

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lexington County
DeAndrea G. Benjamin, Circuit Court Judge

S.C. Supreme Court

HENRY Y. CAUDLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001518

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 voluntarily and intelligently?

STATEMENT

On August 13, 2013, petitioner appeared before the Hon. Edward B. Cottingham in Lexington County and pled guilty to assault and batter of a high and aggravated nature (ABHAN). Petitioner was sentenced to twelve (12) years suspended on service of six (6) years and six (6) years probation thereafter. Plea counsel was Sally Henry, Esq. (App. p 1-p. 20).

Petitioner filed an application for post-conviction relief on December 2, 2013. (App. p. 21-p. 27) He also filed an attachment. (app. p. 28–p. 44). Respondent filed a return dated May 19, 2014. (App. p. 45–p. 50). An evidentiary hearing was held on October 14, 2014, before the Hon. DeAndrea Benjamin. Petitioner was present and was represented by Anna R. Good, Esq. Respondent was represented by Clay Mitchell, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 51–p. 84). On June 11, 2015, Judge Benjamin issued an order denying and dismissing petitioner’s application for post-conviction relief. (App. p. 86 – p. 92).

This petition follows.

ARGUMENT

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

The indictment charging petitioner with assault and battery of a high and aggravated nature alleged that on or about October 31, 2012, he did in Lexington County “unlawfully offer or attempt to injure another person with the present ability to do so, and the act occurred during the commission of a robbery, burglary, kidnapping, or theft, to wit: the defendant assaulted [the victim] with a metal bar striking him in the arms, face and skull several times causing him to seek medical attention . . .” (App. p. 95).

At the guilty plea hearing an eight (8) page competency evaluation and a six (6) page criminal responsibility report were introduced as exhibits. Then a Blair¹ hearing was held. (App. p. 4, line 1-p. 6, line 3). The victim in this case was petitioner's father. The solicitor said the victim was aware that his son has some mental health issues. (App p. 9, lines 5-6). Plea counsel said petitioner was very mentally fragile and he had issues with anxiety and depression. He had been in mental health care. (App. p. 14, line 19-p.15, line 1).

At the evidentiary hearing petitioner testified that his first meeting with counsel was in November of 2012 and it was basically just an introductory meeting. The next time he saw counsel was not until June of 2013. He had tried numerous time to get in touch with her by letter and telephone. (App. p. 55, line 22-p.56, line 20). The next time he saw her was at a hearing to try to relieve her as counsel. (App. p. 57, lines 12-13). Eventually he came up for a plea in July of 2013. He did not want to plea. That plea did not go through. (App. p. 58, line 16-p.59, line 3). Petitioner testified that when he did finally plea in August he was feeling quite bad. He had been having neurological problems which included a few grand mal seizures. He also had severe headaches,

¹ State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981)

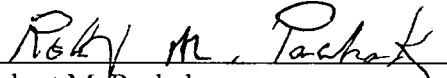
shaking of the arms and legs, and an inability to concentrate. He was not aware of what he was pleading to that day. (App. p. 59, line 19-p. 60, line 4).

To find that a guilty plea is voluntarily and knowingly entered into, the record must establish that the defendant had a full understanding of the consequences of his plea and the charge against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). The record in this case did not meet the requirements of Boykin.

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 2nd day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
DEANDREA G. BENJAMIN, CIRCUIT COURT JUDGE

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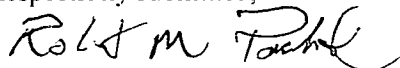
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Henry Y. Caudle 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 15, 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 Henry Y. Caudle.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 2nd day of November, 2015

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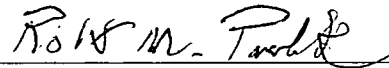
STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2015-001518

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 John Walt Whitmire, Esquire and Henry Y. Caudle, # 356436, at Allendale Correctional Institution this 2nd day of November, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 2nd day of
November, 2015

U. G. (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.