

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Jun 07 2023**

S.C. SUPREME COURT

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Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge  
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JASON R. JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001245  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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JESSICA M. SAXON  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Whether the PCR court erred in finding plea counsel provided effective representation where counsel did not perform any independent investigation into Petitioner's case which was not reasonable under the circumstances and thus rendered Petitioner's guilty plea unknowing and involuntary?

## STATEMENT OF THE CASE

During the August 2018 term of the Florence County grand jury, Petitioner was indicted<sup>1</sup> for one count of trafficking methamphetamine and one count of distribution of cocaine base. App. 20-23. The charges arose from an investigation conducted by the Florence County Narcotics Division. The distribution charge was based on an undercover buy performed by a confidential informant who was equipped with an audio and visual recording device. The trafficking charge was based upon the execution of a search warrant on a residence where Petitioner allegedly sold narcotics. App. 10, l. 15-App. 12, l. 8.

On October 3, 2019, Petitioner appeared before the Honorable Edgar J. Dickson to enter a guilty plea. The State was represented by Todd Tucker. Petitioner was represented by Scott Floyd. App. 1. Pursuant to the terms of the negotiated plea, Petitioner was sentenced to ten years incarceration on each charge with the sentences to run concurrently. App. 4, ll. 14-25; App. 16, ll. 9-14; App. 24-25. A direct appeal was not taken.

Petitioner filed an application for post-conviction relief on August 27, 2020. App. 26-32. The State filed a return on December 17, 2020. App. 33-40. PCR Counsel Ola Johnson filed an amended PCR application on June 6, 2022. App. 41-44. An evidentiary hearing was convened before the Honorable George M. McFaddin, Jr., on June 16, 2022. The State was represented by Danielle Dixon. Petitioner was represented by Ola Johnson. App. 45.

Petitioner testified that he did not enter the guilty plea voluntarily, that he was never advised of his constitutional rights, trial rights, or his right to remain silent, and only met with Counsel Floyd twice. App. 50, ll. 10-23. Petitioner told Counsel Floyd that he wanted to take

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<sup>1</sup>Petitioner was also indicted for possession with intent to distribute (PWID) cocaine base, PWID marijuana, PWID heroin, possession of heroin, and possession of cocaine base. App. 18-21. These charges were dismissed as part of the plea agreement. App. 55, l. 23-App 56, l. 1.

the charges to trial, particularly the trafficking charge because he was not guilty of that charge. However, Counsel Floyd told him if he took the trafficking charge to trial and won the State would still “slay” him on the distribution charge because they had enough evidence in that matter to convict him. He maintained that he was guilty of the distribution charge but not the trafficking charge. App. 51, l. 10-App. 52, l. 25. Petitioner stated he was not informed about the appeal processes and only learned about it once he arrived in SCDC. Petitioner wanted to file an appeal to challenge the trafficking charge. App. 52, ll. 3-12. Petitioner stated there were other people that were arrested with him and at the time of his arrest no drugs were found on his person. App. 53, ll. 3-10.

On cross-examination, Petitioner conceded that he answered in the affirmative when the plea court questioned him as to whether he had discussed his constitutional rights with his lawyer, that he had understood them, and that he did not require more time to speak with his lawyer. App. 57, ll. 3-16. Petitioner stated that Counsel Floyd only showed him the evidence against him the week that he had to enter the plea or take the case to trial which made him feel “like my hands are tied behind my back.” App. 58, ll. 5-23. Petitioner testified that the drugs that were “put on him” were found in a pocketbook, in a drawer, and in the room but not on his person. Therefore, he believed Counsel Floyd should have investigated the female that was arrested with him who also had drug charges, as well as the crime scene where the arrests occurred. App. 60, l. 4-App. 61, l. 4

Counsel Floyd testified that he reviewed Petitioner’s constitutional and trial rights with him prior to the guilty plea. He also stated he informed Petitioner of the right to appeal from a guilty plea. Counsel Floyd met with Petitioner five times, with three of those times being right before the plea was entered once Petitioner was back in the county jail. He tried to contact

Petitioner on other occasions but stated the phone number he had did not work, Petitioner had been incarcerated in Tennessee, and that he did not get a response to the letter he sent. App. 63, l. 10-App. 65, l. 25. Counsel Floyd stated Petitioner never expressed an interest in going to trial and did not request an appeal be filed in his case. App. 68, ll. 4-14. Counsel Floyd admitted that he had access to a private investigator through his office who could have questioned the other individuals involved in the case but that he did not use the investigator because Petitioner “told him he wanted to plea” after they discussed the case. App.73, l. 20-App. 74, l. 3.

An order of dismissal was filed on August 12, 2022. App. 78-88. The PCR court found that Petitioner had not met his burden of proof and that Counsel Floyd had credibly testified about his representation of Petitioner throughout the case. Regarding the failure to investigate, the PCR court found that Counsel Floyd’s testimony that Petitioner did not ask him to investigate anything was credible and found that he was not deficient. Further, the court found that Petitioner had failed to show what evidence counsel would have discovered upon further investigation and therefore he could not show prejudice. App. 86-87.

## ARGUMENT

The PCR court erred in finding plea counsel provided effective representation where counsel did not perform any independent investigation into Petitioner's case which was not reasonable under the circumstances and thus rendered Petitioner's guilty plea unknowing and involuntary.

It is well established that counsel has a duty to undertake reasonable investigations. Strickland v. Washington, 466 U.S. 668, 691 (1984). When evaluating the reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland v. Washington, 466 U.S. at 690. Therefore, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (emphasis in original).

"The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383–84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The "prejudice," requirement focuses on whether counsel's

constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. at 59 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pled guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

The failure to investigate can support the contention that a defendant's plea was involuntary. In Hill, supra, the United States Supreme Court addressed the analysis to be used in addressing such ineffective assistance claims. The Court explained,

“Where the alleged error is failure to investigate or discover potentially exculpatory evidence, the determination whether the error “prejudiced” the defendant by causing him to plead guilty rather than to go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial.”

Hill at 59.

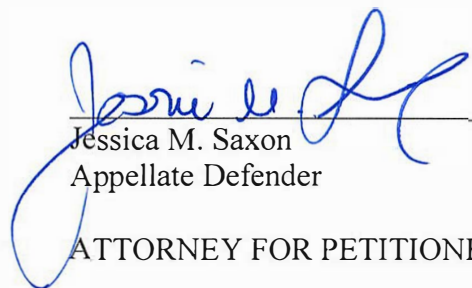
The PCR court found that Counsel Floyd's failure to conduct any independent investigation into the facts and circumstances around Petitioner's case was not deficient because 1) Petitioner had not asked him to investigate anything and 2) Petitioner wanted to enter a guilty plea. However, the law does not place a duty on a defendant to request counsel perform an investigation. The duty to investigate a case is placed upon counsel and failure to perform any investigation is not reasonable under prevailing professional norms. Further, whether a client wants to enter a plea or go to trial has no impact on counsel's duty to investigate. Counsel cannot reasonably advise a client regarding a plea or trial if they have not investigated and vetted the State's case. Counsel Floyd's failure to conduct any investigation or interview any witnesses was deficient performance.

Petitioner maintained that he was not guilty of the trafficking charge and that he wanted to take that charge to trial. He indicated in his written PCR application that a co-defendant had taken ownership of a portion of the methamphetamine and that he should have been charged with possession with intent to distribution instead of trafficking. Had Counsel Floyd taken the time to investigate the case he could have discovered this evidence which lessened Petitioner's culpability. This evidence reasonably could have changed Counsel Floyd's advice to plead guilty to the trafficking charge and would have impacted the outcome of a trial. Petitioner has therefore shown prejudice.

Petitioner has shown that Counsel Floyd provided ineffective assistance of counsel by proving both deficient performance and prejudice. Pursuant to the standard set forth in Hill, *supra*, this Court should find that Petitioner's guilty plea was not knowingly and voluntarily entered. This case should be remanded back to the Court of General Sessions of Florence County for a new trial.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of this issue.

  
\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 7th day of June, 2023.

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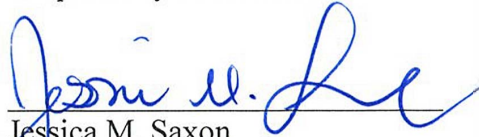
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Counsel for Jason Rashaad Jones states:

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 George M. McFaddin, which was held on June 16, 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 Jason Rashaad Jones.

Respectfully Submitted,



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Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of June, 2023.

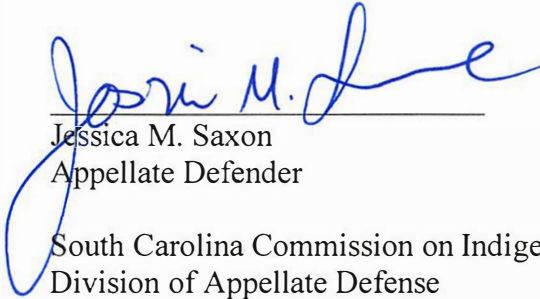
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CERTIFICATE OF COUNSEL

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 7th day of June, 2023.