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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

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

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ERICK ETON HEWINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000998

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# JOHNSON PETITION FOR WRIT OF CERTIORARI

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Wanda H. Carter
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## INDEX

## ISSUE PRESENTED

Petitioner's guilty pleas were given involuntarily in the case because he was coerced into pleading guilty per a plea agreement and thereby forced to abandon his desire to present a Fourth Amendment claim before a jury of his peers.

## STATEMENT

Petitioner Erick E. Hewins was convicted of trafficking in cocaine base and possession of a schedule IV controlled substance per jury trial held at the August 2010 term of the Greenville County General Sessions Court before Judge G. Edward Welmaker. Petitioner was sentenced to an aggregate twenty-five-year prison term. App. 1-428. Assistant Solicitor Joyce Monts prosecuted the case, and Attorney Chase Harbin represented petitioner at trial. After petitioner appealed, the South Carolina Court of Appeals affirmed his convictions and sentences on December 23, 2014. See Final Brief of Appellant. App. 430-462. See also, State v. Erick E. Hewins, Unpublished Op. No. 2014-UP-478 (S.C. Ct. App. filed December 23, 2014). App. 463-470. A petition for rehearing was filed on January 6, 2015, but denied on February 24, 2015. App. 471-477. Also, petitioner's petition for writ of certiorari that followed was dismissed by the South Carolina Supreme Court on March 23, 2016. App. 478-479

On April 26, 2016, petitioner filed a PCR application (2016-CP-23-2656) with the Greenville County Office of the Clerk of Court. App. 480– 12. The respondent filed a return dated August 29, 2016. App. 513-520. After an evidentiary hearing was held in the case, Judge John C. Hayes, III, granted PCR relief to petitioner per Order issued on October 27, 2015, and filed on November 4, 2015, on the ground that trial counsel was ineffective in failing to properly preserve a Fourth Amendment violation for appeal via an objection at trial regarding an unconstitutional second search of petitioner that occurred in the case. App. 521-526. Petitioner was granted a new trial. The state appealed, but the South Carolina Supreme Court dismissed the action by Order dated March 23, 2016. App. 527.

On August 21, 2018, petitioner pled guilty to possession with intent to distribute cocaine base and possession of a schedule IV controlled substance before Judge Walton J. McLeod at the

Greenville County General Sessions Court. App. 528-539. Petitioner was present at the plea proceeding and represented by William Eugene Grove, and Assistant Joyce Monts appeared on behalf of the state. Petitioner received a sentence of five years for time served. Petitioner did not appeal his convictions and sentences from the plea proceeding.

Petitioner filed a PCR application and an amended PCR application on June 25, 2019, and July 23, 2019, respectively, with the Greenville County Office of the Clerk of Court. App. 541-554. This PCR action was stamped 2019-CP-23-03629. The Respondent filed a Return dated November 21, 2019. App. 555-570. Subsequently, petitioner's PCR counsel filed an amended PCR application on March 6, 2020. App. 571-572.

A PCR hearing on action 2019-CP-23-03629 was held on May 25, 2022, at the Greenville County Courthouse before Judge G.D. Morgan, Junior. App. 573-608. Petitioner was present at the hearing and represented by Susannah C. Ross, and Assistant Attorney General Taylor Z. Smith appeared on behalf of the state. On May 8, 2023, Judge Morgan signed an Order of Dismissal in the case therein denying post-conviction relief to petitioner. App. 618-637.

Petitioner appealed Judge Morgan's Order of Dismissal. This petition follows.

## ARGUMENT

Petitioner's guilty pleas were given involuntarily in the case because he was coerced into pleading guilty per a plea agreement and thereby forced to abandon his desire to present a Fourth Amendment claim before a jury of his peers.

On August 9, 2010, a police officer approached petitioner as he sat inside his vehicle at the Clarion Inn parking lot in Greenville County. The event gave rise to two different searches of petitioner by the police. Drugs were found on petitioner and inside his vehicle as a result of the searches. The search of petitioner's person happened at two separate intervals. The initial search of petitioner's pockets yielded a finding of cash, but subsequently drugs were found when police searched petitioner's pockets a second time. App. 187, l. 5 – p. 208, l. 14. Petitioner's argument was that the second search exceeded the scope of a Terry[1] search in violation of the Fourth Amendment. In the appellate court opinion, it was held that the second search of petitioner's pockets wherein clonazepam existed constituted an unconstitutional search that exceeded the scope of the officer's initial justification for the first Terry search; and that trial counsel failed to object at that point to the second search as a violation of the Fourth Amendment in order to preserve the issue for appellate review. App. 468-469. Thereafter, a PCR judge granted relief on trial counsel's error in failing to object properly in this regard in order to preserve the issue of the unlawfulness of the second search for appellate review in the case. App. 521-525.

After receiving relief on PCR due to counsel's error in failing to object to the second search of appellant's pockets, petitioner's initial charges were later re-instated, after which time petitioner pled guilty and received a time served sentence through a negotiated plea bargain.

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[1] Terry v. Ohio, 392 U.S. 1 (1968)

Thereafter, petitioner filed a second PCR action, which is the subject of this appeal. The gist of petitioner's second PCR action is that he did not want to plead to the time served plea agreement because he yearned for the issue of the police officer's second unconstitutional search that violated the Fourth Amendment to be presented to a jury for consideration. Petitioner's argument was that the police illegally extended the investigatory Terry stop beyond the permissible scope and moved the detention into an impermissible "fishing expedition"[2] to continue on with the illegal second search in the case. Additionally, petitioner claimed that the police lied to buy time to extend the search beyond the Terry scope by declaring that they were unable to identify him or locate information on him per their radio search when they knew his identity but needed extra time to justify his prolonged detention and the second unlawful search. Petitioner stated that there were untruths associated on the CAD reports with respect to driver's license numbers and the information he had given, and that there were untruths submitted about whether the police could identify him in connection with the investigation. Petitioner wanted this matter presented to a jury also. App. 580, l. 7 – p. 581, l. 13; App. 584, l. 13 – p. 589, l. 13.

Trial counsel testified at the hearing and stated that he did not investigate fully into the CAD issue. App. 604, l. 10 – p. 605, l. 25. Trial counsel testified as follows regarding the case:

> Q:...[Y]yur advice to [petitioner was] that he, basically, was trading a potential Fourth Amendment suppression argument for time served five years?
>
> A: Yeah...that we are giving up is the ability to pursue a Fourth Amendment claim, which could have resulted in an outright dismissal of the case...what we were getting in exchange was avoiding a 25 year mandatory minimum in exchange for time served. App. 602, lines 2-13.

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2 Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994).

Petitioner's closing testimony at the PCR hearing was that he "wasn't in fact guilty," but pled guilty to the negotiated plea deal ultimately because he "knew [his] lawyer wasn't going to fight" and that he "didn't have faith in the system." App. 592, lines 4-14.

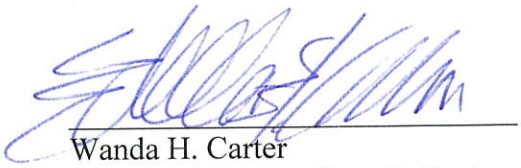
Clearly, based on a PCR judge's ruling and an opinion issued by the appellate court, petitioner had a viable Fourth Amendment claim; and the controversy surrounding stalled time on the CAD issue supported the Fourth Amendment claim in connection with the "fishing expedition" style illegal second search in the case. Indeed, petitioner felt coerced into abandoning these issues and pleading guilty involuntarily under the plea bargain rather than pursuing a trial by jury. Thus, petitioner's pleas were not given voluntarily. Additionally, trial counsel erred in failing to develop the Fourth Amendment claim for trial as an adjudicatory option in the case. Hill v. Lockhart, 484 U.S 52 (1985).

The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997), citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970). Therefore, "the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty." See Gustine v. State, supra.

In the case at bar, petitioner was undoubtedly coerced into accepting a guilty plea deal for time served despite his desire to plead not guilty and present his Fourth Amendment claim to a jury via a trial. Per these circumstances in the instant case, petitioner did not plead guilty voluntarily.

## CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the above-raised issue.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of October, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Erick Eton Hewins states:

1. She is Deputy Chief 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 May 25, 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 Erick Eton Hewins.

Respectfully Submitted,

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of October, 2023.

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**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 6th day of October, 2023.