

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Roger E. Henderson, Circuit Court Judge

ELIJAH GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000878

JOHNSON PETITION FOR WRIT OF CERTIORARI

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

RECEIVED

Nov 22 2022

S.C. SUPREME COURT

INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT.....2

ARGUMENT

The PCR court erred where it found counsel provided effective representation where counsel’s deficient performance resulted in Petitioner’s entry of pleas that were not knowingly, voluntarily, and intelligently entered.....4

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

ISSUE PRESENTED

Whether the PCR court erred where it found counsel provided effective representation where counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, voluntarily, and intelligently entered?

STATEMENT

A Richland County Grand Jury indicted Elijah Green, Petitioner, for two counts of felony driving under the influence (felony DUI), during the August term of 2015 and the July term of 2016. App. 160 – 161; App. 163 – 164. The State alleged that on April 25, 2015, Petitioner caused a car wreck which seriously injured two other motorists when he was under the influence of alcohol with a blood alcohol concentration of .139. App. 9, l. 24 – 11, l. 15. According to his wife, Petitioner struggled with a drinking problem. App. 16, ll. 21-22. Petitioner also had health problems caused by being shot in the legs in 2014. App. 6, l. 25 – 7, l. 8.

On December 7, 2016, Petitioner appeared before the Honorable Clifton Newman for a guilty plea hearing. Petitioner was represented by Rhodes Bailey. Joshua Golson prosecuted the case. App. 1. Petitioner pleaded guilty as indicted, and as part of the plea negotiations, the State dismissed by *nolle prosequi* an unrelated domestic violence charge. App. 3, ll. 21-23. Petitioner was sentenced to serve concurrent terms of incarceration of twelve years for each offense. App. 162; App. 165; App. 23, ll. 14-17. Petitioner sought reconsideration of the sentence, but his motion was denied. App. 25 – 27.

On March 1, 2017, Petitioner filed an application for post-conviction relief (PCR). App. 28 – 32. On November 6, 2017, the State made its return. App. 33 – 42. On July 11, 2018, Petitioner filed an amended PCR application. App. 43 – 45. A hearing on the matter was convened before the Honorable Roger E. Henderson. Due to scheduling concerns and witness availability, the hearing was held on August 20 – 21, 2019, and December 8, 2021. Petitioner was represented by Jonathan Waller. Lindsey McCallister and Yasmeen Klein represented the State. App. 46; App. 81; App. 112.

Petitioner testified that counsel did not discuss major aspects of the case with him, including the drawing of his blood and the nature of the motorists' injuries. Petitioner explained that he pleaded guilty based on discussions with counsel which led him to believe he could obtain a favorable sentencing by pleading guilty. Petitioner thought he would receive a sentence of three to five years but instead he was sentenced to twelve years. App. 60, l. 9 – 66, l. 5.

Defense counsel claimed Petitioner's pleas were voluntarily entered. According to defense counsel, Petitioner did not want to talk about the motorists' injuries and counsel had Petitioner's wife come to the plea and speak in mitigation. App. 99, l. 5 – 104, l. 17.

On June 15, 2022, the PCR court issued an order of dismissal. App. 132 – 159. The PCR court concluded that Petitioner had not established his pleas were not freely and voluntarily tendered. The order cited to the plea colloquy as evidence that Petitioner was informed of his constitutional right to a jury trial and that Petitioner told the plea judge he was guilty of the charges. App. 153.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred where it found counsel provided effective representation where counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, voluntarily, and intelligently entered.

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). To establish a claim of ineffective assistance of trial counsel, a PCR applicant must show that: (1) counsel's representation fell below an objective standard of reasonableness and, (2) but for counsel's errors, there is a reasonable probability the result at trial would have been different. *Gilchrist v. State*, 350 S.C. 221, 226, 565 S.E.2d 281, 284 (2002) (citing *Strickland*, 466 U.S. at 687).

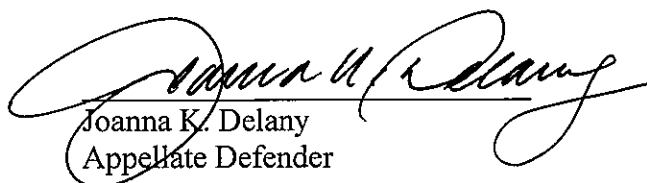
"[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). A defendant is entitled to the effective assistance of competent counsel before deciding whether to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill*, 474 U.S. at 56.

To establish prejudice when challenging a guilty plea, a PCR applicant must prove "there is a reasonable probability that, but for, counsel's errors, the defendant would not have pled guilty, but would have gone to trial." *Harden v. State*, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). "The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial." *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018).

In this case, there was evidence that Petitioner did not have a full picture of the facts comprising the circumstances of his charges including the extent of the other motorists' injuries and the legality of the blood draw. There was also testimony that Petitioner expected a sentence of three to five years based on his discussions with counsel, but, as seen, Petitioner received a sentence of twelve years. If Petitioner had received effective representation, he would have gone to trial instead of pleading guilty. The PCR court's finding that Petitioner's guilty plea was voluntarily, knowingly, and intelligently made, was error. *Strickland v. Washington*, 466 U.S. 687; *Hill v. Lockhart*, 474 U.S. at 58.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that a writ of certiorari be granted to allow full briefing on this issue.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of November, 2022.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Roger E. Henderson, Circuit Court Judge

ELIJAH GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

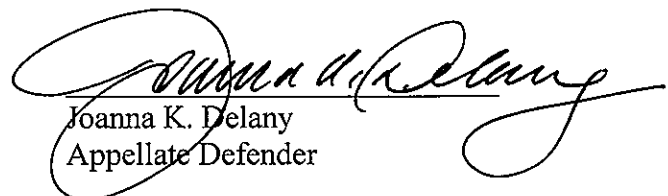
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Elijah Green 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 Roger E. Henderson, which was held on August 20-21, 2019, and December 8, 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 Elijah Green.

Respectfully Submitted,


Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of November, 2022.

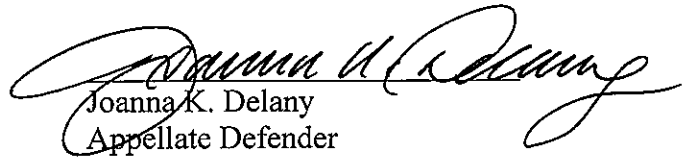
RECEIVED

Nov 22 2022

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."



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 22nd day of November, 2022.