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STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

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

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JUSTIN PARIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001506

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Sarah E. Shipe  
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Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT .....2

ARGUMENT

The PCR court erred finding petitioner’s guilty plea voluntary, knowing, intelligent, and free where petitioner’s exhibits show a history of severe mental illness, petitioner testified he wanted to go to trial, and where counsel admitted petitioner could have raised the affirmative defense of insanity at trial. ....3

CONCLUSION .....8

PETITION TO BE RELIEVED AS COUNSEL .....9

**ISSUE PRESENTED**

Whether PCR court erred finding petitioner's guilty plea voluntary, knowing, intelligent, and free where petitioner's exhibits show a history of severe mental illness, petitioner testified he wanted to go to trial, and where counsel admitted petitioner could have raised the affirmative defense of insanity at trial?

## STATEMENT

On May 29, 2015, a Spartanburg County grand jury indicted petitioner for murder, kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime. App. 182-87. On September 11, 2017, petitioner pled guilty but mentally ill pursuant to *Alford*,<sup>1</sup> before the Honorable J. Mark Hayes II. App. 1-30. Scott Robinson represented petitioner and Barry Barnette, solicitor, represented the state. App. 1. Judge Hayes sentenced petitioner to concurrent terms of life imprisonment for murder, thirty years' imprisonment for kidnapping and thirty years' imprisonment for armed robbery. App. 29, l. 23-30, l. 3; 188-90.

Thereafter petitioner filed an application for PCR. App. 32-37. On April 18, 2022, an evidentiary hearing was held before the Honorable G.D. Morgan Jr. App. 48-104. Rodney Richey represented petitioner and Chelsey Marto, assistant attorney general, represented the state. App. 49.

On August 9, 2022, Judge Morgan signed an order denying PCR. App. 169-81. The court found petitioner's guilty plea was freely, knowingly, intelligently, and voluntarily entered. App. 178. The court found that "though [petitioner] does have mental health issues, this was put on the record . . . the plea was accepted as free, voluntary, knowing, an intelligently entered, by the [c]ourt with full knowledge that [petitioner] suffered with serious mental health issues." App. 178. The court also found that all the reports regarding petitioner's mental health were before the plea court and that nothing new was presented at the evidentiary hearing, thus no lesser sentence would have been imposed if counsel had offered additional mitigation. App. 180.

This petition follows.

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

## ARGUMENT

The PCR court erred finding petitioner's guilty plea voluntary, knowing, intelligent, and free where petitioner's exhibits show a history of severe mental illness, petitioner testified he wanted to go to trial, and where counsel admitted petitioner could have raised the affirmative defense of insanity at trial.

### **Relevant facts**

Petitioner has a well-documented history of serious mental illness. App. 7, ll. 19-25; 25-29; 56, ll. 19-21; 66, l. 18-67, l. 11; 69, ll. 21-25; 105-65. He served in the army national guard from 2001 until his discharge in 2009. App. 110. During his service he was deployed to Iraq for a period of time. App. 25, ll. 8-10; 66, l. 23-67, l. 1; 110. While in the military he was treated for substance abuse and after he left service, he was diagnosed with post traumatic stress disorder (PTSD). App. 7, ll. 19-25; 110; 117-18. In 2005, when petitioner was twenty-four he was in a serious car accident where he suffered, among other injuries, a traumatic brain injury (TBI). App. 25-26; 112-13; 124. After that accident petitioner was often treated at the hospital and was admitted for several days because he was "dangerous to self, others, or property." App. 124-26. Over the years petitioner was hospitalized on multiple other occasions and took several different medications to treat his diagnosed mental illnesses which included: PTSD, Psychosis, bipolar, manic, substance abuse disorder, and "personality change due to TBI." Tr. 119-27.

In April of 2015, a woman petitioner had been seeing romantically was found dead in his parent's home where he had been living. App. 13-16. Petitioner was found in the decedent's van with her child and had to be apprehended with a canine unit. App. 13-16. Petitioner had no memory of the incident. App. 16, ll. 17-19.

At petitioner's guilty plea hearing the solicitor entered two psychiatric evaluations of

petitioner. App. 12, ll. 8-21. Dr. L. William Mulbry evaluated petitioner on December 21, 2015. App. 106-31. Dr. David R. Price evaluated petitioner in August 2017. App. 137-68. In mitigation defense counsel offered a statement from petitioner's grandmother. App. 24-26. Defense counsel asked the plea court for mercy citing petitioner's serious mental illness and adding that petitioner did not have a significant record. App. 27, l. 21-29, l. 4.

Petitioner's testimony at the evidentiary hearing was difficult to follow. Petitioner seemed agitated, frequently gave non-responsive answers, and interjected throughout the hearing during other witnesses' testimony. App. 54, l. 11-56, l. 13; 57, ll. 8-25; 59, ll. 11-24; 65, ll. 13-17; 67, ll. 5-17; 75, ll. 17-19; 81, l. 8. However, on one point he was very clear. Petitioner declared he did not want to plead guilty and "sign his life away" because he wanted a jury trial in this case. App. 60, l. 18-61, l. 21. He contended that he told defense counsel that he wanted a jury trial. App. 60, l. 18-61, l. 21.

Defense Counsel testified he was "definitely" aware that petitioner was suffering with mental illness including PTSD and complications from multiple head injuries. App. 76, ll. 1-12. He admitted that in petitioner's case there was no negotiation with the state and that he advised petitioner to plead guilty without any recommendation. App. 75, ll. 6-14. Counsel testified that he did not believe that petitioner knew right from wrong at the time of the incident. App. 76, l. 24-77, l. 2. Counsel claimed that was one of the reasons why he pled petitioner pursuant to *Alford*, because petitioner had no memory of the incident. App. 77, ll. 2-5. He said he considered and discussed the defense of insanity with petitioner but ultimately did not think going to trial was the right decision based on the facts of petitioner's case. App. 77, ll. 7-22; 81, ll. 3-22. Counsel maintained that if he had tried petitioner's case, instead of recommending a guilty plea, that petitioner would have been convicted and that he believed a guilty plea was the

better choice because there was the possibility petitioner could have received less than life. App. 85, l. 10-86, l. 25.

### **Discussion**

Defense counsel was deficient for advising petitioner to plead guilty but mentally ill where he had a viable insanity defense and for failing to present sufficient mitigation at the guilty plea proceeding. Petitioner was prejudiced where he received the maximum sentence of life where but for counsel's error he would have gone to trial. Defense counsel's failure to adequately advise petitioner regarding his decision rendered petitioner's guilty plea involuntary, unknowing, unintelligent, and not freely given.

In *Hill v. Lockhart*, the United States Supreme Court explained, that the two-part *Strickland v. Washington*<sup>2</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.*

In cases where allegations of ineffective assistance challenges in the context of a guilty plea, the prejudice inquiry will be similar to the inquiry when reviewing ineffective-assistance challenges to convictions obtained through a trial. *Stalk v. State*, 383 S.C. 559, 561–62, 681 S.E.2d 592, 594 (2009).

While counsel is not required to investigate or submit every imaginable line of mitigating

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<sup>2</sup> 466 U.S. 668 (1984).

evidence, a decision not to investigate must be reasonable. Strategic choices made after less than complete investigation are only reasonable if reasonable professional judgment supports the limits on the investigation. *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2009) (holding counsel's investigation as to mitigation evidence was inadequate and incomplete).

Here, defense counsel was ineffective for failing to successfully investigate petitioner's serious mental health problems in order to negotiate a better plea deal or present an insanity defense at trial. *See Judge v. State*, 312 S.C. 554, 471 S.E.2d 143 (1996) (a defendant is entitled to effective assistance of counsel during plea negotiations). Instead counsel recommended that petitioner plead guilty *without* a sentencing recommendation and petitioner was given the maximum sentence of life. Additionally, defense counsel failed to call an expert, or even a treating psychiatrist, in order to present mitigating evidence on behalf of petitioner.

"Similarly, where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." *Id.*; *See, e.g., Evans v. Meyer*, 742 F.2d 371, 375 (C.A.7, 1984) ("It is inconceivable to us ... that [the defendant] would have gone to trial on a defense of intoxication, or that if he had done so he either would have been acquitted or, if convicted, would nevertheless have been given a shorter sentence than he actually received").

All the testimony and the exhibits admitted during the evidentiary hearing demonstrate that petitioner suffered serious mental illness due his experiences while serving in Iraq and a TBI. Petitioner was hospitalized on numerous occasions and diagnosed and treated for multiple serious mental illnesses. Defense counsel failed call an expert to testify in mitigation at

petitioner's plea proceeding or to bring to the court's attention petitioner's serious mental illness. Instead, defense counsel chose to ask petitioner's grandmother to give a statement and asked the court for mercy. Ultimately petitioner was given the maximum sentence.

**CONCLUSION**

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



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

Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of May, 2023.

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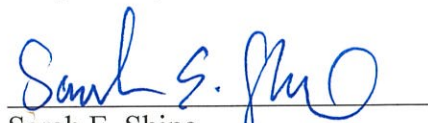
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Counsel for Justin Paris states:

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 18, 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 Justin Paris.

Respectfully Submitted,

  
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Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of May, 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."



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This 8th day of May, 2023.