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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County
Roger L. Couch, Circuit Court Judge

KENNETH HILTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002140

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
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ISSUE PRESENTED

Whether the PCR court erred in allowing petitioner to represent himself when it did not warn petitioner of dangers and disadvantages of self-representation?

STATEMENT

On January 23, 2013, petitioner appeared before the Honorable J. Derham Cole in Cherokee County and pled guilty to kidnapping and assault with intent to commit criminal sexual conduct in the second degree. Petitioner was sentenced to twenty-five (25) years for kidnapping and to twenty (20) consecutive years on the assault charge. He was represented by Don Thompson, Esquire. Kim Leskanic, Esquire was the assistant solicitor. (App. p.1 – p. 32)

On May 1, 2013, petitioner filed an application for post-conviction relief. (App. p. 33 – p. 40) Respondent filed a return dated March 17, 2014. (App. p. 41 – p. 45) An evidentiary hearing was held on March 27, 2015, before the Honorable Roger L. Couch. Petitioner was present and represented himself. Plea counsel was present and was represented by Suzanne H. White, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 46 – p. 104) On September 24, 2015, Judge Couch issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 105 – p. 143)

This petition follows.

ARGUMENT

The PCR court erred in allowing petitioner to represent himself because it did not warn petitioner of the dangers and disadvantages of self-representation.

At the start of the PCR hearing the PCR court stated that the records before it indicated that petitioner was representing himself. Petitioner said that was correct. The court asked if that was how he wished to proceed and petitioner replied in the affirmative. The court advised petitioner that if he wanted an attorney, one would be appointed. Petitioner said he did not need an attorney. (App. p. 49, lines 16-25)

The PCR court then proceeded as follows:

The Court: Now, Mr. Hilton, there's a couple of things I'm required to go over with you about this. So - - -

Mr. Hilton: Yes, sir.

The Court: - - - be patient with me and let me get through these things.

Mr. Hilton: Yes, sir.

The Court: Mr. Hilton, the - - I want to be sure that you're aware of the kinds of things that an attorney might do to be of service to you in this matter.

Mr. Hilton: Right.

The Court: Are you aware of those things?

Mr. Hilton: Yes, I am.

The Court: Do I need to go over those with you at this time?

Mr. Hilton: No, sir.

The Court: Mr. Hilton, how far did you go with your education?

Mr. Hilton: About the eleventh grade.

The Court: Okay. And are you married?

Mr. Hilton: My wife is passed away.

The Court: I'm sorry to hear that.
Do you have children?

Mr. Hilton: No, I do not.

The Court: Now, before you were incarcerated, were you employed somewhere?

Mr. Hilton: I was working at Hucks Piggyback Trucking Service and I worked for them for 14 years.

The Court: Okay. So you were self-employed and able to support yourself?

Mr. Hilton: Not self-employed, I worked for the company.

The Court: You were employed yourself and - - -
Mr. Hilton: Right.
The Court: - - - you were able to take care of yourself?
Mr. Hilton: Yes, sir.
The Court: Did you handle your own business affairs at that time?
Mr. Hilton: Yes, I did.
The Court: Now, do you suffer from any mental, physical, or nervous conditions today that would affect your ability to reason or make good decisions?
Mr. Hilton: No, sir.
The Court: Have you taken or used any drugs, medications, or other substances that would have that effect?
Mr. Hilton: No, sir.
The Court: So, Mr. Hilton, do you know what you're doing?
Mr. Hilton: Yes, I do.
The Court: Are you able to proceed in this matter today?
Mr. Hilton: I am indeed, sir.
The Court: And do you understand what this hearing is about?
Mr. Hilton: Yes, I do, sir.
The Court: All right. I'll make a finding that Mr. Hilton is in a position to represent himself in this matter. Mr. Hilton, if you change your mind about that, at anytime during this proceeding, I'm going to ask that you inform me immediately so that we can discuss that.
Mr. Hilton: Right.
The Court: You understand that?
Mr. Hilton: Yes, sir.

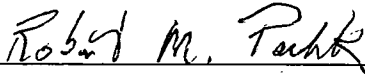
(App. p. 50, line 8 – p. 52, line 20)

Notably absent from the above was any warning as required by Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975); Wroten v. State, 301 S.C. 293, 391 S.E.2d 575 (1990); Salley v. State, 306 S.C. 213, 410 S.E.2d 921 (1991).

CONCLUSION

Because petitioner was not properly warned of the dangers and disadvantages of self-representation, he should be given a new PCR hearing.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of January, 2016.

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APPELLATE CASE NO. 2015-002140

CERTIFICATE OF SERVICE

I certify that a true copy of the 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 Mr. Kenneth Hilton #354034 at the Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 13th day of January, 2016.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of January, 2016.

Kenneth Lumbel (L.S.)
Notary Public for South Carolina
My Commission Expires: July 2, 2023.