

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Robert E. Hood, Circuit Court Judge

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DOUGLAS J. MAYES,

PETITIONER S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001376

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
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether trial counsel was ineffective in failing to convey a plea offer?

STATEMENT

Petitioner was convicted of trafficking in cocaine and simple possession cocaine after a jury trial held before the Honorable Howard P. King on October 1-2, 2012, in Lexington County. Respective sentences of twenty-five (25) years and ten (10) years were imposed. H. Wayne Floyd, Esq. was trial counsel. Michael Ross, Esq. was the assistant solicitor.

Petitioner appealed his convictions and they were affirmed by the South Carolina Court of Appeals on January 14, 2015. State v. Mayes, Op. No. 2015-UP-018.

Petitioner filed an application for post-conviction relief on February 3, 2015. Respondent filed a return dated December 7, 2015. An evidentiary hearing was held on April 18, 2017 before the Honorable Robin E. Hood. Petitioner was present and was represented by Anna Browder, Esq. Respondent was represented by Jessica E. Kinard, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. On May 15, 2017, Judge Hood issued an order denying and dismissing with prejudice the application for post- conviction relief.

This petition follows.

ARGUMENT

Trial counsel was ineffective in failing to convey a plea offer.

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 avoiding 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).

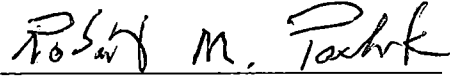
In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) the court held a defense attorney ineffective in failing to convey of 15 year plea offer to his client who ended up getting a 27 year sentence.

In this case petitioner testified at the evidentiary hearing that he was offered a plea deal of 18 years but he wanted a better plea deal. (App. p. 529, lines 8- 14). He said he tried to have his

attorney relieved so he could get a better plea deal. (App. p. 530, lines 14- 16). If he had an offer for less than 18 years he would have taken it. (App. p. 531, lines 16- 18). Petitioner said he believed there was a later plea offer that was not relayed to him. (App. p. 535, lines 19-22).

CONCLUSION

Because the later plea offer was not conveyed to him petitioner's convictions should be reversed.

Handwritten signature of Robert M. Pachak in black ink, written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of November, 2017.

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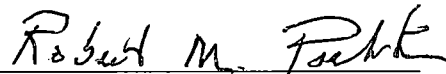
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Douglas J. Mayes 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 Robert E. Hood, which was held on April 18, 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 Douglas J. Mayes.

Respectfully Submitted,

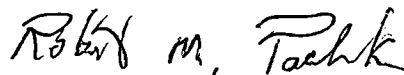


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of November, 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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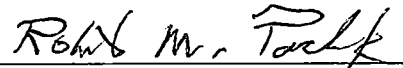
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CERTIFICATE OF SERVICE

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 Melody J. Brown, 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 Douglas J. Mayes, #334386, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 3rd day of November, 2017.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

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

 (L.S)

Notary Public for South Carolina
My Commission Expires: July 5, 2027.