

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Feb 17 2023**

S.C. SUPREME COURT

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Certiorari to Pickens County

Honorable R. Scott Sprouse, Circuit Court Judge

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AARON VAN HENDRIX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001163

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

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**ISSUE PRESENTED**

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to advise Petitioner of the severity of the charges against him and the potential sentence he faced if he was convicted at trial since there is a reasonable probability Petitioner would have accepted the state's fifteen year plea offer and pled guilty if he would have known he faced a mandatory minimum sentence of twenty-five years and up to life without parole if convicted of first degree criminal sexual conduct with a minor and third degree criminal sexual conduct with a minor at trial?

## STATEMENT OF THE CASE

The state alleged Petitioner sexually abused his then girlfriend's three minor children: Minor 1, a girl, Minor 2, a girl, and Minor 3, a boy. Minor 1 and Minor 3 are twins. Petitioner met Stacy Riden, the children's mother, through Riden's sister, Jennifer. App. 436, ll. 3-5. The two knew each other for roughly five years before they started dating. App. 435, ll. 21-25. Petitioner eventually moved in with Riden and her children at the beginning of 2012. App. 436, ll. 6-20; App. 459, ll. 7-16. Petitioner and Riden ultimately broke up near the end of 2012 and Petitioner moved out of the home before Christmas. App. 459, ll. 17-19.

In March 2013, the children began living with their maternal grandfather and step-grandmother, Mark and Lisa Riden, because Riden was struggling to pay bills and take care of the children on her own. App. 444, ll. 2-16; App. 456, ll. 3-25. It was meant to be a temporary solution and there was no court order in place. App. 308, ll. 5-24; App. 463, ll. 13-22. The grandparents allowed Riden to come visit the children at their home in the beginning but slowly limited her access. App. 447, l. 13 – 448, l. 1. On December 29, 2013, law enforcement responded to the grandparents' home about a report of sexual abuse allegedly disclosed to the children's step-grandmother, Lisa. App. 259, l. 22 – 260, l. 24.

The state alleged that Petitioner and Riden sexually abused the children from December 25, 2011 through December 25, 2012 by touching their genitalia, digitally penetrating them, and making the children give and receive cunnilingus and fellatio. The twins, Minor 1 and Minor 3, were five years old at the beginning of the relevant time period and Minor 2 was twenty months old. Both Petitioner and Riden testified at their joint trial and denied the allegations. App. 431, l. 13 – 473, l. 9; App. 493, l. 18 – 504, l. 8.

A Pickens County grand jury indicted Petitioner on June 9, 2015 for two counts of first degree criminal sexual conduct (CSC) with a minor and one count of third degree criminal sexual conduct with a minor. App. 753-758. His case was called to trial on January 25, 2016 before the Honorable Perry H. Gravely, and a jury. App. 1. Petitioner was tried jointly with his codefendant, Stacy Riden. App. 1. Assistant Solicitor Christopher Jones represented the state. App. 1. Richard Warder represented Petitioner. App. 1. Caroline Horlbeck represented Riden. App. 1. On January 28, 2016, the jury found Petitioner guilty as indicted. App. 608, l. 15 – 609, l. 24. Petitioner was sentenced to twenty-five years for each count of first degree CSC with a minor to be served concurrently and twelve years consecutive for third degree CSC with a minor. App. 615, l. 22 – 616, l. 10. The aggregate sentence was thirty-seven years' imprisonment.

The Court of Appeals affirmed Petitioner's convictions and sentence. App. 659-660. On August 14, 2019, Petitioner filed an application for post-conviction relief (PCR) raising the claim argued in this petition. App. 661-669. The state filed a return to this application dated January 22, 2020. App. 670-687. An evidentiary hearing was convened on January 26, 2022 before the Honorable R. Scott Sprouse. App. 689. Assistant Attorney General Lillian Meadows represented the state, and Don Thompson represented Petitioner. App. 689.

Petitioner testified at the evidentiary hearing that his trial counsel never advised him of the severity of the charges against him or the potential sentence he faced. Petitioner may have decided to plead guilty instead of proceeding to trial if he would have known "how much time [he] could get." App. 696, l. 25 – 697, l. 17. Petitioner explained that the state extended two plea offers—one was fifteen years and the other was twelve years. App. 702, l. 22 – 703, l. 1. He rejected these offers because he "felt very sure that there was no way they could convict me." App. 703, ll. 2-5. However, if he would have known the potential sentence he faced if convicted

at trial, “it would’ve given [him] something to think about and talk to [his] family [about], and it’s possible they [his family] would’ve talked [him] into a plea.” App. 702, ll. 9-21. However, Petitioner “couldn’t say for sure.” App. 702, l. 21.

Don Thompson, Petitioner’s trial counsel, testified that he was confident he discussed with Petitioner the severity of the charges against him and the potential sentence he faced. App. 707, ll. 20-23. Thompson maintained that he would not have discussed a plea offer without discussing the benefits of pleading guilty versus the risks of proceeding to trial. App. 707, l. 20 – 708, l. 23. However, he had no independent recollection of his discussion with Petitioner. 714, l. 5 – 715, l. 7.

By order filed August 19, 2022, the PCR judge denied Petitioner relief. App. 729-752. He found trial counsel credibly testified that he advised Petitioner of the severity of the charges against him and the potential sentence he faced during their discussion on the risks of proceeding to trial versus the benefits of accepting a favorable plea offer from the state. The judge also found credible trial counsel’s testimony that Petitioner chose to go to trial because of his insistence that he was innocent and would not be convicted at trial. App. 746-747. Consequently, the judge found counsel was not deficient.

As to prejudice, the judge found that, even if counsel was somehow deficient, Petitioner failed to demonstrate a reasonable probability he would have accepted the state’s plea offer based on Petitioner’s testimony that he did not accept the offer because he was innocent. The judge emphasized Petitioner’s “only claim of prejudice was that he would have talked about it with his family—who maybe could have convinced him to plead guilty—had counsel properly advised him of the severity of the charges and the sentence he was facing.” App. 747.

Because Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated by trial counsel's failure to advise Petitioner of the severity of the charges against him and the potential sentence he faced if convicted at trial, and because Petitioner was prejudiced since there is a reasonable probability he would have accepted the state's fifteen year offer and pled guilty had he known he faced a mandatory minimum sentence of twenty-five years and up to life without parole if convicted of first degree CSC with a minor and third degree CSC with a minor at trial, this petition for writ of certiorari follows.

## ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to advise Petitioner of the severity of the charges against him and the potential sentence he faced if he was convicted at trial since there is a reasonable probability Petitioner would have accepted the state's fifteen year plea offer and pled guilty if he would have known he faced a mandatory minimum sentence of twenty-five years and up to life without parole if convicted of first degree criminal sexual conduct with a minor and third degree criminal sexual conduct with a minor at trial.

Trial counsel was ineffective for failing to advise Petitioner of the severity of the charges against him and the potential sentence he faced if convicted at trial of first degree criminal sexual conduct with a minor and third degree criminal sexual conduct with a minor before Petitioner chose to reject the state's fifteen year plea offer. Counsel's failure to advise Petitioner of the risks and benefits of accepting or rejecting the state's offer prevented Petitioner from making an intelligent choice among the alternative courses of action open to him. Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability Petitioner would have accepted the state's favorable offer and pled guilty instead of proceeding to trial where he was convicted and sentenced to an aggregate term of thirty-seven years' imprisonment.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). Our Supreme Court "has held that a defendant has the right to effective assistance of counsel during the plea bargaining process." Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), *overruled on other grounds by* Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000)). The United States Supreme Court has also "made clear

that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel.” Missouri v. Frye, 566 U.S. 134, 141 (2012) (quoting Padilla v. Kentucky, 559 U.S. 356, 373 (2010)) (internal quotations admitted).

“The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages.” Frye, 566 U.S. at 143. “[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions favorable to the accused.” Id. at 145.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland, 466 U.S. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove “that counsel’s performance was deficient” and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

In Lafler v. Cooper, 566 U.S. 156, 161 (2012), the United States Supreme Court found defense counsel ineffective when the defendant rejected a favorable plea offer, despite admitting guilt and expressing a willingness to accept the offer, after defense counsel “convinced [the defendant] that the prosecution would be unable to establish his intent to murder [the decedent] because she had been shot below the waist,” which was “an incorrect legal rule.” In order to prove prejudice in these circumstances, the Court held “a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer’s terms would have been less severe than under the judgment and sentence that in fact were imposed.” Id. at 164. The Court found the defendant in Lafler suffered prejudice because he had shown that but for counsel’s deficient performance there was a reasonable probability he would have accepted the offer, the trial court would have accepted its terms, and as a result of not accepting the plea and being convicted at trial, the defendant received a minimum sentence three and a half times greater than he would have received under the plea. Id. at 174.

Additionally, in Kolle v. State, 386 S.C. 578, 591-592, 690 S.E.2d 73, 80 (2010), this Court held plea counsel was ineffective in advising Kolle that the state’s initial plea offer was “not a good deal” and misinforming Kolle that the offer would remain open after a suppression hearing, when the offer did not remain open and was significantly less than the seven year sentence Kolle received. The Court stated, “Had Kolle known that the state would withdraw this offer after the suppression hearing, he may have decided to accept it and received a lower

sentence.” Id. Thus, the Court affirmed the PCR court’s decision to grant Kolle relief. Id. at 593, 690 S.E.2d at 81.

In this case, Petitioner’s Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to advise Petitioner of the severity of the charges against him and the potential sentence he faced if convicted of first degree CSC with a minor and third degree CSC with a minor at trial before Petitioner rejected the state’s fifteen year plea bargain. Counsel had a duty to adequately advise Petitioner of the risks and benefits of accepting or rejecting the state’s offer, including the severe sentence he faced by rejecting the offer and proceeding to trial, namely a mandatory minimum of twenty-five years and up to life without parole. See S.C. Code Ann. § 16-03-655.

Because of counsel’s deficient performance, Petitioner was unable to make an intelligent decision among the alternative courses of action open to him. Petitioner testified at the evidentiary hearing that if he would have known the potential sentence he faced by proceeding to trial, he would have discussed the matter with his family who likely would have convinced him to accept the state’s offer and plead guilty. Consequently, there is a reasonable probability Petitioner would have accepted the offer. Moreover, Petitioner’s sentence alone is evidence of prejudice. As a result of not accepting the favorable plea offer and being convicted at trial, Petitioner received a sentence more than twice as long as he would have received pursuant to the plea deal.

Respectfully, because of trial counsel’s deficient performance and the resulting prejudice to Petitioner, this Court should reverse Petitioner’s convictions and sentence and remand for a new trial.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order furthering briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully Submitted,

s/ Lara M. Caudy \_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of February, 2023.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Aaron Van Hendrix states:

1. She is an 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, which was held on January 26, 2022 before the Honorable R. Scott Sprouse, 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 Aaron Van Hendrix.

Respectfully Submitted,

s/ Lara M. Caudy

Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of February, 2023.

**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.”

s/ Lara M. Caudy  
Lara M. Caudy  
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This 17th day of February, 2023.