

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

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**RECEIVED**

DEC 13 2016

S.C. SUPREME COURT

CHRISTOPHER WILDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001557

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
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PO Box 11589  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Whether plea counsel was ineffective in failing to advise petitioner that he could withdraw his guilty plea after the judge enhanced the sentence beyond what was agreed?

## STATEMENT

On October 20, 2014, petitioner appeared before the Honorable Allison Lee in Oconee County and pled guilty to criminal sexual conduct in the first degree. He was sentenced to ten (10) years imprisonment. Wilson Burr, Esquire was the plea counsel. Lindsey S. Simmons, Esquire was the assistant solicitor. (App. p. 1 – p. 22)

Petitioner filed an application for post-conviction relief on August 10, 2015. (App. p. 23 – p. 29) Respondent filed a return dated February 2, 2016. (App. p. 30 – p. 35) An evidentiary hearing was held on June 6, 2016, before the Honorable R. Scott Sprouse. Petitioner was present and was represented by Johanna C. Valenzuela, Esquire of the Attorney General's Office. Both petitioner and plea counsel testified at the hearing. (App. p. 36 – 60) On July 19, 2016, Judge Sprouse issued an order denying and dismissing the application for post-conviction relief. (App. p. 61-p. 66)

This petition follows.

## ARGUMENT

Plea counsel was ineffective in failing to advise petitioner that he could withdraw his guilty plea after the judge enhanced the sentence beyond what was agreed.

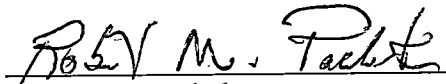
In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced 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).

At petitioner's guilty plea, the court was told that there was a recommendation of fifteen (15) years suspended upon seven (7) years service with five (5) years probation thereafter. The Department of Probation went along with this recommendation. (App. p. 17, ll. 16-24) At the evidentiary hearing, petitioner testified that he signed a seven-year guilty plea. He said that he never

would have signed it if he did not think it was a binding agreement. Trial counsel never objected or attempted to withdraw the plea when he was given the ten year sentence. (App. p. 40, ll. 6-11; p. 42, l. 16-43; l. 7)

CONCLUSION

Because of counsel's failure to object to the ten year sentence and his failure to move to withdraw the guilty plea; petitioner's guilty plea should be vacated.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of December, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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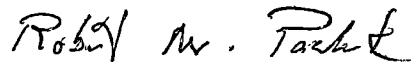
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Christopher Wilder states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
  2. He has reviewed the record of petitioner's trial before Judge R. Scott Sprouse, which was held on June 6, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
  3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.
- Therefore, counsel requests that the Court relieve him as counsel for Christopher Wilder.

Respectfully Submitted,

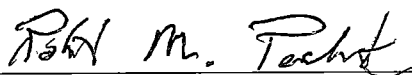


Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 13th day of December, 2016.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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ATTORNEY FOR PETITIONER

This 13th day of December, 2016.

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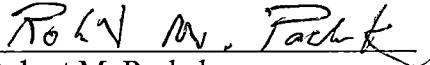
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

—————  
CERTIFICATE OF SERVICE  
—————

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Christopher Wilder, #303905, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 13th day of December, 2016.

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 13th day of December, 2016.

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