

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Tanya A. Gee, Circuit Court Judge

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APR 14 2016

SC SUPREME COURT

KENTWAN L. LAKE

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELATE CASE NO. 2015-002277

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 counsel was ineffective in failing to present adequate evidence of petitioner's competence during the mitigation phase of his guilty plea?

STATEMENT

On August 25, 2011, petitioner appeared before the Honorable L. Casey Manning in Richland County and pled guilty to two counts of first degree burglary and one count of armed robbery. He was sentenced to fifteen (15) years imprisonment on each charge. He was represented by Tivis Sutherland, Esquire. Petitioner also pled guilty to two armed robbery charges from Lexington County. He was sentenced to fifteen (15) years on those charges as well. Casey Cornwell, Esquire was plea counsel on those charges. (App. p.1 – p.31) Petitioner filed an application for post-conviction relief on August 28, 2012. (App p.32 – p.36) Respondent filed a return dated October 12, 2012. (App. p.37 – p.43) An evidentiary hearing was held on August 27, 2015, before the Honorable Tonya A. Gee. Petitioner was present and represented by Charles T. Brooks, III, Esquire. Respondent was represented by J. Clayton Mitchell, Assistant Attorney General. Petitioner testified in his own behalf and he called both plea counsels to testify. He also called Donna Schwartz–Watts Maddox to testify. (App. p.44 – p.100) On October 26, 2015, Judge Gee issued an order denying and dismissing the application for post-conviction relief. (App. p.101 – p.107)

This petition follows.

ARGUMENT

Counsel was ineffective in failing to present adequate evidence of petitioner's competence during the mitigation phase of his guilty plea.

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).

In the case a well known psychiatrist in this State, Donna Schwartz-Watts, testified that she evaluated petitioner. She found the following:

- Q: Okay. And what did you find out, you know, after gathering all of this as relates to Mr. Lake?
- A: Well, Your Honor, Mr. Lake had a long-standing history of some intellectual deficits and also mental illness. If you go through his records, he was in an emotionally-handicapped class when he was younger.

His verbal intelligence was always good and average. He's an intelligent young man. He did have some problems in his performance IQ over the years. He was, as a child, treated for attention deficit disorder. He was followed at the Hall Institute as an outpatient. And he was treated there for attention deficit disorder. So he was no stranger to having specialized treatment in school and also some out-patient psychiatric treatment.

He got his charges. He was evaluated by the Department of Mental Health, Dr. Friarson, in 2000 - - I believe 13. Excuse me. 2010. And I had that report as well and reviewed it.

Q: Okay.

A: Based on all of those records, I was able to confirm that he had prior mental illness. However, when I saw him in 2013 I was very concerned, Your Honor. He was psychotic. And I went to Kershaw. I met with him. He was very paranoid. He was very suspicious of me. And I met with him about, probably over an hour. And near the end of the interview when he realized I was trying to get his history he was concerned that I had not reviewed any of his records. He was very frightened that I was not prepared to be able to deal with his issues.

As I interviewed him he began to tell me a story, and also in my opinion it qualified as a bizarre delusion. And I'm glad to describe that for the Court.

Mr. Lake was telling me that he had a dog and it was a pit bull and it was, he called it a rare bloodline. And the dog's name was Rascal. And his belief its that the was chosen by God to protect this bloodline, that it's a religious bloodline, that the dog had been missing and that his attempts to gain money and the robberies that he committed were him trying to come up with money to pay ransom for his dog.

I thought that was a strange belief and during the interview he trusted me enough, he turned over his Department of Corrections badge and actually had the picture of the pit bull on the back of his label. He - - that was called a bizarre delusion.

He also had delusions that he that he was dying and that something was wrong with him and had headaches and wanted an MRO scan of his brain which I concurred with. Any new onset psychosis - - it was my opinion at the time, he's certainly of the

age, he's 24. That's the age of onset of schizophrenia. He had very bizarre delusions. I agreed and thought an MRI was pertinent.

He participated in the MRI. He was glad to have that done and it was abnormal, Your Honor. He had the MRI done on November 21st, 2014. And the MRI - - what the findings called - - and I'll be glad to spell it. It's called cavum septum pellucidum. And basically what that means is he's got an extra, like, white matter in part of his brain. And that's shown to be related to schizophrenia.

(App p. 59 line 15 – p. 61, line 25)

She concluded by saying the following:

I don't think it was a competency issue, but it was my opinion that he had significant mitigation that could have been presented and that in no way, shape or form was he faking symptoms of mental illness. And I don't believe he is today.

(App. p. 62, ll. 19 – 23)

Plea counsel from Richland County testified that the psychiatrist's testimony would have been helpful. (App. p. 80, ll. 7 – 16)

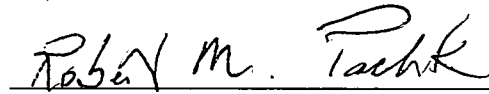
Plea counsel from Lexington County also thought the testimony would have helped. (App. p. 89, line 21 – p. 90, line 5)

In Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991) a conviction was reversed and remanded where counsel admitted his error. The same should be held true here.

CONCLUSION

Petitioner's guilty plea should be reversed.

Respectfully submitted,

Handwritten signature of Robert M. Pachak in black ink, written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of April, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
TANYA A. GEE, CIRCUIT COURT JUDGE

KENTWAN L. LAKE

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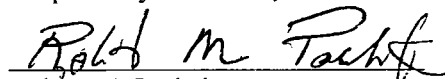
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kentwan L. Lake 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 August 27, 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 Kentwan L. Lake.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 14th day of April, 2016

STATE OF SOUTH CAROLINA

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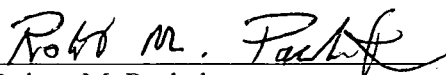
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CERTIFICATE OF SERVICE

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 Clay Mitchell, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Kentwan L. Lake, #347507, at Kershaw Correctional Institution this 14th day of April, 2016.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of April, 2016.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.