke did or told you that influenced your decision to plead guilty; things he did or told you?

A. Well, pretty basically like I said when I spoke to my mother, when I called home and she had said he had called and said that I was probably going to be coming home with probation.

Which, you know, when I talked to home he said he hadn't really told her that and, you know, I mentioned it too but he said, you know, things -- crazy things have happened. And I said well I wanted to pick McDonald because she seemed like she was being fair with everybody going through there.

So, I'm thinking okay if that's the case then worst case I was thinking five years, you know, so if I could -- I just wanted to get it over with. So, you know, I just wanted to get the thing done and behind me so I could get on home and get back to my life.

And so that's why I said let's go ahead and plead guilty because I've done sat in the county jail for almost 2 years. So I knew I would get that time from sitting in the jail, so I was thinking I was going home and then when I got hit with 13 I just -- I didn't -- couldn't believe this was -- I didn't know what to say or do because I didn't couldn't believe that it was happening.

(App. p. 49, line 1- p. 50, line 2)

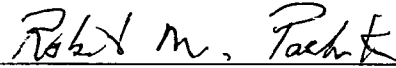
In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. 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. 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).

Petitioner's own testimony established that plea counsel gave him incorrect sentencing advice.

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 15th day of October, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO BERKELEY COUNTY
WILLIAM JEFFREY YOUNG, CIRCUIT COURT JUDGE

WOODROW J. BAKER,

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V.

STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2015-001320

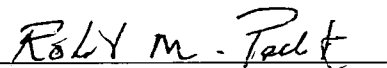
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Woodrow J. Baker 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 22, 2015. 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 Woodrow J. Baker.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 15th day of October, 2015

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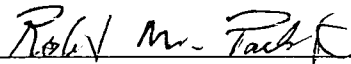
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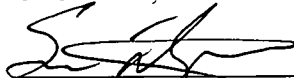
CERTIFICATE OF SERVICE

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 J. Rutledge Johnson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Woodrow J. Baker, #219004, at Macdougall Correctional Institution this 15th day of October, 2015.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15th day
of October, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.