

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Charleston County

Roger E. Henderson, Family Court Judge

WAYNE HOLLINSHEAD

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002427

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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QUESTION PRESENTED

Whether petitioner's guilty plea was coerced?

STATEMENT

On November 2, 2011, petitioner appeared before the Honorable Deadra L. Jefferson in Charleston County and pled guilty to trafficking in cocaine – 400 grams or more. A sentence of twenty (20) years was imposed. Leon Stavrinakis, Esquire was plea counsel. E. Culver Kidd, Esquire represented the State. (App. p.9 – p.32)

Petitioner filed an application for post conviction relief on November 30, 2012 (App. p.33 – p.40) Respondent filed a return dated June 28, 2013. (App. p.41 – p.45) An evidentiary hearing was held on July 20, 2015, before the Honorable Roger E. Henderson. Petitioner was present and was represented by William O. Hanahan, III, Esquire. Respondent was represented by J. Rutledge Johnson, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p.46 – p.111) On October 12, 2015, Judge Henderson issued an order denying and dismissing petitioner’s application for post-conviction relief. (App. p.112 – p.120)

This petition follows.

ARGUMENT

Petitioner's guilty plea was coerced.

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.

In this case petitioner testified to the coercive nature of his guilty plea as follows:

Q: Mr. Hollinshead, you just testified that you decided to plead guilty because your hand was forced, correct?

A: Yes.

Q: And that hand being either you accept the 20 years negotiated or you go to trial on all of these charges, right?

A: Yes, it was - - I didn't - - when he was saying negotiated as far as that able to negotiate okay if I would have - - if I would get sentenced up to the 20. I didn't know that I was going to do 20 because the original plea was 15 and then it went to 18. But I didn't know it was going to turn out to be 20 years.

Q: But you have already said you were the one who rejected the 15 and 18 year offers, correct?

A: I - - I just didn't want - - my mental state at the time I didn't understand what it was going on with the proceedings.

Q: So you said you don't understand what was going on with the proceedings, correct?

A: Yeah, at that time.

(App. p.79, l. 23 – p.80, l. 17)

Q: And that's why you chose to accept the 20-year negotiations versus going to trial and particularly getting LWOP'd, correct?

A: Because I thought he was leading me in the right hands of the law.

Q: And as a matter of fact, Mr. Stavrinakis got about eight different charges dropped in this guilty plea, correct?

A: I don't know about the eight different charges. You would have to show me - - -

Q: You don't have three sets of charges?

A: Yeah, I think I - - yeah, I had three sets.

Q: Okay. And they are all trafficking cocaine, correct?

A: Yes.

Q: Okay. And those are most serious charges; do you understand that?

A: Uh-huh.

Q: And that the State could try you on each one of those three and seek a life without parole sentence?

A: Yes.

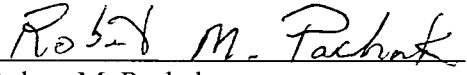
(App. p.82, ll. 2-21)

The above testimony confirms that petitioner's guilty plea was coerced.

CONCLUSION

The petitioner's guilty plea should be reversed.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of March, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
ROGER E. HENDERSON, FAMILY COURT JUDGE

WAYNE HOLLINSHEAD

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002427


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Wayne Hollinshead 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 July 20, 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 Wayne Hollinshead.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 2nd day of March, 2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Roger E. Henderson, Family Court Judge

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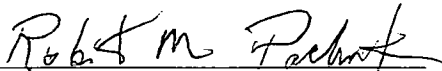
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002427

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 and Wayne Hollinshead, #300696, at Broad River Correctional Institution this 2nd day of March, 2016.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 2nd day
of March, 2016.

 (L.S.)

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