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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Cherokee County

Honorable G.D. Morgan, Jr., Circuit Court Judge

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CHRISTOPHER A. WYLIE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000764

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Sarah E. Shipe  
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

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**ISSUE PRESENTED**

Did the PCR court err finding meritless petitioner's allegation that defense counsel was ineffective for failure to investigate and present mitigating evidence to secure a better negotiated guilty plea offer from the state, where counsel stated he wished could have negotiated a better offer for petitioner and where petitioner received a fifteen-year sentence?

## STATEMENT

On June 21, 2018, a Cherokee County grand jury indicted petitioner for possession with intent to distribute (PWID) controlled substance, Alprazolam, PWID marijuana, trafficking methamphetamine, failure to stop, possession of a firearm during the commission of a violent crime, unlawful carrying of a firearm, possession of a firearm by a person convicted of a violent felony and pointing and presenting a firearm. App. 78-91.

On November 5, 2019, petitioner appeared before the Honorable Grace Knie and pled guilty to a negotiated fifteen-year sentence for possession with intent to distribute (PWID) controlled substance, Alprazolam, PWID marijuana, trafficking methamphetamine, failure to stop, possession of a firearm during the commission of a violent crime, unlawful carrying of a firearm, and possession of a firearm by a person convicted of a violent felony. App. 3-7. Petitioner was represented by Ricky Harris and the state was represented by deputy solicitor, Kimberly Lesknic. App. 2.

Thereafter, petitioner filed an application for PCR on September 8, 2020. App. 29-36. An evidentiary hearing was held on April 19, 2022, before the Honorable G.D. Morgan, Jr. App. 47-48. Petitioner was represented by Rodney Richey and the state was represented by assistant attorney general, Chelsey Marto. App. 48.

On May 5, 2022, Judge Morgan signed an order denying PCR. App. 69-77. The court found petitioner's allegation that defense counsel was ineffective for failing to investigate and present evidence regarding petitioner's background for mitigation was without merit. The court found that defense counsel had addressed the fact that petitioner was young at the time of the incident and likely was an addict. The court further found that petitioner failed to show what other mitigating evidence there was that counsel failed to investigate which would have led to a

more favorable plea offer. App. 75.

This petition follows.

## ARGUMENT

The PCR court erred finding meritless petitioner's allegation that defense counsel was ineffective for failure to investigate and present mitigating evidence to secure a better negotiated guilty plea offer from the state, where counsel stated he wished could have negotiated a better offer for petitioner and where petitioner received a fifteen-year sentence.

### **Relevant facts**

At petitioner's guilty plea hearing the state alleged that on April 14, 2018, an officer noticed a vehicle weaving so the officer activated his blue lights and siren. The vehicle sped up, ran several stop signs, and eventually wrecked, hitting two parked cars. Upon searching the driver, petitioner, and his vehicle the officer found drugs and two guns. App. 13-15.

During the hearing, defense counsel addressed the court regarding petitioner and stated that he "wished that [he] could have negotiated better," but that he still believed petitioner was receiving "substantial benefits." App. 18, ll. 9-13.

At the close of the hearing the court accepted petitioner's guilty plea and the negotiated sentence. The court sentenced petitioner to concurrent terms of fifteen years' imprisonment for trafficking methamphetamine; ten years' imprisonment for PWID marijuana; five years' imprisonment for PWID controlled substance, Alprazolam; five years' imprisonment for possession of a firearm by a felon; five years' imprisonment for possession of a weapon during the commission of a violent crime; three years' imprisonment for failure to stop; and one year imprisonment for unlawful carry. App. 3-4; 26-27.

Petitioner testified at the evidentiary hearing that at the time of his guilty plea he did not understand what a negotiated plea was because of his youth and inexperience. He said that during the course of his case defense counsel only met with him one time. During that meeting

they discussed the benefits of pleading guilty. App. 54, ll. 1-18. Petitioner acknowledged that he did not wish to go to trial on these charges. App. 54, l. 23-55, l. 10. However, he contended that had defense counsel done any investigation or spoken with petitioner more that counsel could have been more successful negotiating with the state. Petitioner believed he had mitigating factors and that a better sentence could have been negotiated based on his age and background. App. 55-57.

Defense counsel Harris denied that he only met with petitioner on only one occasion insisting that they communicated through “phone calls and in-person meetings.” App. 61, l. 15-62, l. 10. Counsel testified he discussed petitioner’s age and background with the solicitor and with the plea court “to the extent that it was possible.” App. 61, ll. 1-6. He claimed he made both the state and the plea court aware of petitioner’s age and the fact that he believed petitioner was an “addict” as opposed to a drug dealer. App. 64, l. 17-65, l. 3.

Counsel said that he disagreed with the state’s position in this case and believed that they were being “too harsh.” Counsel tried to convince the state to agree to a negotiated sentence with a range from ten to fifteen years but that the state refused. App. 63, ll. 11-25. He maintained that he did not believe there was anything by way of background or mitigation that would have persuaded the state to go below a fifteen-year sentence. App. 65, ll. 6-15. Counsel testified that, not only would the state not negotiate further than fifteen years imprisonment, the state actually threatened to seek a sentence of life without the possibility of parole (LWOP) if petitioner did not accept the negotiated guilty plea offer. App. 65, ll. 11-17.

## **Discussion**

The PCR court erred finding defense counsel was not ineffective for failing to present mitigating evidence to the state in order to secure a beneficial negotiated sentence on petitioner’s

behalf.

In *Hill v. Lockhart*, the United States Supreme Court explained, that the two-part *Strickland v. Washington*<sup>1</sup> test applies to challenges to guilty pleas based on ineffective assistance of counsel. 474 U.S. 52, 57 (1985). “A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that the applicant was prejudiced by that deficiency.” *Stalk v. State*, 383 S.C. 559, 560–61, 681 S.E.2d 592, 593 (2009). “Plea counsel is ineffective within the meaning of the Sixth Amendment only when the applicant satisfies both requirements.” *Id.*

The record reflects that at the time of the incident petitioner was young and inexperienced and suffering from the disease of addiction. Petitioner testified, at the evidentiary hearing, that he only met with counsel on one occasion. While counsel refuted petitioner's testimony he offered no notes or dates regarding his additional visits and what conversations they had during those alleged additional meetings. It was unreasonable for defense counsel to fail to meet with petitioner on more than one occasion. *See Strickland v. Washington*, 466 U.S. 668, 688–89 (1984) (stating the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances).

Counsel's testimony indicated that the state had a rigid stance regarding petitioner's sentence. However, had counsel spent more time with petitioner and done independent research outside of the discovery provided by the state he likely would have discovered additional mitigation in peititoner's case which would have aided him in his negotiation. *See Strickland v. Washington*, 466 U.S. 688, 688-89 (1984) (stating “[c]ounsel's function is to assist the

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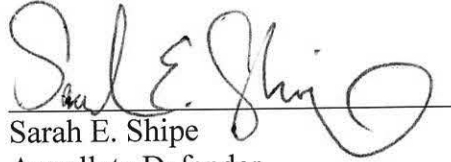
<sup>1</sup> 466 U.S. 668 (1984).

defendant”).

Petitioner was prejudiced by counsel’s failure where he was forced to accept a lengthy sentence or face the potential of a sentence of life without the possibility of parole as a young man in his early twenties.

**CONCLUSION**

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

A handwritten signature in black ink, appearing to read "Sarah E. Shipe". The signature is written in a cursive style with a large, looping "S" and "E".

Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of December, 2022.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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PETITION TO BE RELIEVED AS COUNSEL

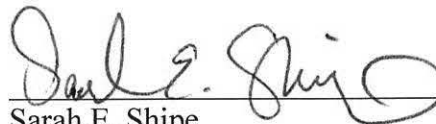
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Counsel for Christopher A. Wylie states:

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 G.D. Morgan, Jr., which was held on April 19, 2022, 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 A. Wylie.

Respectfully Submitted,




Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of December, 2022.

**CERTIFICATE OF COUNSEL**

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."

A handwritten signature in black ink, appearing to read "Sarah E. Shipe", written over a horizontal line.

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This 15th day of December, 2022.