

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

OMAR RICK WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-001264

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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Jun 30 2022

S.C. SUPREME COURT

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The PCR court erred ruling petitioner’s guilty plea pursuant to *Alford* was given freely and voluntarily where petitioner testified that, on the day his trial was to start, defense counsel advised him the state would incarcerate his wife unless he entered a guilty plea.3

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ISSUE PRESENTED

Whether the PCR court erred ruling petitioner's guilty plea pursuant to *Alford*¹ was given freely and voluntarily where petitioner testified that, on the day his trial was to start, defense counsel advised him the state would incarcerate his wife unless he entered a guilty plea?

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

STATEMENT

On June 7, 2018, a Florence County grand jury indicted petitioner for Assault and battery of a high and aggravated nature (ABHAN) and second-degree assault and battery. App. 83-84. On January 23, 2019, petitioner entered an *Alford* plea to ABHAN before the Honorable Thomas a. Russo. Petitioner pled to a negotiated sentence with a ten-year cap and the state dismissed the second-degree assault and battery charge. App. 4. Daniel Jordan represented petitioner and Susan McGill, assistant solicitor, represented the state. App. 1. Judge Russo sentenced petitioner to eight years' imprisonment. App. 19.

Defense counsel filed a notice of appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR. Petitioner filed an explanation for appeal. The Court of Appeals dismissed the appeal by written order on April 18, 2019.

Thereafter, petitioner filed an application for PCR on March 28, 2019. App. 22-29. An evidentiary hearing was held before the Honorable George M. McFaddin, Jr., on August 30, 2021. Jonathan Waller represented petitioner and Yasmeeen Klein, assistant attorney general, represented the state. App. 36.

On September 30, 2021, Judge McFaddin signed an order denying PCR. App. 70-82. The court found petitioner's guilty plea, pursuant to *Alford*, was given freely and voluntarily. The court found there was no evidence presented by petitioner, other than his own testimony, to support the allegation that his guilty plea was coerced. The court found defense counsel testified credibly that: he did not recall advising petitioner to plead guilty or else his wife would go to prison, he recalled petitioner wanted to plead guilty, and he recalled it was petitioner's choice to enter a negotiated guilty plea. App. 80-81.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred ruling petitioner's guilty plea pursuant to *Alford* was given freely and voluntarily where petitioner testified that, on the day his trial was to start, defense counsel advised him the state would incarcerate his wife unless he entered a guilty plea.

Relevant facts

At petitioner's guilty plea hearing the state alleged that on November 26, 2017, petitioner shot Walter Treadway in the foot after a drug deal gone wrong. App. 12-13. Petitioner maintained his innocence but acknowledged the state likely had enough evidence to secure a conviction at trial. App. 18.

At petitioner's evidentiary hearing he testified that Daniel Jordan was appointed to represent him on unrelated charges and when petitioner was charged with ABHAN he represented him on those charges. App. 40, ll. 9-22. Petitioner said that the first time they met regarding the charge of ABHAN counsel said, "you shot that boy." App. 41, ll. 1-9.

On the day petitioner's trial was to begin, petitioner said that counsel told him if he did not plead guilty his wife would be charged. It was petitioner's understanding that his wife was being detained across the street, at the old courthouse, and her freedom depended on his acceptance of the negotiated plea offered by the state. App. 45-46. Petitioner admitted he did not tell any of this to the plea judge. However, petitioner explained, it was because he understood that if he disagreed with anything the judge asked him the judge would not accept his guilty plea and his wife would be in jeopardy. App. 55-57; 59-60.

Counsel Jordan testified that petitioner wanted to go to trial right up to the day of trial. Counsel claimed that petitioner changed his mind when he found out Treadway was going to testify against him at trial. App. 63, ll. 4-12. When asked if petitioner was threatened or coerced

to plead guilty counsel answered, “not that I can recall.” App. 64, ll. 2-7. Counsel testified that he believed petitioner’s wife had pending charges in connection to petitioner’s unrelated charges but did not remember if she was charged in connection to this case. App. 64, ll. 11-16. Counsel maintained that he did not believe petitioner entered a guilty plea under duress or coercion. App. 65, ll. 11-14.

Discussion

“A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and 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.” *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

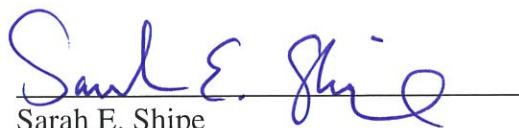
“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). “Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “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, (1985) (quoting *North Carolina v. Alford*, 400 U.S. 25 (1970)).

Here petitioner’s *Alford* plea was not entered freely or voluntarily where he testified at PCR that he was forced to choose between pleading guilty or going to trial and his wife being arrested in connection with a crime she was innocent of. Although, the plea transcript alone

appears to reflect a voluntary guilty plea, a review of the entire record reveals petitioner's guilty plea was not voluntarily tendered due to coercion.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.



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This 30th day of June, 2022.

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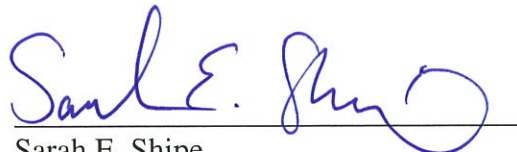
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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Omar Rick Williams states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, Jr., which was held on August 30, 2021, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Omar Rick Williams.



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This 30th day of June, 2022.

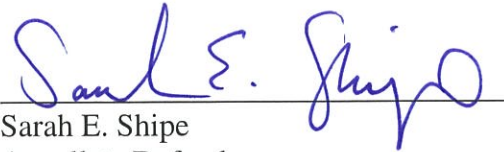
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her 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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