

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Union County

Honorable G. Thomas Cooper, Circuit Court Judge

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JEREMY LEE MOODY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001529

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
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ATTORNEY FOR PETITIONER

 ORIGINAL

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

Whether plea counsel was ineffective in failing to pursue a mental health defense?

## STATEMENT

On May 6, 2014, petitioner appeared before the Honorable Lee S. Alford in York County and pled guilty to two counts of murder, burglary in the first degree, two counts of possession of a weapon, and two counts of kidnapping. He was sentenced to two consecutive life sentences for murder, to life for burglary, and to five years on each possession of a weapon charge. Harry Dest, Esq. was plea counsel. Kevin Brackett, Esq. was the assistant solicitor. (App. p. 1- p. 52)

Petitioner filed an application for post-conviction relief on July 10, 2015. (App. p. 53- p. 59). Respondent filed a return dated September 23, 2016. (App. p. 60- 65).

An evidentiary hearing was held before the Honorable G. Thomas Cooper, Jr. on April 18-19, 2017. Petitioner was present and was represented by N. Beth Ramsey Faulkner, Esq. Respondent was represented by Justin James Hunter, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 66- p. 118). On June 5, 2017, Judge Cooper issued an order denying and dismissing the application for post-conviction relief. (App. p. 119- p. 129).

This petition follows.

## ARGUMENT

### Plea counsel was ineffective in failing to pursue a mental health defense.

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 avoid 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 some instances counsel may be held ineffective without a showing of prejudice when he fails to subject the prosecution's case to a meaningful adversarial testing. In such cases prejudice is presumed. Nance v. Ozmit, 367 S.C. 547, 626 S.E.2d 878 (2006).

Petitioner testified at the evidentiary hearing that he was 34 years old. (App. p. 83, lines 13-14). He had been going to mental health since he was 17 years old. He would usually do well unless


he went off his medications. Before he was 17, he would hallucinate both visually and audially. (App. p. 87, lines 1- 22). As medications he was taking Lithium, Prozac, Abilify, and Trazodone. He stopped taking these medications about a year before the murders. (App. p. 88, lines 5- 23). He said once he feels like his head has cleared up he thinks everything is fine and he stops taking his medications. (App. p. 89, lines 1- 2). Petitioner said he really did not talk to plea counsel about his past mental health conditions. (App. p. 89, lines 17- 19). They never explained the defense of insanity or about pleading guilty but mentally ill. (App. p. 90, lines 4- 13).

Petitioner testified that his current medications are Lithium, Prozac, Cogentin, and Seroquel. He has been diagnosed with borderline personality and anti-social personality along with schizophrenia. (App. p. 93, lines 9- 16).

As can be seen from the above plea counsel failed to pursue a mental health defense.

**CONCLUSION**

Because plea counsel was ineffective petitioner's guilty plea should be vacated.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of November, 2017.

STATE OF SOUTH CAROLINA

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Certiorari to Union County

Honorable G. Thomas Cooper, Circuit Court Judge

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JEREMY LEE MOODY,

PETITIONER

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PETITION TO BE RELIEVED AS COUNSEL

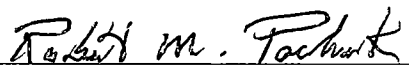
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Counsel for Jeremy Lee Moody states:

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 G. Thomas Cooper, which was held on April 18 - 19, 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 Jeremy Lee Moody.

Respectfully Submitted,

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 8th 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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This 8th day of November, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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PETITIONER

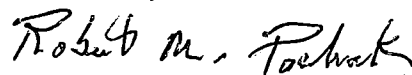
V.

STATE OF SOUTH CAROLINA,

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 J. 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 Jeremy Lee Moody, #359801, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 8th day of November, 2017.



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 8th day of November, 2017.

 (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.