

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Aiken County
Honorable J. Mark Hayes, Circuit Court Judge

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MAR 20 2018

RASHAWN J. ISAAC,

PETITIONER

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002368

JOHNSON PETITION FOR WRIT OF CERTIORARI

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel failed to subject the State's case to meaningful adversarial testing?

STATEMENT

Petitioner appeared before the Honorable James R. Barber, III, in Aiken County on December 10, 2015, and pled guilty to first degree burglary, armed robbery, and voluntary manslaughter. Sentences of thirty (30) years were imposed on each charge. Michael Chesson, Esq. was plea counsel. J. William Weeks, Esq. was the assistant solicitor. (App. p. 1-p. 25).

Petitioner filed an application for post-conviction relief on November 29, 2016. (App. p. 26-p. 32). Respondent filed a return dated August 23, 2017. (App. p. 33- p. 37). An evidentiary hearing was held on September 22, 2017, before the Honorable J. Mark Hayes, II. Petitioner was present and was represented by Arthur K. Aiken, Esq. Respondent was represented by Julie A. Coleman, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 38- p. 63). On October 16, 2017, Judge Hayes issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 64- p. 71).

This petition follows.

ARGUMENT

Plea counsel failed to subject the State's case to meaningful adversarial testing.

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).

In this case petitioner gave the following testimony about plea counsel at the evidentiary hearing:

Q. Now leading up to the plea, did Mr. Chesser ever present to you the option that you could try your case?

A. No, sir.

Q. Okay. Did Mr. Chesser advise you of the advantages and disadvantages of a plea?

A. No, sir.

Q. Did Mr. Chesser advise you of the advantages and disadvantages of a trial?

A. No, sir.

Q. Did Mr. Chesser review all of the evidence with you?

A. No, sir.

Q. Okay. Now, did Mr. Chesser explain to you what you would get if you pled guilty?

A. Yes, sir.

Q. And – and what did he tell you?

A. He told me that when he came to the court – detention center Friday, he was, like, I would plea to 25 years and they'll drop it down to 22.

Q. Was there any discussion about parole?

A. Yes, sir. He said I would parole-eligible. That's why I took the plea.

(App. p. 45, lines 3-23).

Q. Okay. Now, if you had understood, when you made the decision to plead guilty, that you were not eligible for – for parole, would you have pled guilty?

A. No, sir.

Q. If you understood that you were going to get a 30-year sentence before you pled guilty, would you have pled guilty?

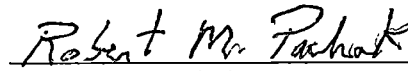
A. No, sir.

(App. p. 46, lines 12-19).

The above testimony under Nance establishes that there had been a constructive denial of counsel because counsel failed to subject the State's case to meaningful adversarial testing.

CONCLUSION

Petitioner's guilty plea should be vacated.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of March, 2018.

STATE OF SOUTH CAROLINA

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Certiorari to Aiken County

Honorable J. Mark Hayes, Circuit Court Judge

RASHAWN J. ISAAC,

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V.

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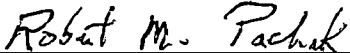
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rashawn J. Isaac 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 J. Mark Hayes, which was held on September 22, 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 Rashawn J. Isaac.

Respectfully Submitted,

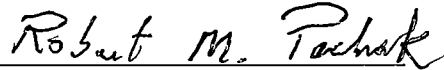


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 20th 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."



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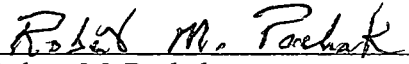
V.

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RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Julie Coleman, 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 Rashawn J. Isaac, #366517, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 20th day of March, 2018.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 20th day of March, 2018.

 (L.S)

Notary Public for South Carolina

My Commission Expires: May 12, 2027.