

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

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SHANTEL HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001249

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

Whether defense counsel was ineffective in giving incorrect sentencing advice?

## STATEMENT

On July 14, 2015, petitioner appeared before the Honorable R. Ferrell Cothran in Sumter County and pled guilty to kidnapping, strong armed robbery, and burglary in the second degree. Respective terms of thirteen (13) years, thirteen (13) years, and nine (9) years were imposed. Petitioner was represented by Katarzyna Thomas, Esq. Respondent was represented by Ryan Kirk Griffin, Esq. and Johnathan Scott Matthews, Esq.

Petitioner filed an application for post-conviction relief on August 1, 2016. Respondent filed a return and motion for a more definite statement dated February 13, 2017. An evidentiary hearing was held on March 28, 2017, before the Honorable D. Craig Brown. Petitioner was present and 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 May 2, 2017, Judge Brown issued an order denying and dismissing the application for post-conviction relief.

This petition follows.

## ARGUMENT

### Defense counsel was ineffective in giving 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

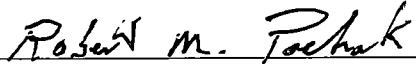
accusers. A valid waiver of these rights cannot be presumed from a silent record. 395 U.S. at 243, 89 S. Ct. at 1712. In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the court held that the “essence” of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure 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 testified at the evidentiary hearing that counsel originally came to him with a 20 year plea offer but he told her he could not do 20 years. (App. p. 44, lines 15-17). The next time counsel came to him with a plea of 0-13 years. She told him the kidnapping would not be considered violent because no one got hurt and there was no sexual assault so he would not end up getting the whole 13 years. (App. p. 41, lines 6-9). Petitioner said he thought he could be paroled but he found out he could not. (App. p. 43, lines 10-12).

As noted above, giving incorrect sentencing advice constitutes ineffective assistance of counsel. Hinson v. State; Ray v. State.

**CONCLUSION**

Petitioner's guilty plea should be vacated.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of September, 2017.

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PETITION TO BE RELIEVED AS COUNSEL

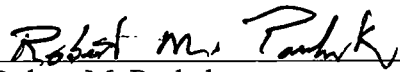
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Counsel for Shantel Harris states:

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 28, 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 Shantel Harris.

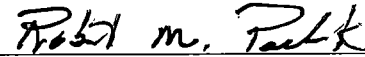
Respectfully Submitted,

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 15th 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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This 15th day of September, 2017.

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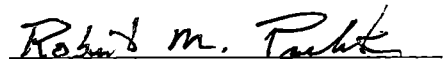
RESPONDENT

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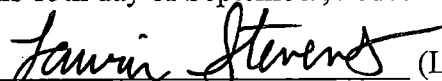
CERTIFICATE OF SERVICE

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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 Shantel Harris, #364719, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 15th day of September, 2017.

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 15th day of September, 2017.

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