

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable J. Derham Cole, Circuit Court Judge

RONNIE K BRADY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002035

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether plea counsel was ineffective in giving petitioner incorrect sentencing advice?

STATEMENT

On November 21, 2013, petitioner appeared before the Honorable J. Mark Hayes, II in York County and pled guilty to manufacturing methamphetamine. A twenty-five (25) year sentence was imposed. Plea counsel was E. Ashley Anderson, Esquire. Marina Hamilton, Esquire was the assistant solicitor. (App. p. 1 – 23) Petitioner filed an application for post-conviction relief on August 15, 2014. (App. p. 24 – 30) Respondent filed a return dated December 10, 2014. (App. p. 31-36) On January 21, 2015, an evidentiary hearing was held before the Honorable J. Derham Cole. Petitioner was present and was represented by William Michael Hemlepp, Jr., Esquire. Respondent was represented by J. Rutledge Johnson, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 36-63) On August 23, 2016, Judge Cole issued an order denying and dismissing the application for post-conviction relief. (App. p. 64-72)

This petition follows.

ARGUMENT

Plea counsel was ineffective in giving petitioner incorrect sentencing advice.

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).

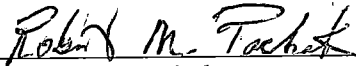
Besides attacking a guilty plea based on ineffective assistance of counsel, a defendant may challenge the guilty plea on other constitutional grounds. The United States Supreme Court explained in Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969) that "a plea of guilty is more than admission of conduct; 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 wrote in his application for post-conviction relief that his public defender told him he would get a ten (10) year sentence but he got twenty-five (25) years. It was only his second felony but they charged him with a third. (App. p. 26) At the evidentiary hearing, petitioner testified that plea counsel almost guaranteed him that if he would plead guilty he would get ten (10) years. She was 90 percent sure. Petitioner said he believed her. (App. p. 42, ll. 2-10) He said he never would have pled guilty if he had known he was not going to get ten (10) years. (App. p. 43, ll. 15-17) As noted above giving incorrect sentencing advice constitutes ineffective assistance of counsel.

CONCLUSION

Petitioner's guilty plea should be vacated.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of January, 2017.

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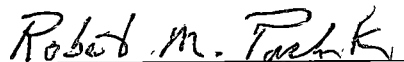
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronnie K Brady 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 J. Derham Cole, which was held on January 21, 2015, 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 Ronnie K Brady.

Respectfully Submitted,

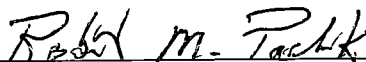


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of January, 2017.

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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This 19th day of January, 2017.

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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 Justin Hunter, 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 Ronnie K Brady, #357967, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 19th day of January, 2017.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of January, 2017.

 (L.S)

Notary Public for South Carolina
My Commission Expires: March 1, 2026