

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

DAYVONN A. VALENTINE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. Supreme Court

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ISSUE PRESENTED

Whether the PCR court erred in holding that petitioner's Sixth Amendment right to effective assistance of counsel was not violated because plea counsel failed to communicate a plea offer and gave erroneous advice regarding sentencing?

STATEMENT

On July 3, 2005, Dayvonn A. Valentine was indicted in Greenville County for eight counts of armed robbery and kidnapping and also for a related weapons offense. App. 100 - 126. On April 5, 2006, petitioner pled guilty before the Honorable D. Garrison Hill. App. 1; App. 22, ll. 5 - 14. Petitioner was represented by Sydney Mitchell. App. 1. Judge Hill sentenced petitioner to twenty years' imprisonment on each count, concurrent, and five years on the weapons charge. App. 29, ll. 19 - 22. Judge Hill also revoked his probation. App. 30; ll. 4 - 7. Petitioner's Anders appeal was dismissed on July 14, 2008. See State v. Valentine, No. 2008-UP-386 (Ct. App. July 14, 2008). App. 42 - 43.

On April 21, 2009, petitioner filed a PCR application. App. 44. On May 9, 2011, a hearing was held before the Honorable G. Edward Welmaker. App. 54. Elizabeth Wiygul represented petitioner and Karen Ratigan represented the State. App. 66. On July 6, 2011, Judge Welmaker denied petitioner's PCR application. App. 93 - 99. This petition follows.

ARGUMENT

The PCR court erred in holding that petitioner's Sixth Amendment right to effective assistance of counsel was not violated because plea counsel failed to communicate a plea offer and gave erroneous advice regarding sentencing.

The PCR court erred in holding petitioner could not prove deficient performance or prejudice under the two-pronged approach of Strickland v. Washington, 466 U.S. 668 (1984). Petitioner's guilty plea was unknowing and unintelligent because he relied on the erroneous advice of his attorney. "The longstanding test for determining the validity of a guilty 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 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted). The Supreme Court has "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under Strickland." Id. at 1481 (quoting Strickland v. Washington, 466 U.S. 668, 689 (1984)).

Petitioner did not receive effective assistance of counsel because his attorney failed to communicate a plea offer of sixty-five years. App. 75, l. 24 – 76, l. 5. Counsel also told him that he would be eligible for parole. App. 79, l. 25 – 80, l. 5. This constituted deficient performance. This Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant's trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would

have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. This Court found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

Furthermore, petitioner was prejudiced because had petitioner known he would be sentenced to 320 years' imprisonment, he certainly would have accepted the plea offer of 65 years. "[A] petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla, 130 S.Ct. at 1485. Any decision to reject the plea offered by the State would not have been reasonable. The PCR court erred in stating that plea counsel did not convey the 65 year offer. Plea counsel testified that he did not recall the offer, so he could not have conveyed it. App. 87, ll. 6 – 18. Therefore, petitioner suffered prejudice and this Court should grant his petition and reverse.

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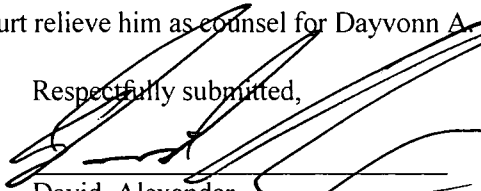
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dayvonn A. Valentine states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on May 9, 2011. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Dayvonn A. Valentine.

Respectfully submitted,



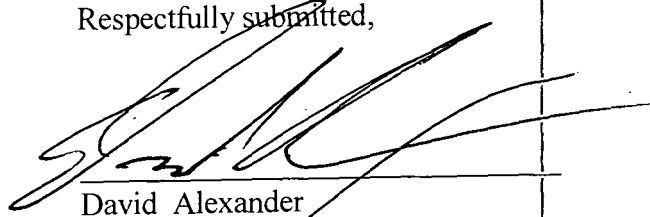
David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 14th day of December, 2012

CONCLUSION

This Court should grant certiorari with the ultimate relief of a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and extends to the right of the line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of December, 2012.

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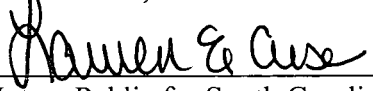
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire and Dayvonn A. Valentine, # 314805, at McCormick Correctional Institution this 14th day of December, 2012.


David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of December, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.