

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

QUINTIN SHAVJONTE' LUMPKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002404

JOHNSON PETITION FOR WRIT OF CERTIORARI

Robert M. Pachak
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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether petitioner's decision to plead guilty was knowing and voluntary when he did not get to see his discovery?

STATEMENT

On March 13, 2014, petitioner appeared before the Honorable Edgar W. Dickson in Orangeburg County and pled guilty to common law robbery, assault and battery of a high and aggravated nature (ABHAN), and armed robbery. He was sentenced to fifteen (15) years for common law robbery, to twenty (20) years for ABHAN, suspended upon fifteen (15) years service and five (5) years probation thereafter, and to twenty (20) years for armed robbery, suspended upon fifteen (15) years service with five (5) years probation thereafter. After a motion to reconsider the sentence Judge Dickson amended the armed robbery sentence to a straight fifteen (15) year sentence. Breen Stevens, Esq. was plea counsel. Thomas Scott, Esq. was the assistant solicitor. (App. p.1 - p.24).

Petitioner filed an application for post-conviction relief on December 2, 2014. Respondent filed a return dated August 11, 2015. (App. p. 26 - p. 42). An evidentiary hearing was held before the Honorable Benjamin H. Culbertson on May 18, 2016. Petitioner was present and was represented by Jonathan D. Waller, Esq. Respondent was represented by J. Clayton Mitchell, III, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 50 - p. 102). On October 27, 2016, Judge Culbertson issued an order denying and dismissing the application for post-conviction relief. (App. p. 103 - p. 110).

This petition follows.

ARGUMENT

Petitioner's decision to plead guilty was not knowingly and voluntarily made because he did not get a chance to see his discovery.

On the issue of plea counsel and discovery the following discussion transpired at the evidentiary hearing:

A: He told me that they would have to have certain things on me for them to convict me but that was it.

Q: Were there some statements that were taken from Witnesses in your case that you—

A: Mr. Stevens told me the whole time—from the first time I spoke with Mr. Stevens he was telling me that the only things they had on me was a photo lineup, which I received a video which he showed me, and a witness statement. He told me the only way they could convict me was off the witness statement and he was waiting for the solicitor to send it, I never received a witness statement. I wrote the public defender's office five times, got five different motion of discoveries, I wrote the clerk of court, I asked him several times, it was never no witness statement. And my whole time still until now I'm still believing that there is a witness statement that I have never seen because that is the only -- that is what he was telling me as my attorney so that's what I believe, but it was never nothing, never seen it. Never seen it.

Q: Okay.

A: And from my understanding that was the only thing that they really had that they could convict me and I never seen it.

Q: Do you know if Mr. Stevens saw it?

A: From my understanding he didn't because—he told me that the solicitor had it and the solicitor was going to get it to him and he was going to do everything in his power to get it, but he never showed me, he never said that he read it, he never told me what it stated, never told me none of that.

Q: So you pled guilty and you still had not seen that statement.

A: I pled guilty and I still didn't see the statement. and I wrote him after I pled guilty and the clerk of court asking for a motion of discovery with specifically the witness statement in it so I could see it myself and I still—it was never no witness statement.

(App. p. 65, line 7 - p. 66, line 66).

“Guilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758, 90 S.Ct. 1463, 1474 (1970). The difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.” Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369 (1985) (internal quotations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) to claims of the same against plea counsel).

First, “the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” Id. On the other hand, the prejudice requirement focuses on whether “there is a reasonable probability that, but for counsel’s errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.” Id. 474 U.S. at 59, 106 S.Ct. At 370. “[T]he voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Holden v. State, 393 S.C. 565, 572-74, 713 S.E.2d 611, 615-12 (2011).


In the present case, Counsel’s advice was not within the range of competence demanded of attorneys in criminal cases. Specifically, petitioner asserted he made the plea without being fully advised of the evidence against him. “A criminal defense attorney has the duty to conduct a

reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); see also Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) (“Without a doubt, ‘[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.’”) (quoting Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir. 1986)). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” Lounds, 380 S.C. at 460, 670 S.C. at 649 (quoting Ard, 372 at 331-32, 642 S.E.2d at 597); see also Sneed v. Smith, 670 F.2d 1348, 1353 (4th 1982) (“To meet this standard, an attorney must at a minimum, ‘conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.’”) (quoting Coles v. Peyton, 389 F.2d 224, 226 (4th 1968)).

Plea counsel’s failure to obtain discovery in this case and make it available to petitioner rendered petitioner’s guilty plea involuntary and unknowing.

CONCLUSION

Petitioner's guilty plea should be vacated.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of May, 2017.

STATE OF SOUTH CAROLINA

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Certiorari to Orangeburg County

Honorable Benjamin H. Culbertson, Circuit Court Judge

QUINTIN SHAVJONTE' LUMPKINS,

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STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quintin Shavjonte' Lumpkins 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 Benjamin H. Culbertson, which was held on May 18, 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 Quintin Shavjonte' Lumpkins.

Respectfully Submitted,

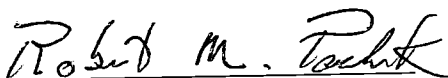


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of May, 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 3rd day of May, 2017.

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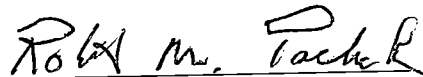
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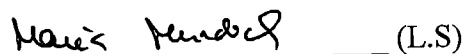
CERTIFICATE OF SERVICE

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 Ruston Neely, 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 Quintin Shavjonte' Lumpkins, #359238, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 3rd day of May, 2017.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of May, 2017.

 (L.S)

Notary Public for South Carolina
My Commission Expires: July 3, 2023