

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

CARLYNIAS PETTIGREW,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001587

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 entered into voluntarily and intelligently?

STATEMENT

On July 26, 2012, petitioner appeared before the Honorable D. Craig Brown in Florence County and pled guilty to voluntary manslaughter. He was sentenced to thirty (30) years imprisonment. Vick Meetze, Esquire was plea counsel. Edgar Clements, III was the solicitor. (App. p. 1- p. 46)

Petitioner filed an application for post-conviction relief on February 5, 2013. An amendment to the application was also filed. (App. p. 47- p. 57) Respondent filed a return dated May 9, 2013. (App. p. 58- p. 62) An evidentiary hearing was held on October 9, 2014, before the Honorable Edgar W. Dickson. Petitioner was present and was represented by Jonathan Waller, Esquire. Respondent was represented by Croom Hunter, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 63- p. 106) On June 12, 2015, Judge Dickson issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 107- p. 114)

This petition follows.

ARGUMENT

Petitioner's guilty plea was not entered into voluntarily and intelligently.

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 pled guilty to voluntary manslaughter in the shooting death of his brother-in-law. The shooting happened on January 24, 2011, after the two got into a disagreement that escalated. At the time petitioner said he did not mean to hurt the victim. He tried to render aid but it was too little too late. (App. p. 23, lines 5-18) At the guilty plea, petitioner expressed dissatisfaction with his appointed attorney. (App. p. 12, line 15- p. 13, line 16) Petitioner said he wanted another lawyer because he was not being represented well. (App. p. 14, line 15- p. 15, line 15) Petitioner said he had the right to defend himself. (App. p. 16, lines 3-15)

In his PCR application petitioner alleged an involuntary plea. (App. p. 49; App. p. 53- p. 54) At the evidentiary hearing, he complained about the lack of a bond and what should have been a defense of self-defense. (App. p. 68, line 18- p. 69, line 13) He said he and plea counsel did not discuss any potential defenses. He said he had no intention of killing the victim. Petitioner said he wanted to go to trial. He wanted to get a statement suppressed and then he could proceed on the theory of self-defense. The suppression process was not discussed. (App. p. 70, line 24- p. 72, line 2) Petitioner said he wasn't satisfied with taking the plea. (App. p. 72, line 23-24) As can be seen from petitioner's testimony, his guilty was entered into voluntarily and intelligently.

CONCLUSION

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

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of October, 2015.

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CERTIORARI TO FLORENCE COUNTY
EDGAR W. DICKSON, CIRCUIT COURT JUDGE

CARLYNIAS PETTIGREW,

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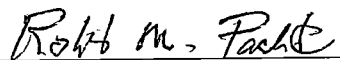
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Carlynias Pettigrew 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 9, 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 Carlynias Pettigrew.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of October, 2015

STATE OF SOUTH CAROLINA
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CARLYNIAS PETTIGREW,

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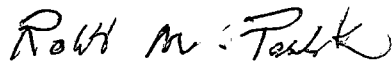
STATE OF SOUTH CAROLINA,

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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. Croom Hunter, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Carlynias Pettigrew, # 351719, at Broad River Correctional Institution, this 20th day of October, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of October, 2015.

 (L.S.)

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