

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Abbeville County  
Donald B. Hocker, Circuit Court Judge

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S.C. Supreme Court

HERMAN D. BATTLES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001207

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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  
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 move to withdraw petitioner's guilty plea when the plea bargain of fifteen (15) years was not kept?

## STATEMENT

On January 31, 2013, petitioner appeared before the Honorable Frank R. Addy, Jr. in Abbeville County and pled guilty to armed robbery and burglary in the first degree. He was sentenced to 20 years on each charge. Plea counsel was W. Townes Jones, IV, Esquire. The solicitor was Cecil Yates Brown, Jr., Esquire. (App. p. 1- p. 30)

Petitioner filed an application for post-conviction relief on May 10, 2013. (App. p. 31- p. 40) Respondent filed a return dated February 4, 2014. (App. p. 44- p. 49) On February 19, 2015, an evidentiary hearing was held before the Honorable Donald B. Hocker. Petitioner was present and was represented by Joshua Shaheen Nasrollahi, Esquire. Respondent was represented by J. Rutledge Johnson, Assistant Attorney General. Plea counsel, petitioner, and Jeffrey Brown testified at the hearing. (App. p. 50- p. 101) On March 27, 2015, Judge Hocker issued an order denying and dismissing petitioner's application for post-conviction relief. (App p. 102- p. 110)

This petition follows.

## ARGUMENT

Plea counsel was ineffective in failing to move to withdraw petitioner's guilty plea when the plea bargain of fifteen (15) years was not kept.

Petitioner raised the issue above in his application for post-conviction relief. (App. p. 35)

In his colloquy with PCR counsel he explained as follows:

Q. Okay. Was your understanding -- was there ever -- was it ever your understanding that there was a offer of 15 years?

A. There was an offer of 15 years.

Q. Okay. And --

A. And at the -- when I start -- when they offered me the 15 years, it -- it come with stipulations of if you don't take the 15 years, we'll lock up both your sisters, your nephew, and, you know -- so at that point I tried to explain to Mr. Jones that my sister was in real bad health and that I -- you know, I -- I would do anything to keep her from having to go to court. Because they did lock up my nephew for this charge.

And when I agreed the -- to plead -- take a plea, they released him immediately. Charges were dropped on him. And so I -- I took -- I --I did agree to take the 15 years because of the threats on my sisters and -- and nephew and family.

Q. Okay. So were these threats, as you say -- did they play any importance in your decision to plead or to take an offer?

A. Most definitely. I -- I would've went to a jury trial. It was just that they were -- I mean, it -- it -- they act like they were just going lock them up right then, you know, when they -- which they did. They went out and got my nephew and locked him up at -- right at that point.

So my -- my agreeing to take the -- the 15 and then, of course, the 20 years was for the same reason: because they had threatened me with my family, that they were going lock them all up

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Q. Okay.

A. ---for nothing.

(App. p. 86, line 19- p. 89, line 25)<sup>1</sup>

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<sup>1</sup> Petitioner's plea may also be considered involuntary due to the threats on his family members. Lynum v. Illinois, 372 U.S. 528, 83 S.Ct. 917 (1963)

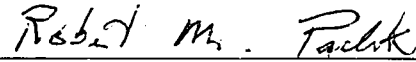
In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v.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

Generally, a defendant has a right to withdraw a guilty plea before a judge formally accepts it. State v. Bickham, 381 S.C. 143, 672 S.E.2d 105 (2009). Plea counsel in petitioner's case was ineffective in failing to move to withdraw his guilty plea.

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 19th day of October, 2015.

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IN THE SUPREME COURT

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CERTIORARI TO ABBEVILLE COUNTY  
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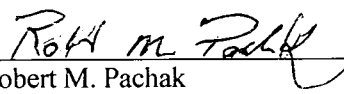
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Counsel for Herman D. Battles states:

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 February 19, 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 Herman D. Battles.

Respectfully submitted,

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 19th day of October, 2015

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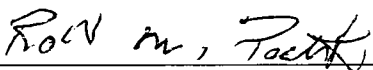
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CERTIFICATE OF SERVICE


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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 Justin Hunter, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Herman D. Battles, #354133, at McCormick Correctional Institution this 19th day of October, 2015.

  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day  
of October, 2015.

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