

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Georgetown County

Honorable Steven H. John, Circuit Court Judge

RECEIVED

AUG 27 2018

MALCOLM JOHN CROMEDY,

S.C. SUPREME COURT
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000558

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

STATEMENT.....2

ARGUMENT

Petitioner’s guilty plea was not voluntarily and intelligently
entered.....3

CONCLUSION.....5

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

ISSUE PRESENTED

Whether petitioner's guilty plea was voluntarily and intelligently entered?

STATEMENT

On November 28, 2016, petitioner appeared before the Honorable William H. Seals, Jr. in Georgetown County and pled guilty to two counts of trafficking in heroin. He was sentenced to ten (10) years on each count. Plea counsel was Ronald Hazzard, Esq. The assistant solicitor was Alicia Richardson. (App. p. 1-p. 10)

Petitioner filed an application for post-conviction relief on September 14, 2017. (App. p. 11-p. 18). Respondent filed a return dated December 13, 2017. (App. p. 19-p. 24). An evidentiary hearing was held on February 23, 2018, before the Honorable Steven H. John. Petitioner was present and was represented by James. K. Falk, Esq. Respondent was represented by Johnny E. James, Jr., Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. (App. p. 25-p. 57). On March 21, 2018, Judge John issued an order denying and dismissing the application for post-conviction relief. (App. p. 58-p. 66).

This petition follows.

ARGUMENT

Petitioner's guilty plea was not voluntarily and intelligently entered.

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.

Petitioner testified at the evidentiary hearing that he only met with plea counsel one time before his plea. He was trying to negotiate a good plea. There were two charges against him. One was a buy from a confidential informant (CI). The other drug charge stemmed from a traffic stop. His attorney told him not to worry about the CI buy because the informant was not reliable or credible. (App. p. 28, line 19-p. 29, line 24).

Petitioner said he reviewed discovery but did not understand it. There was a video of the CI but he never got to see it. When he went to plea, he thought he was going to get eight years nonviolent. Counsel, however, told him it would be ten years and violent. (App. p. 30, line 15-p. 31, line 5).

When asked why he pled guilty, petitioner said the following:

A: Really at the time, man I was just lost, man I was just thinking about my brand new baby I just had, you know, planning on getting married, you know, I had done changed from the time I got caught till then and it was just out of it, man I didn't even know what was going on, really. I was just going with the flow, man.

(App. p. 32, lines 12-17)

CONCLUSION

As can be seen from the above testimony from petitioner he did not voluntarily and intelligently plead guilty and his guilty plea should be vacated.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of August, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County

Honorable Steven H. John, Circuit Court Judge

MALCOLM JOHN CROMEDY,

PETITIONER

V.

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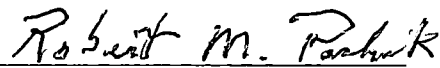
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Malcolm John Cromedy 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 Steven H. John, which was held on February 23, 2018, 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 Malcolm John Cromedy.

Respectfully Submitted,


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 27th 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."



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This 27th day of August, 2018.

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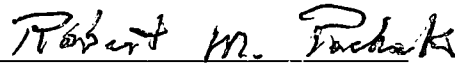
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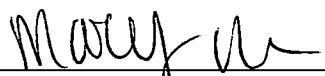
RESPONDENT

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 Johnny Ellis James, Jr., 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 Malcolm John Cromedy, #294206, at Goodman Correctional Institution, 4556 Broad River Road, Columbia, SC 29210, this 27th day of August, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2018.


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