

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

James R. Barber, III, Circuit Court Judge  
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APR 30 2012

S.C. Supreme Court

VERNON T. HARRISON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

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

## STATEMENT

On March 9, 2009, petitioner appeared before the Honorable J. Michelle Childs in Richland County and pled guilty to voluntary manslaughter. A thirty (30) year sentence was imposed. Deon O'Neal, Esquire was plea counsel.

Petitioner filed an application for post-conviction relief dated March 8, 2010. An evidentiary hearing was held on August 29, 2011 before the Honorable James R. Barber, III. Petitioner was present and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Brian T. Petrano, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing.

On December 13, 2011, Judge Barber issued an order denying and dismissing petitioner's application for post-conviction relief.

This petition follows.

## ARGUMENT

### Plea counsel was ineffective in failing to properly investigate petitioner's case.

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. 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 or failure to investigate. 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). Stalk v. State, *supra*. The post-conviction relief court will normally consider the guilty plea transcript as well as the evidence presented at the post-conviction relief hearing in looking at guilty plea issues. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Besides attacking a guilty plea based on ineffective assistance of counsel, a defendant may challenge the voluntariness of the plea. The difference "between a valid guilty plea and a invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). 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. The Court went on to note:

Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth. Mallory v. Hogan, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed 2d 653. Second, is the right to trial by jury. Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491. Third, is the right to confront one’s accusers. Pointer v. Texas, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923. We cannot presume a waiver of these three important federal rights from a silent record.

395 U.S. at 243, 89 S. Ct. 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 pled guilty on the advice of counsel. With what he now knows he would have gone to trial. Plea counsel never informed him of the Protection of Personal Property Act. He had concerns about this from the beginning and they were never followed up. Petitioner said he had a self-defense claim because he was attacked in his own home. He told his lawyer about this. He was forced to plead guilty because his lawyer failed to investigate the defense of self-defense. In fifteen (15) months he only saw his lawyer twice for

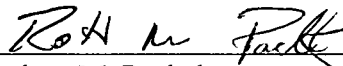
about thirty (30) minutes each time. He also had witnesses that could have helped him – Nashanda Boyd and his father. (App. p. 60, line 8 – p. 63, line 8).

As can be seen from petitioner’s testimony, plea counsel was ineffective in his representation of petitioner in failing to properly investigate his case.

CONCLUSION

Petitioner's writ should be granted and his guilty plea should be overturned.

Respectfully submitted,

  
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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of April, 2012.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

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VERNON T. HARRISON,

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STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL


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Counsel for Vernon T. Harrison states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on August 29, 2011. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Vernon T. Harrison.

Respectfully submitted,

  
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Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 30th day of April, 2012

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

James R. Barber, III, Circuit Court Judge  
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VERNON T. HARRISON,

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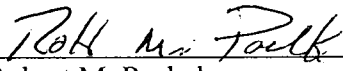
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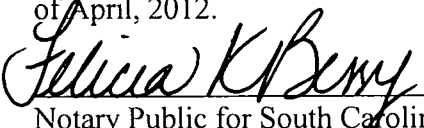
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CERTIFICATE OF SERVICE  
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Robert D. Corney, Esquire and Vernon T. Harrison, #333555, at Broad River Correctional Institution this 30th day of April, 2012.

  
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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day  
of April, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: June 21, 2020.