

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable John C. Hayes, Circuit Court Judge

JESSIE JAMES ROBINSON,

ORIGINAL

RECEIVED

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S.C. SUPREME COURT
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001688

JOHNSON PETITION FOR WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

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 pleading petitioner to guilty but mentally ill to burglary in the first degree?

STATEMENT

Petitioner adopts the statement from the post-conviction relief courts granting this belated Austin appeal.

ARGUMENT

Plea counsel was ineffective in pleading petitioner to guilty but mentally ill to burglary in the first degree.

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.

At the evidentiary hearing in this case plea counsel explained as follows:

In representing Mr. Robinson, and he did present himself as I said at the plea, you know, somebody who had some mental weaknesses, also a lot of physical weaknesses and health problems, and he, you know, had been to prison before and he was afraid of going back to prison, and the Department of Mental Health did not find that he lacked the capacity to conform in the report.

They're the experts, I'm not, but he certainly did have enough mental difficulties that I felt like if I could get him some mental health treatment to help him adjust for his period of incarceration I felt I would say not so much legally but maybe morally compelled to try to do that.

And, you know, he was legally in a bad situation. This was a first degree burglary, he has as I'm sure you've seen a lengthy prior record, he was eligible to be served with Life Without Parole Notice which the solicitor did talk about doing should he not enter a guilty plea. So, legally our backs were up against the wall, but I still wanted to try to get him some type of help before he would be embarking on a period of incarceration, so I did talk with the prosecutor.

The evaluation as you have seen did note that he did have mental difficulties that finally rose to the level. I did talk with her about some of the problems that I had noted. I had talked with Mr. Woodard, his brother, about some of the things he had gone through in his past, and as a result of all of those conversations they did agree to not object to him entering his plea under Guilty but Mentally Ill despite what the DMH evaluation said, so that he would be -- I mean, as I know you know, he would still be technically incarcerated but it would be at least in the beginning in a Department of Correction run mental health facility as opposed to prison. And it was my hope that at that place he could receive treatment to help him deal with the rest of his period of


incarceration whether that treatment was counseling, medication,
or probably both.

(App. p. 70, line 8- p. 71, line 18)

As can be seen from the above plea counsel was ineffective in pleading petitioner to
guilty but mentally ill.

CONCLUSION

Petitioner's guilty plea should be vacated.

Handwritten signature of Robert M. Pachak in black ink, written in a cursive style.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of January, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable John C. Hayes, Circuit Court Judge

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PETITIONER

V.

STATE OF SOUTH CAROLINA,

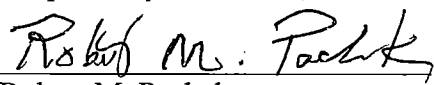
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jessie J. Robinson 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 John C. Hayes, which was held on December 10, 2013, 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 Jessie J. Robinson.

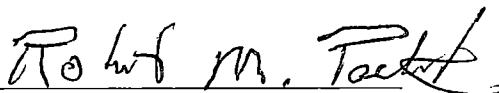
Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 11th day of January, 2018.

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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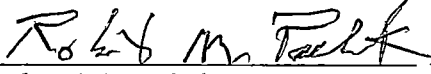
V.

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RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari pursuant to Austin v. State 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 pursuant to Austin v. State has been served on Jessie J. Robinson, #166280, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 11th day of January, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 11th day of January, 2018.

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