

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

D. Garrison Hill, Circuit Court Judge  
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FEB - 8 2013

S.C. Supreme Court

RYAN ANTONIO CHAPMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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JOHNSON PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
2012- 212307

DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in denying petitioner's application because his Sixth Amendment right to effective assistance of counsel was violated when plea counsel gave erroneous advice regarding sentencing?

## STATEMENT

On April 13, 2010, Ryan Antonio Chapman was indicted in Greenville County for attempted armed robbery and kidnapping. App. 145-50. On June 8, 2010, petitioner pled guilty before the Honorable W. Jeffrey Young. App. 86, ll. 2 - 14. Petitioner was represented by Thomas Hoskinson. App. 1. Judge Young sentenced petitioner to concurrent fifteen year terms of imprisonment. App. 95, ll. 11 - 24. Petitioner did not appeal.

On May 19, 2011, petitioner filed a PCR application. App. 102. On February 28, 2012, a hearing was held before the Honorable D. Garrison Hill. App. 114. Rodney W. Richey represented petitioner and Karen C. Ratigan represented the State. App. 114. On June 4, 2012, Judge Hill denied petitioner's PCR application. App. 138-44. This petition follows.

## ARGUMENT

The PCR court erred in denying petitioner's application because his Sixth Amendment right to effective assistance of counsel was violated when plea counsel gave erroneous advice regarding sentencing.

The PCR court erred in holding petitioner could not prove deficient performance or prejudice under the two-pronged approach of Strickland v. Washington, 466 U.S. 668 (1984). Petitioner's guilty plea was unknowing and unintelligent because he relied on the erroneous advice of his attorney. "The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted).

Petitioner did not receive effective assistance of counsel because his attorney failed to communicate that the State's plea offer was without any sentencing recommendation. App. 127, ll. 9 – 23. Petitioner only pled guilty because he believed he was going to be sentenced to ten years' imprisonment. App. 127, ll. 9 – 23. It is undisputed there was a prior plea offer of ten years. App. 133, ll. 2 – 16. Petitioner inferred that this prior plea offer was still available and was the offer he was accepting. Plea counsel's failure to ensure that petitioner understood that the solicitor would not be making a recommendation constituted deficient performance. This Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant's trial attorney told him he would be

eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. This Court found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

Furthermore, petitioner was prejudiced because had petitioner known that he was pleading guilty without a recommendation, he would have continued with the trial. Petitioner already made the decision to go to trial and the court held a suppression hearing regarding petitioner's confession. App. 66, ll. 9 - 22. "[A] petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla, 130 S.Ct. at 1485. A decision to proceed with the trial would have been rational. Therefore, petitioner suffered prejudice and this Court should grant his petition and reverse.

CONCLUSION

This Court should grant certiorari with the ultimate relief of a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8<sup>th</sup> day of February, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
D. GARRISON HILL, CIRCUIT COURT JUDGE

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RYAN ANTONIO CHAPMAN,

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STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

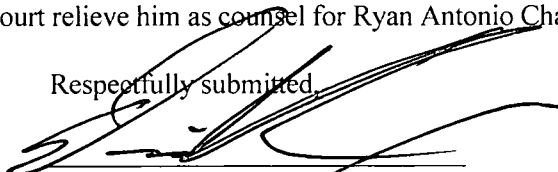
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Counsel for Ryan Antonio Chapman states:

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 February 28, 2012. 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 Ryan Antonio Chapman.

Respectfully submitted,



David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 8<sup>th</sup> day of February, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

D. Garrison Hill, Circuit Court Judge  
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RYAN ANTONIO CHAPMAN,

PETITIONER,

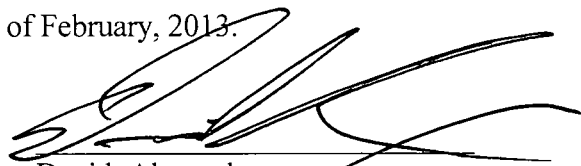
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

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 Karen Ratigan, Esquire and Ryan Antonio Chapman, # 341146, at Lee Correctional Institution this 8th day of February, 2013.



David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day  
of February, 2013.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 2, 2013