

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Dorchester County

Honorable Robert E. Hood, Circuit Court Judge

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ANTONIO TERRELL JACOBS,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001740

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
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX i

ISSUE PRESENTED.....1

STATEMENT2

ARGUMENT

Plea counsel was ineffective in failing to give petitioner correct
sentencing advice.3

CONCLUSION.....5

PETITION TO BE RELIEVED AS COUNSEL.....6

ISSUE PRESENTED

Whether plea counsel was ineffective in failing to give petitioner correct sentencing advice?

STATEMENT

On December 8, 2014, petitioner appeared before the Honorable Kristi L. Harrington in Dorchester County and pled guilty to trafficking in cocaine, third offense, and possession with intent to distribute marijuana, third offense. Respective sentences of twenty-two (22) years and twenty (20) years were imposed. Pierce L. Wehman, Esq. was plea counsel. Donald N. Sorrenson, Esq. of the Solicitor's Office represented the State. (App. p. 1-p. 14). There was no appeal.

Petitioner filed an application for post-conviction relief on October 29, 2015. (App. p. 15-28). Respondent filed a return dated May 4, 2016. (App. p. 29- p. 36). On February 27, 2017, an evidentiary hearing was held before the Honorable Robert E. Hood. Petitioner was represented by Rodney Davis, Esq. Respondent was represented by Ruston Neeley, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 37-p.86). On July 3, 2017, Judge Hood issued an order denying and dismissing petitioner's application for post-conviction relief.

This petition follows.

ARGUMENT

Plea counsel was ineffective in failing to give petitioner correct 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

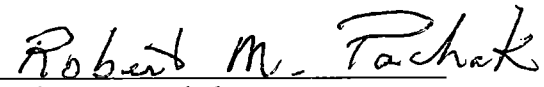
accusers. A valid waiver of these rights cannot be presumed from a silent record. 395 U.S. at 243, 89 S. Ct. at 1712. In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), the court held that the “essence” of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure 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.

At the evidentiary hearing in this case petitioner testified that plea counsel did not discuss with him that the trafficking cocaine charge would be a strike. He was not told it would be a no parole offense. He was also not informed that it was an 85% offense. (App. p. 55, lines 7-16). Petitioner said he would not have pled guilty and would have gone to trial if he had known the trafficking conviction was a strike that could set up a potential life without parole sentence. He was also not told that the marijuana offense was a no-parole offense or an 85% offense. (App. p. 56, line 23-p. 57, line 15).

It is clear from the above that plea counsel’s representation fell below an objective standard of reasonableness and that he was ineffective.

CONCLUSION

Petitioner's guilty plea should be vacated.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of March, 2018.

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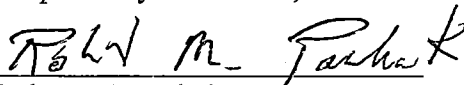
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antonio Terrell Jacobs 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 February 27, 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 Antonio Terrell Jacobs.

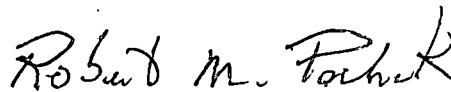
Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 2nd day of March, 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."



Robert M. Pachak
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This 2nd day of March, 2018.

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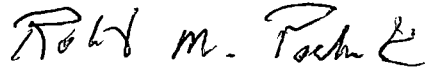
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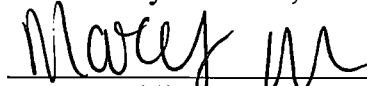
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CERTIFICATE OF SERVICE
—————

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 Christian Saville, 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 Antonio Terrell Jacobs, #306881, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 2nd day of March, 2018.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 2nd day of March, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.