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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to Dorchester County  
Court of Common Pleas

The Honorable Robert J. Bonds, Post-Conviction Relief Judge  
The Honorable Diane Schafer Goodstein, Plea Judge

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Appellate Case No. 2022-001386

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MATTHEW M. OLIVER,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**PETITIONER’S STATEMENT OF ISSUE PRESENTED**

Did the PCR judge err in refusing to find that the guilty plea was rendered involuntary by the fact that on the morning of trial counsel advised Petitioner that the jury had been selected without Petitioner present, that the jury picked was all white, that it was impossible to be found not guilty by this jury, and, if found guilty, the judge would impose a sentence of 105 years?

**RESPONDENT’S RESTATEMENT OF ISSUE PRESENTED**

The PCR judge properly found Petitioner’s plea was not rendered involuntary by any erroneous information given to Petitioner by his counsel because the information conveyed by the plea judge cured any potential error by Petitioner’s counsel, and even if the erroneous information constitutes an error by Petitioner's counsel, Petitioner’s assertion that he would have gone to trial “but for” those errors is directly contradicted by the evidence in the record.

## STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections. In September 2014, the Dorchester County Grand Jury indicted Petitioner for trafficking in methamphetamine – 400 grams or more (2014-GS-18-0861) and trafficking in cocaine base – 28 grams or more, but less than 100 grams (2014-GS-18-0862). (App. pp. 47-50). Subsequently, in May 2017, the Dorchester County Grand Jury indicted Petitioner for trafficking in cocaine – 400 grams or more (2017-GS-18-0956). (App. pp. 51-52).

The charges arose out of two separate incidents. The first occurred on November 11, 2013, in which Petitioner was attacked and shot in his home. Law enforcement then obtained a search warrant as part of the attempted murder investigation and discovered a safe in the home. Investigators obtained a second search warrant specifically for the safe and found it to contain 2217.6 grams of cocaine, 47.5 grams of crack cocaine, and 531.7 grams of methamphetamine, all of which was determined to belong to Petitioner. (App. p. 30, lines 4-15).

The second incident occurred on July 1, 2016, where Petitioner conspired with two codefendants to bring marijuana into the state. Investigators intercepted two packages at two different UPS stores in Summerville, and both packages were determined to belong to Petitioner and the codefendants. Investigators seized 16.78 pounds of marijuana from the two packages. (App. p. 31, lines 6-13).

On June 13, 2017, Petitioner appeared before Judge Diane Schafer Goodstein, and pursuant to a negotiated plea agreement, Petitioner pled guilty to the lesser-included offense of trafficking in ice, crank, or crack – 28 grams or more, but less than 100 grams (second offense) on indictment 2014-GS-18-0861, to the lesser-included offense of trafficking in cocaine – 10 grams or more, but less than 28 grams (second offense) on indictment 2017-GS-18-0956, and pled guilty as indicted

on 2014-GS-18-0862.<sup>1</sup> (App. pp. 25-26, lines 21-25; 1-8). As part of the agreement, the State dismissed indictments 2014-GS-18-0857 (possession of a weapon during violent crime), 2014-GS-18-0858 (possession of a weapon during violent crime), 2014-GS-18-0859 (possession of a stolen weapon/sale or delivery), and 2014-GS-18-0860 (trafficking in cocaine – 28 grams or more, but less than 100 g (first offense)). (App. p. 11, lines 16-25). Judge Goodstein sentenced Petitioner to terms of seventeen years' imprisonment on each charge, all to run concurrently. (App. pp. 44-45, lines 18-25; 1-11; pp. 53-55). Petitioner did not appeal his pleas or sentences.

On June 1, 2018, Petitioner filed a PCR action. (App. pp. 56-71). A second PCR action was filed on June 14, 2018, which was merged with the original PCR filing and treated as an amendment. (App. p. 72, n.1; p. 89, lines 7-25). On May 16, 2022, an evidentiary hearing was held before Judge Robert J. Bonds. (App. pp. 83-137). In a written order filed September 20, 2022, Judge Bonds denied Petitioner's request for relief on all allegations and dismissed the PCR action with prejudice. (App. pp. 138-157). Petitioner filed a timely notice of appeal, and a petition for writ of certiorari was filed March 15, 2023. This return to the petition for writ of certiorari follows.

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<sup>1</sup> Petitioner was also charged in indictment 2016-GS-18-1315 with trafficking in marijuana – 10 lbs or more, but less than 100 lbs (first offense), and he pleaded guilty to the lesser-included offense of possession with intent to distribute marijuana (first offense). Judge Goodstein sentenced Petitioner to five years' imprisonment, to be served concurrently with the other sentences listed above. Petitioner did not list this charge or sentence in his application for post-conviction relief.

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts defer to the post-conviction relief court's finding of fact and will uphold them if there is any evidence in the record to support them. *Id.* At 180, 810 S.E.2d at 839. (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. *Id.* At 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

**The PCR judge properly found Petitioner's plea was not rendered involuntary by any erroneous information given to Petitioner by his counsel because the information conveyed by the plea judge cured any potential error by Petitioner's counsel, and even if the erroneous information constitutes an error by Petitioner's counsel, Petitioner's assertion that he would have gone to trial "but for" those errors is directly contradicted by the evidence in the record.**

Petitioner alleges his counsel was ineffective for placing undue pressure on him to plead guilty and for providing erroneous information to Petitioner that rendered his plea involuntary. (App. p. 87, lines 22-24). At the evidentiary hearing, Petitioner contended he felt coerced into taking a guilty plea (App. p. 109, lines 2-4); testifying he never wished to plead guilty and would not have pled guilty if Counsel had not advised him that the jury was selected without his presence, it was an all white jury, that he could not win, and told him he would receive a 105-year sentence should he proceed to trial. (App. p. 92, line1-5; p. 98, lines 10-13).

The PCR court disagreed. (App. P. 152). Judge Bonds found that throughout the plea hearing, Petitioner confirmed he understood he was present to plead guilty and it was his intention to do so; moreover, Petitioner interacted intelligently with the plea court and entered his plea knowingly and voluntarily. (App. 156). Judge Bonds further found the plea transcript directly contradicted Petitioner's assertion his plea was involuntary because of ineffective assistance of counsel. (App. 157). In addition, Judge Bonds found Petitioner's testimony at the evidentiary hearing was not credible and was wholly self-serving. (App. p. 152). Petitioner's request for relief for the allegation his plea was involuntary was denied. (App. 157).

**1. The information conveyed by Judge Goodstein cured any potential error by Petitioner's counsel.**

Entering a guilty plea results in a waiver of several constitutional rights; therefore, the Due Process Clause requires that defendants enter into guilty pleas voluntarily, knowingly, and

intelligently. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The South Carolina Supreme Court held that, “in addition to the requirements of *Boykin*, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991); *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980)).

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137–39, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). “Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.*; *See also Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by *United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused’s statements at a guilty plea proceeding are “conclusively” established unless he makes some reasonable allegation why this should not be so); *cf. Blackledge*, 431 U.S. at 73–74 (representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea

not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge).

“When considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel.” *Burnett v. State*, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998)). The appellate court will uphold the PCR court's findings if there is any evidence of probative value to support them. *Id.* (citing *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989)).

In *Burnett*, the petitioner pled guilty to malicious injury to personal property, ABHAN, and three counts of pointing a firearm, and filed a PCR application, alleging his guilty plea was involuntary because of erroneous advice of counsel. *Burnett*, 352 S.C. at 591, 576 S.E.2d at 145. The court reversed the PCR court's grant of relief finding “the plea judge accepted Burnett's guilty pleas only after a very thorough questioning of Burnett's understanding of what rights he was waiving by pleading guilty, what his possible sentences were, and that the judge had not agreed to give him any particular sentence.” *Id.* (emphasis added). The court held that “any possible misconceptions on Burnett's part were cured by the colloquy during the actual plea hearing.” *Id.* at 593-94, 576 S.E.2d at 146.

Any possible misconceptions Petitioner alleges were cured during the actual plea because Judge Goodstein's comprehensive plea colloquy with Petitioner is strikingly similar to the plea colloquy approved in *Burnett*. Judge Goodstein explained to Petitioner the constitutional rights he waived by pleading guilty, including the right to remain silent, the right against self-incrimination,

the right to challenge the State's evidence, the right to have counsel cross-examine witnesses, the right to present a defense, the right to challenge any searches or seizures Petitioner did not believe appropriate, and the right to a jury trial.<sup>2</sup> (App. pp. 26-28). Specifically, Judge Goodstein told the Petitioner "[a]nd, Mr. Oliver, if you wanted a jury trial, you would have a jury trial." (App. p. 27, lines 12-13). Petitioner informed the plea court he understood he waived those rights and other rights not enumerated when pleading guilty. (App. p. 28, lines 6-19). Judge Goodstein, then confirmed Petitioner's understanding of this waiver:

THE COURT: And do you clearly understand that when you plead guilty you give up your right to have a jury determine if you're guilty or not guilty. Do you understand that?

THE DEFENDANT: Yes, ma'am.

(App. p. 28, lines 16-22). Significantly, Petitioner again confirmed his understanding during the PCR hearing:

Q My question was, Did you understand that you were waiving your right to a jury trial --

A Yes, ma'am.

Q -- by pleading guilty?

A Yes, ma'am.

(App. p. 108, lines 14-18).

Petitioner also informed Judge Goodstein he understood the charges he was pleading to and indicated he understood the minimum and maximum sentence associated with the charges (App. p. 15-16, lines 15-25, 1-2; p. 21-23, lines 24-25, 1-8). Additionally, Judge Goodstein

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<sup>2</sup> In fact, Petitioner had a lengthy suppression hearing the day prior to his plea over concerns on when law enforcement entered the home. It was one of Petitioner counsel's largest concerns about the case. The motion to suppress was denied. (App. p. 120, lines 3-16).

reviewed Petitioner's total exposure:

THE COURT: Okay. So I'm going to do the math so there's no question in anyone's mind. (Brief pause.) All right. Now, Mr. Oliver, do you understand that your exposure, exposure here today, is 95 years five years [sic] in prison and a fine of -- it's a 150 on the trafficking, I think it's 5000 on the --

AST. SOL. TEMPLETON: It's not mandatory on the marijuana as well.

THE COURT: Right. And do you understand that?

THE DEFENDANT: Correct.

(App. p. 22, lines 9-18). Judge Goodstein also discussed with Petitioner that the sentences could run concurrently:

THE COURT: Nothing to keep them from running concurrent, though. Do you understand?

THE DEFENDANT: Correct.

(App. p. 23, lines 10-12). Further, Judge Goodstein thoroughly reviewed with Petitioner that two of the offenses he was pleading to were classified as violent and most serious, the consequences of that fact, and confirmed with Petitioner's counsel, the Solicitor, and Petitioner that these convictions constituted only one strike. (App. pp. 16-21).

Petitioner also testified at the plea hearing that he was not threatened, intimidated, or promised anything in exchange for his guilty plea and confirmed that he had enough time to make up his mind. (App. pp. 31-32, lines 16-25; 1-3). Significantly, Judge Goodstein verified Petitioner was pleading freely, voluntarily and was in fact guilty:

THE COURT: Are you pleading guilty today freely and voluntarily?

THE DEFENDANT: Yes, ma'am.

THE COURT: And are you pleading guilty because you are in fact guilty?

THE DEFENDANT: Yes, ma'am.

(App. p. 32, lines 4-9).

Petitioner testified he wished he spoke with his counsel for longer periods of time when they met; however, he believed that counsel had investigated his case, that counsel had done everything he needed to do to properly represent him, that nothing was left undone regarding preparation for trial, and Petitioner indicated he was fully satisfied with counsel's representation. (App. pp. 32-33, lines 10-25; 1-11). Significantly, when given a direct opportunity to express concerns about how counsel's representation had any affect on his plea, Petitioner testified it did not:

THE COURT: And so if you have any concerns regarding the representation of counsel and any affect that has on your plea, I need to know it now, okay. So tell me if that exists.

THE DEFENDANT: No.

(App. p. 34, lines 12-16) (emphasis added). Petitioner testified all his answers to the court's questions were his own, he was truthful when answering the questions, he had no lingering questions, and no further need to speak with his counsel. (App. pp. 35-36, lines 15-25; 1-5).

The plea transcript speaks for itself. Any misconceptions Petitioner had based on erroneous information given by his counsel were cured by Judge Goodstein's thorough questioning during the plea hearing. Petitioner was made aware and confirmed he understood that he could have a jury trial if he wanted one. Petitioner was made aware and confirmed he understood his total sentencing exposure was 95 years, not 105 years. Petitioner's concern over consecutive sentences was dispelled because he was told and confirmed he understood the sentences could run concurrently, and Petitioner was given ample opportunity to express any of his concerns with Judge Goodstein.

Petitioner fails to articulate any reason he should be allowed to depart from his sworn

testimony in the plea hearing. Judge Bonds properly found the plea transcript directly contradicts Petitioner’s PCR assertions. It is clear Petitioner intended to plead guilty, understood the proceedings, and interacted intelligently with Judge Goodstein. Any alleged misconceptions Petitioner had regarding his ability to have a jury trial, his understanding of the time he faced, if guilty, and whether the sentences would be consecutive were cured by Judge Goodstein’s thorough questioning during the plea colloquy. For these reasons, the petition for writ of certiorari should be denied.

**2. Even if the erroneous information constitutes an error by Petitioner's counsel, Petitioner’s assertion that he would have gone to trial “but for” those errors is directly contradicted by the evidence in the record.**

“A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *Jackson v. State*, 342 S.C. 95, 535 S.E.2d 926 (2000); *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000); *Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994)).

“The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.” *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (citing *Jackson*, 342 S.C. at 97–98, 535 S.E.2d at 927; *Alexander v. State*, 303 S.C. 539, 543, 402 S.E.2d 484, 485–86 (1991) (emphasis added). Further, “[a]n applicant seeking relief from a guilty plea must present probative evidence to support the allegations in the PCR application that but for trial counsel's erroneous advice, the applicant would not have pled guilty”, *Id.* at 139, 631 S.E.2d at 261–62. *see also Stalk*

*v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) ( if deficient performance prong satisfied, “*Hill v. Lockhart*, 474 U.S. 52 (1985)] makes clear that th[e] prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial”).

Petitioner’s reliance on *Alexander*, 303 S.C. at 539, 402 S.E.2d at 484 and *Hinson v. State*, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989) is unavailing. In *Alexander*, the petitioner pled guilty to trafficking in cocaine, and filed a PCR claiming ineffective assistance of counsel due to erroneous sentencing advice. The court reversed the PCR court’s denial of relief holding Alexander’s testimony was sufficient to establish the prejudice because “[i]n fact, the **only evidence** in the record on this point is petitioner's own testimony that had trial counsel not misinformed him that he would face a potential life sentence if he proceeded to trial, he would not have pled guilty.” *Alexander*, 303 S.C. at 543, 402 S.E.2d at 485 (emphasis added).

In *Hinson*, the petitioner pled guilty to common law murder, and filed a PCR claiming ineffective assistance of counsel due to erroneous parole eligibility advice. The Court reversed the PCR court’s denial of relief finding Hinson’s assertion that his counsel was ineffective was supported by extensive testimony of a codefendant’s trial counsel, who conceded the advice given to Hinson was incorrect. *Hinson*, 297 S.C. at 458, 377 S.E.2d at 339. The Court held the “evidence is **uncontroverted** that Hinson entered his plea in expectation of receiving the lesser period for parole eligibility.” *Id.* (emphasis added).

Here, unlike *Alexander* and *Hinson*, there is ample probative evidence that Petitioner was not coerced by erroneous information of his counsel, but he chose to plead guilty because of the amount of evidence against him and was aware a jury was not selected. The Court need look no

further than Petitioner's own sworn testimony that he knew he could not win because of the amount of evidence against him. During the PCR hearing Petitioner testified:

Q Okay. And so based on what your lawyer told you that day, what did you decide to do?

A I asked my lawyer -- I maintained my innocence. I said, **I will take a plea because of the amount of evidence that they have against me and I know I can't win**, and you're telling me I can't win, but can I plead Alford?

(App. p. 93, lines 3-7) (emphasis added). This fact is corroborated by Petitioner's counsel's statements during the plea hearing:<sup>3</sup>

THE COURT: From your investigation of the facts and circumstances of your client's case, do you believe that the State could produce sufficient evidence to convict and establish your client's guilt beyond a reasonable doubt; and if he was to stand trial that his conviction would be probable?

MR. BOLUS: I feel so based on -- this case is like three, three and a half years old and things have gone from a certain point to the point where they are now. I would not have said that at some points otherwise, but I certainly say so now **based on what I know is getting ready to happen from a witness standpoint**.

(App. pp. 4-5, lines 16-25; 1-2) (emphasis added).

Further corroborating the amount of evidence against Petitioner, Solicitor Ryan Templeton testified during the PCR hearing regarding the evidence. Solicitor Templeton testified "that a large quantity of cocaine, cocaine base, methamphetamine, and large amounts of currency" were found inside the house, the DEA analyst was flying in from Miami to testify, and Petitioner's girlfriend was prepared to testify that Petitioner resided in the house where the drugs were found. (App. p.

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<sup>3</sup> Petitioner's counsel, Michael T. Bolus passed away prior to the PCR hearing. (App. p. 88, lines 5-13).

118, lines 10-11; 21-23; p. 122, lines 21-25). When Solicitor Templeton was asked if he believed the State had a strong case, he testified “I did.” (App. p. 122, lines 11-13).

Regarding the jury selection, Solicitor Templeton testified the jury panel was present, but “[w]e never selected a jury.” (App. p. 120, lines 22-25). Significantly, Petitioner’s mother testified that during a conversation she had with him in the holding cell; Petitioner knew a jury was not selected:

A So I went back and told him, I said, Miguel, you have to take the plea bargain. The lawyer says you have to take the plea bargain. And he says, Mom, I didn't do this; I don't want to take the plea bargain. We're here for court, for trial. **But we never picked a jury.**

(App. p. 112, lines 20-24) (emphasis added). On cross examination, Petitioner’s mother further corroborated it was her understanding a jury was not selected:

Q Just a couple questions. So for clarification, had a jury been picked?

A I didn't see people come in the courtroom. I didn't hear them ask any questions, and so **as far as I know there was not a jury picked.** But I didn't know any of that. The only thing I know is what he told me.

(App. pp. 115, lines 7-12) (emphasis added).

Moreover, it is significant to note that Judge Bonds found the Petitioner’s testimony at the evidentiary hearing was not credible and was wholly self-serving. (App. p. 152). “The PCR court's findings on matters of credibility are given great deference by this Court.” *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012) (citing *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010)), *see also Walker v. State*, 407 S.C. 400, 407, 756 S.E.2d 144, 147 (2014). (“Questions concerning the weight and believability of Reed's testimony were solely within the province of the PCR court, and through the narrow lens which we must view its findings.)

In *Goins*, the Court found that “[a]lthough Goins testified at the PCR hearing that he accepted the plea because of the erroneous advice on the suppression of the evidence, his testimony

specifically was found not to be credible.” *Goins*, 397 S.C. at 575, 726 S.E.2d at 4. The Court found “evidence to support the PCR court's finding that Goins failed to prove he was prejudiced by counsel's ineffective assistance because he has not demonstrated he would have gone to trial absent the erroneous advice.” *Id.* Here, the Petitioner also testified that he would not have pled guilty to the charges but for trial counsel's advice, and like in *Goins*, there is evidence to support Judge Bonds’ findings, and the Petitioner’s testimony was found to be not credible.

There is ample probative evidence in the record to support Judge Bonds’ findings and denial of relief. Petitioner knew the amount of evidence the State was prepared to bring in the trial and knew that a jury was not selected. The Court need look no further than the Petitioner’s own testimony and statements to his mother to gain insight into his decision making. This evidence disputes Petitioner’s uncredible and wholly self-serving claim his plea was rendered involuntary due to undue pressure and any erroneous information provided by his counsel. For these reasons, the petition for writ of certiorari should be denied.

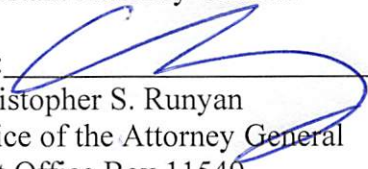
**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR court's finding counsel was not constitutionally ineffective. Should this Court grant Certiorari, Respondent requests permission under the rules to fully brief the issues discussed above.

Respectfully submitted,

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