

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge

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AUG 13 2018

S.C. SUPREME COURT

BILLY ROY BOYD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000961

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 the PCR court erred in ruling that standby counsel at petitioner's trial could not be held ineffective when standby counsel was retained to represent petitioner, standby counsel asked to be relieved, and standby counsel sat at the table with petitioner and gave him help throughout the trial?

STATEMENT

Petitioner was convicted of two counts of armed robbery and two counts of kidnapping after a jury trial held before the Honorable D. Garrison Hill from December 9, 12-14, 2011, in Greenville County. Petitioner was sentenced to twenty years for the armed robbery convictions and to ten years for the kidnapping convictions. Petitioner represented himself and Scott D. Robinson, Esq. was standby counsel. Jennifer A. R. Tessitore, Esq. was the assistant solicitor. (App. p. 1- p. 575).

Petitioner appealed his convictions and the appeal was dismissed by the Court of Appeals after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Boyd, Op. No. 2014-UP-220 (filed June 11, 2014). (App. p. 600-p. 601).

An application for post-conviction relief was filed on June 11, 2015. (App. p. 576-599). Respondent filed a return dated December 22, 2015. (App. p. 600- p. 604) An evidentiary hearing was held on October 24, 2017, before the Honorable Letitia H. Verdin. Petitioner was present and was represented by Rodney Richey, Esq. Respondent was represented by Deshawn Mitchell, Assistant Attorney General. Petitioner was present and testified on his own behalf. Allen Fretwell, Esq. and Scott Robinson, Esq. testified for respondent. (App. p. 605- p 642). On May 15, 2018, Judge Verdin issued an order denying and dismissing the application for post-conviction relief. (App. p. 643-p. 656)

This petition follows.

ARGUMENT

The PCR court erred in ruling that standby counsel at petitioner's trial could not be held ineffective when standby counsel was retained to represent petitioner, standby counsel asked to be relieved, and standby counsel sat at the table with petitioner and gave him help throughout the trial.

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).

This present case is unusual because the PCR court ruled that standby counsel could not be held ineffective. While there is ample authority for that proposition as the PCR court cited in its order of dismissal, the facts do not correspond with the facts in petitioner's case.

Petitioner testified that he was forced to represent himself but trial/standby counsel sat at the table with him and that counsel was ineffective. (App. p. 610, line 25- p. 611, line 19). He said he paid counsel to represent him. (App. p. 612, line 24-p. 613 line 1). He paid counsel \$4500. (App. p. 616, lines 9-24). Counsel wanted him to plead but he did not want to plead. (App. p. 617, lines 15-18); app. p. 620, lines 18-25). Petitioner said he was forced to represent himself at trial since the court relieved counsel two days before trial.¹ (App. p. 626, lines 2-17). As standby counsel, counsel admitted he talked to petitioner throughout the trial. (App. p. 636, lines 2-3).

There was no testimony that counsel even gave back the money petitioner paid him to represent him. Counsel should therefore be judged under the standard set forth in Strickland v. Washington as to whether he provided the effective assistance of counsel.

¹It was trial counsel who asked to be relieved. (App. p. 3, lines 4-20).

CONCLUSION

Petitioner's case should be remanded for a finding if counsel provided the effective assistance of counsel.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of August, 2018.

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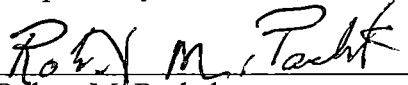
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Billy Roy Boyd 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 post-conviction relief hearing before Judge Letitia H. Verdin, which was held on October 24, 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 Billy Roy Boyd.

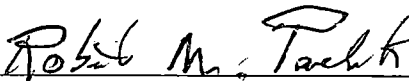
Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of August, 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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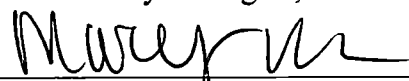
CERTIFICATE OF SERVICE

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 DeShawn H. Mitchell, 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 Billy Roy Boyd, #349065, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 13th day of August, 2018.



Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 13th day of August, 2018.

 (L.S)

Notary Public for South Carolina
My Commission Expires: May 12, 2027