

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

ANDY BROCK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000999

JOHNSON PETITION FOR WRIT OF CERTIORARI

Robert M. Pachak
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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

Plea counsel was ineffective in failing to investigate petitioner’s
case 3

CONCLUSION 5

PETITION TO BE RELIEVED AS COUNSEL 6

ISSUE PRESENTED

Whether plea counsel was ineffective in failing to investigate petitioner's case?

STATEMENT

On August 8, 2016, petitioner appeared before the Honorable Edward Miller in Greenville County and pled guilty to kidnapping, criminal sexual conduct in the first degree, and possession of a weapon. Respective sentences of thirty (30) years, thirty (30) years, and five (5) years were imposed. Plea counsel was Dorothy Manigault, Esq. The assistant solicitor was Lisa Bentley, Esq. (App. 1-p. 15).

Petitioner filed an application for post-conviction relief on December 28, 2016. (App. p. 16-p. 23). Respondent filed a return and motion for a more definite statement dated June 22, 2017. (App. p. 24-p. 28). An evidentiary hearing was held on October 27, 2017, before the Honorable Letitia H. Verdin. Petitioner was present and was represented by Susannah Ross, Esq. Respondent was represented by DeShawn Mitchell, Assistant Attorney General. Petitioner and Shawn Snow testified for petitioner's case. Dorothy Manigault, Esq. testified for respondent. On May 15, 2018 Judge Verdin signed an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 29-p. 62).

This petition follows.

ARGUMENT

Plea counsel was ineffective in failing to investigate petitioners case.

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).

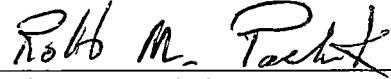
Petitioner alleged in his PCR application that counsel was ineffective in failing to investigate his case properly. (App. p. 18). At the evidentiary hearing, petitioner testified that plea counsel did not call his witnesses, his family, and things that happened in another county.

(App. p. 33, line 19-23). The victim had made similar accusations in the past that were unfounded. (App. p. 33, line 240p. 34, line 8). This is a classic case of an attorney failing to investigate. In Ard v. Catoe, 372 S.C. 318, 331-332, 642 S.E.2d 590, 597 (2007), the court wrote the following:

Without a doubt, “[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.” *Thompson v. Wainwright*, 787 F.2d 1447, 1450 (11th Cir. 1986); *see also Strickland v. Washington*, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the reasonableness of counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland v. Washington*, 466 U.S. at 690, 104 S.Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, “at a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case.” *Troedel v. Wainwright*, 667 F.Supp 1456, 1461 (S.D.Fla.1986). *aff’d*. 828 F.2d 670 (11th Cir. 1987) (emphasis in the original).

CONCLUSION

Petitioner's guilty plea should be reversed because plea counsel failed to properly investigate his case.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of September, 2018.

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IN THE SUPREME COURT

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ANDY BROCK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

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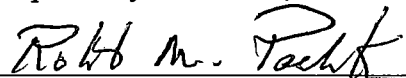
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Andy L. Brock 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 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 Andy L. Brock.

Respectfully Submitted,

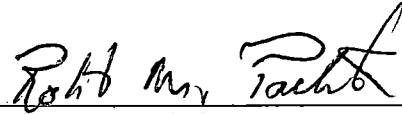


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

This 4th day of September, 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."

A handwritten signature in black ink, appearing to read "Rob M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent
Defense
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ATTORNEY FOR PETITIONER

This 4th day of September, 2018.

STATE OF SOUTH CAROLINA

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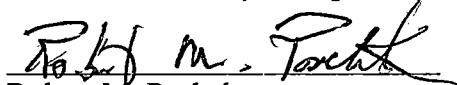
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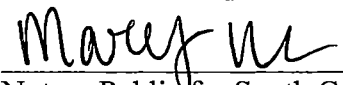
RESPONDENT

—————
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 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 Andy L. Brock, #317746, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 4th day of September, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 4th day of September, 2018.

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