

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**RECEIVED**  
**Jul 27 2022**  
S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

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CHRISTOPHER W. JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001446

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT .....2

ARGUMENT

The PCR court erred in finding defense counsel was not ineffective where counsel’s admitted failure to call petitioner’s grandmother and employer as mitigation witnesses at his guilty plea hearing resulted in petitioner receiving a severe sentence.....3

Relevant Facts .....3

Discussion .....5

CONCLUSION .....7

PETITION TO BE RELIEVED AS COUNSEL .....8

**ISSUE PRESENTED**

Did the PCR court err finding defense counsel was not ineffective where counsel's admitted failure to call petitioner's grandmother and employer as mitigation witnesses at his guilty plea hearing resulted in petitioner receiving a severe sentence?

## STATEMENT

On May 3, 2019, a Spartanburg County grand jury indicted petitioner for three counts of failure to stop for blue lights, one count of possession of a firearm by person convicted of a violent crime, one count possession with intent to distribute (PWID) cocaine base, and PWID marijuana. App. 103-19. On November 7, 2019, petitioner pled guilty before the Honorable J. Mark Hayes, II. Joshua Schultz represented petitioner and Katie Sieber, assistant solicitor, represented the state. App. 1.

Judge Hayes sentenced petitioner to concurrent terms of three years' imprisonment for each count of failure to stop for blue lights, five years' imprisonment for PWID marijuana, and fifteen years', suspended upon the service of ten years' imprisonment, followed by five years of supervision for PWID cocaine base. App. 29-30.

Thereafter, petitioner filed an application for PCR on December 9, 2019. App. 32-42. An evidentiary hearing was held on September 14, 2021, before the Honorable William A. McKinnon. Petitioner was represented by Susannah Ross and William Ray, assistant attorney general, represented the state. App. 57-58

On November 24, 2021, Judge McKinnon signed an order denying PCR. App. 93-102. The court found petitioner failed to show any "reasonable probability" that his sentence would have differed if defense counsel had called his grandmother and employer as mitigation witnesses. The court found that the record demonstrated that counsel "spoke at length in mitigation" on petitioner's behalf and "described much of the information that the proffered witnesses would have provided." Finally, the court found that the evidence presented at PCR was insufficient to show that petitioner was prejudiced by counsel's performance. App. 99-101.

## ARGUMENT

The PCR court erred in finding defense counsel was not ineffective where counsel's admitted failure to call petitioner's grandmother and employer as mitigation witnesses at his guilty plea hearing resulted in petitioner receiving a severe sentence.

### **Relevant facts**

At petitioner's guilty plea hearing the state alleged the following facts. The solicitor stated that on August 10, 2018, an officer observed a black Audi going ten miles over the speed limit, traveling left of center and initiated a traffic stop by activating his blue lights. The vehicle pulled over into a parking lot and then, once the officer approached, it sped off. The officer followed noting that the vehicle had a green, paper tag. The officer was unable to stop the vehicle. The following day officers saw the same car in the same location and again attempted, unsuccessfully, to stop the vehicle. App. 17-18.

On September 12, 2018, officers spotted the vehicle, activated lights and sirens, and the vehicle was eventually stopped when it was struck by another vehicle. After a search of petitioner and the vehicle officers found a handgun, marijuana, a bottle of pills, scales, and 1.96 grams of cocaine base. 18-19.

As mitigation defense counsel offered that petitioner had been working at salvage dealership during his pretrial home detention. Petitioner was permanently confined to a wheelchair because he was shot in 2011. Counsel told the court, that the case went to trial and ultimately the defendant that shot petitioner was found not guilty. App. 24, ll. 14-25. Counsel stated petitioner presented "as a very pathetic individual." App. 26, ll. 20-22. He told the court petitioner had been receiving treatment for mental health and drug addiction including post-traumatic stress disorder (PTSD). Counsel asked for a probationary sentence considering petitioner's mental and physical

health. App. 27.

At the evidentiary hearing petitioner said that, although he had been struggling with mental illness and substance abuse, he was actively employed until his incarceration. App. 64, ll. 11-18. Petitioner also testified during the time before his guilty plea he was enrolled in a “behavioral class and [] group counseling” at a church. He believed that he should be using his time on bond to prove that he was “fit for society.” App. 65, ll. 5-21. Petitioner also testified that the drugs found on him in connection to his arrest were for personal use, not for distribution. App. 66, ll. 1-6. Petitioner testified that the car he was driving at the time of his arrest was not specially outfitted for his disability but that he used a “rod” to press the pedals of the car. App. 63, l. 21-64, l. 5. Petitioner testified he asked defense counsel to call his grandmother and his boss to be present to speak on his behalf at his guilty plea hearing. App. 67, l. 14-69, l. 14.

Petitioner’s grandmother, Betty Johnson, testified that she spoke with defense counsel prior to the plea hearing, and he was aware she was willing to be there in support of petitioner. App. 75, ll. 8-23. She was not contacted to be at the plea hearing and in fact did not know petitioner had pled guilty until the day after the hearing. App. 73, ll. 2-8. Johnson contended that she would have been there to speak in support of petitioner. She could have explained to the plea court that she was supportive of petitioner and would be driving him to his appointments so that he would not have to drive. App. 73, l. 12-74, l. 12.

Petitioner’s boss, Norman James, testified that petitioner worked for him for about six months as an assistant service writer. App. 77, ll. 15-25. James would have told the plea court that petitioner worked for him and that he was an intelligent and reliable guy. James also would have told the court that he was a support in petitioner’s life and was trying to help petitioner “reform” himself after committing the crimes for which he was convicted. App. 78, ll. 4-19.

Defense counsel admitted that he did not remember contacting petitioner's family or friends regarding his guilty plea hearing and said that he wished that he had done so. App. 85, ll. 17-23; 87, ll. 9-12. Counsel believed petitioner's sentences were "pretty extreme for these charges." App. 85, ll. 9-11. He also acknowledged that he should not have told the court that petitioner was "pathetic," and said that he should have used the word sympathetic instead to describe him. Counsel stated, "I wish I could have taken that [statement] back." Counsel thought that petitioner was a sympathetic character because of all that he had been through, "being shot, having [to] see that person be ultimately acquitted that shot him." App. 84, ll. 1-13.

### **Discussion**

In order to prove that counsel was ineffective, the PCR applicant must show that: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *Council v. State*, 380 S.C. 159, 169, 670 S.E.2d 356, 361 (2008). The Court will uphold the findings of the PCR court when there is any evidence of probative value to support them and will reverse the decision of the PCR court when it is controlled by an error of law. *Suber v. State*, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007).

"While *Strickland* does not require counsel investigate every conceivable line of mitigating evidence or require the submission of such evidence in every case, strategic choices made after less than complete investigation are reasonable only to the extent that reasonable professional judgment support the limitations on investigation.... A decision not to investigate thus must be directly assessed for reasonableness in all the circumstances." *Von Dohlen v. State*, 360 S.C. 598, 607-08, 602 S.E.2d 738, 743 (2004) (internal quotations omitted).

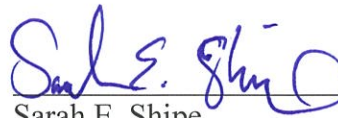
Defense counsel's admitted failure to present mitigating witnesses was deficient

performance. The lower court's order denying PCR found that "the record shows that counsel spoke at length in mitigation on [petitioner's] behalf, and described much of the information that the proffered witnesses would have provided." App. 101. However, statement by counsel to the plea court is much different than petitioner's own family and boss making statements to the court on his behalf. Statements regarding their ability to support petitioner in his attempts to rehabilitate and reform after committing crimes were invaluable to petitioner.

Counsel's failure to present mitigating witnesses prejudiced petitioner where he received a severe sentence. Defense counsel acknowledged that he should have called both witnesses to give statements in mitigation and that petitioner's sentence was severe. Petitioner wheelchair bound was driving a vehicle that was not outfitted for someone with his medical problems and only had a small amount of drugs in his possession and received a lengthy sentence. Had the plea court heard statements from his support system it likely would have impacted his sentence.

**CONCLUSION**

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



Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 27<sup>th</sup> day of July, 2022.

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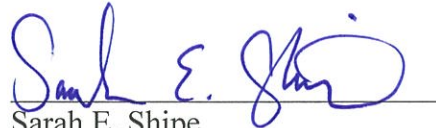
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Christopher W. Johnson states:

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 William A. McKinnon, which was held on September 14, 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 Christopher W. Johnson.

Respectfully Submitted,



Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 27<sup>th</sup> day of July, 2022.

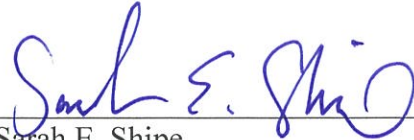
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CERTIFICATE OF COUNSEL

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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This 27<sup>th</sup> day of July, 2022.