

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

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DANIEL EVERS BRUNSON,

PETITIONER
S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001244

JOHNSON PETITION FOR WRIT OF CERTIORARI

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

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

STATEMENT

On July 21, 2014, petitioner appeared before the Honorable R. Ferrell Cothran, Jr. in Sumter County and pled guilty to kidnapping and assault and battery. He was sentenced to two eight year concurrent terms of imprisonment. Tim Murphy, Esq. was plea counsel. Bronwyn McElveen, Esq. was the assistant solicitor.

Petitioner filed an application for post-conviction relief on May 11, 2015. Respondent filed a return dated July 23, 2015. An evidentiary hearing was held on March 27, 2017, before the Honorable D. Craig Brown. Petitioner was present and was represented by Lance Boozer, Esq. Respondent was represented by Julie A. Coleman, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. On April 25, 2017, Judge Brown issued an order denying and dismissing the application for post-conviction relief.

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.

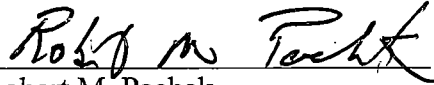
Petitioner testified at the evidentiary hearing that he was visually impaired. He explained that he had “Macular degenerative myopia, retinal ‘detachment,’ glaucoma, stigmatism, and sunlight sensitivity and fluorescent light sensitivity, migraine cluster headaches...” (App. p. 34, lines 19-22). He further explained, “I can tell just illumination out of my left eye. That’s it, illumination. I cannot tell you what anything looks like. I cannot read.” (App. p. 34, line 25- p. 35, line 2).

Plea counsel told petitioner he would probably just be looking at some probation. (App. p. 44, lines 2-5). Petitioner testified that after he was sentenced he told counsel to ask for reconsideration but that was not done. (App. p. 51, lines 17-19).

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 12th day of September, 2017.

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IN THE SUPREME COURT

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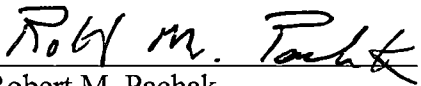
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Daniel Evers Brunson 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 D. Craig Brown, which was held on March 27, 2017, 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 Daniel Evers Brunson.

Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 12th day of September, 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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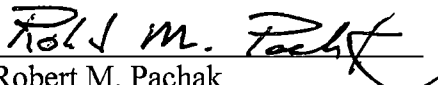
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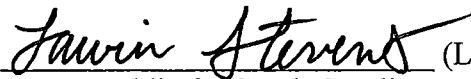
RESPONDENT

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 Julie Coleman, 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 Daniel Evers Brunson, #192642, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 12th day of September, 2017.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 12th day of September, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.