

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

JUL 22 2016

Honorable Perry H. Gravely, Circuit Court Judge

SC SUPREME COURT

PATRICK CHASE MASSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000052

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether defense counsel was ineffective in failing to request a competency hearing and whether the plea court failed to recognize that a competency hearing should have been held?

STATEMENT

On January 6, 2014, petitioner appeared before the Honorable Robin B. Stilwell in Greenville County and pled guilty to attempted first-degree burglary, two (2) counts of breaking and entering a motor vehicle, two (2) counts of first-degree burglary, and malicious damage to personal property. Petitioner was sentenced to 15 years for attempted first-degree burglary, 5 years for each count of breaking and entering a motor vehicle, 15 years for each count of first-degree burglary, and 5 years for malicious damage to personal property. He was represented by Sarah M. Henry, Esquire. The State was represented by Lisa Bentley, Esquire. There was no appeal. (App. p. 1-20)

On August 4, 2014, petitioner filed an application for post-conviction relief. (App. p. 21-33) Respondent filed a return dated November 22, 2014. (App. p. 34-40) An evidentiary hearing was held on October 21, 2015, before the Honorable Perry H. Gravely. Petitioner was present and represented by R. Mills Arial, Esquire. Respondent was represented by Karen Ratigan, Assistant Attorney General. Petitioner testified in his own behalf and called Kim Massey and Sarah Henry to testify. (App. p. 41-91) On November 24, 2015, Judge Gravely issued an order denying and dismissing petitioner's application for post-conviction relief.

This petition follows.

ARGUMENT

Defense counsel was ineffective in failing to request a competency hearing and the plea court failed to recognize that a competency hearing should have been held.

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 some instances counsel may be held ineffective without a showing of prejudice when he fails to subject the prosecution's case to a meaningful adversarial testing. In such cases prejudice is presumed. Nance v. Ozmit, 367 S.C. 547, 626 S.E.2d 878 (2006).

During the petitioner's guilty plea counsel disclosed the following:

Patrick has got a long history of mental health issues. He also - -talked to his mom, talked to

Patrick, he's a little on the slow side. And it's taken a little while for him to comprehend things. Right before this had happened he attempted suicide and they changed his mental health medication. He's on Trazodone, Seroquel. And Trazodone had been a [indiscernible] change. Directly after he was put on his medication he went through a pretty serious episode. I believe because, if I recall, he had been self- medicating for a while. I think Patrick was pretty devastated, at least as to what his mother and Patrick told me. And while on the medication he got, obviously, very inebriated. The combination of two and his intoxication is not a defense in this case, you know, that he knew better than to get drunk on this medication. But that's kind of the root of what happened in this case.

(App. p. 13 line 22 – p. 14, line 14)

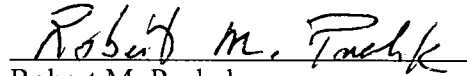
Counsel went on to tell the court that petitioner needed substance abuse counseling and mental health counseling. (App. p. 16, ll. 1-2)

Under Nance v. Ozmit above counsel should have requested a competency hearing. Also, in State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), the court held that a criminal defendant's failure to request a competency hearing did not waive his right to such a hearing where his sanity was an issue.

CONCLUSION

Petitioner's guilty plea should be vacated.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of July, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

PATRICK CHASE MASSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000052

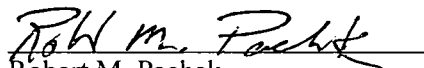
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Patrick Chase Massey 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 1/13/2016. 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 Patrick Chase Massey.

Respectfully submitted,



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 22nd day of July, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

PATRICK CHASE MASSEY,

PETITIONER,

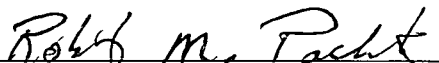
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

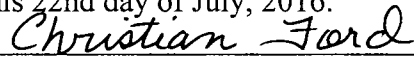
CERTIFICATE OF SERVICE

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 Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Patrick Chase Massey, 358341 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC, 29210, this 22nd day of July, 2016.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 22nd day of July, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.