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SC SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Sumter County

George C. James, Jr., Circuit Court Judge

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LIONEL BRADLEY

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-002425

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

INDEX

INDEX..... 1

ISSUE PRESENTED ..... 2

STATEMENT ..... 3

ARGUMENT

    Plea counsel was ineffective in failing to show petitioner a  
    drug analysis report on the drugs he was accused of having  
    prior to his decision to plead guilty..... 4

CONCLUSION ..... 7

PETITION TO BE RELIEVED AS COUNSEL..... 8

ISSUE PRESENTED

Whether plea counsel was ineffective in failing to show petitioner a drug analysis report on the drugs he was accused of having prior to his decision to plead guilty?

## STATEMENT

On February 20, 2013, petitioner appeared before the Honorable W. Jeffrey Young and pled guilty to possession with intent to distribute cocaine base, 2<sup>nd</sup> or subsequent offense and possession with intent to distribute cocaine within proximity of a school or park. Respective sentences of fifteen (15) years and ten (10) years were imposed. Tiffany Butler, Esquire was plea counsel. Bronwyn K. McElveen, Esquire represented the State. (App. p. 1 – p. 118)

Petitioner filed an application for post-conviction relief on March 19, 2014. (App. p. 119 – p. 125) Respondent filed a return dated June 2, 2014 and an amended return dated November 20, 2014. (App. p. 126 – p. 137) An evidentiary hearing was held on April 15, 2015, before the Honorable George C. James, Jr. Petitioner was present and was represented by Melissa White Gay, Esquire. Respondent was represented by Daniel F. Gourley, Esquire, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 138 – p.224) On October 12, 2015, Judge James issued an order denying and dismissing petitioner's application for post-conviction relief. (App p. 225 – p. 238)

This petition follows.

## ARGUMENT

Plea counsel was ineffective in failing to show petitioner a drug analysis report on the drugs he was accused of having prior to his decision to plead guilty.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution 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). To prove prejudice, petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995). Trial counsel can be found ineffective for failing to object to an improper jury instruction or in failing to request a jury instruction that should have been given. He can be held ineffective for failing to object to the improper admission of character evidence, or prior bad acts, or illegally obtained statements, confessions, or improper searches. Failing to move for a continuance may also constitute ineffective assistance of counsel. Morris v. State, 371 S.C. 278, 639 S.E.2d 53 (2006).

Petitioner testified at the evidentiary hearing as follows:

Q: Do you remember looking at that discovery material yourself?

A: Yes, ma'am.

Q: Do you remember ever seeing anything in there that might have been a drug analysis form?

A: No, ma'am.

(App. p. 194, ll. 16-21)

Q: So on the day that you came to court, you were in the courthouse and you spoke to Ms. Butler.

A: Yes, ma'am.

Q: And I believe you left.

A: Yes, ma'am.

Q: Why did you leave?

A: She told me the solicitor was ready to bring my case to trial, and I told her I wasn't prepared to go to trial, you know, what I'm saying at the moment. Because I wasn't even aware that I was even on the docket to go up for court at that moment. But then she told me that the solicitor wanted to offer me a plea for a 5 to 30, with an 8-year cap. And I said I needed to go get my family to let them know what is going on. And to talk to my mother and them to see what was going in and I'll be back.

Q: Stop there for a minute. So on the morning of that, still hadn't had the drug analysis report, and she was telling you of this plea offer that was maybe 5 to 30.

A: Yes, ma'am

(App. p. 195, ll. 3-24)

Q: When Ms. Butler came back to talk to you, what do you recall of that conversation?

A: She stated that they were in the middle of my trial and they were almost finished with my trial. And the judge stated that if he was to find me guilty in my absence, he was going to give me 30 years. But if I stop the trial and take a plea, he would be fair with me.

Q: So it's your understanding and recollection that you were actually told that the judge was probably going to give you 30 years.

A: Yes, ma'am.

Q: And that he said that.

A: Yes, ma'am.

(App. p. 197, line 20 – p. 198, line 8)

Q: Were you ever told that they gave - - that they had produced the drug analysis report on that morning?

A: No, ma'am.

Q: Were you ever shown that document?

A: No, ma'am.

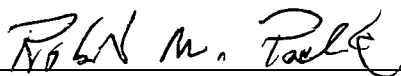
(App. p. 198, line 24 – p. 199, line 4)

It has been held before that a guilty “cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.” McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 1171, (1969) Plea counsel was ineffective in this case in failing to show petitioner the drug analysis report.

CONCLUSION

Petitioner's guilty plea should be vacated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of April, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO SUMTER COUNTY  
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LIONEL BRADLEY

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PETITION TO BE RELIEVED AS COUNSEL

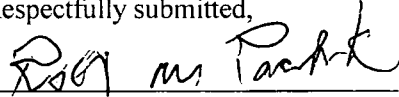
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Counsel for Lionel Bradley states:

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 April 15, 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 Lionel Bradley.

Respectfully submitted,

  
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Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 11th day of April, 2016

STATE OF SOUTH CAROLINA

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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 Daniel Gourley, Esquire and Lionel Bradley, #266225, at Broad River Correctional Institution this 11th day of April, 2016.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 11th day  
of April, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.