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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Perry H. Gravely, Circuit Court Judge

EDNA SLUDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000995

JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
Appellate Defender

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner's guilty plea was unknowing and involuntary because plea counsel failed to explain the elements of the offenses.

STATEMENT

Petitioner was indicted in Oconee County for five counts of second-degree criminal sexual conduct with a minor and five counts of incest and on December 18, 2019, petitioner pled guilty before the Honorable J. Cordell Maddox. App. 1. Lindsey Simmons represented the State and Jenn Byford represented petitioner. App. 1. Judge Maddox sentenced petitioner to concurrent terms of twenty years' imprisonment on each count of second-degree CSC and ten years' imprisonment for incest. App. 30, l. 5 – 14. Petitioner did not appeal.

On November 2, 2020, petitioner filed a PCR application. App. 32. On February 27, 2023, the Honorable Perry H. Gravely held a hearing on petitioner's application. App. 58. Susannah Ross represented petitioner and Russell Barlow represented the State. App. 58. On June 12, 2023, Judge Gravely denied petitioner's PCR and this petition follows. App. 109.

ARGUMENT

Petitioner's guilty plea was unknowing and involuntary because plea counsel failed to explain the elements of the offenses.

At petitioner's plea, it was clear she did not understand the offenses or the rights she was waiving. When the court asked if she understood she was waiving her right to remain silent, she needed to confer with counsel. App. 6. After telling the court she was guilty and listening to the solicitor's recitation of facts, she had to ask for the definition of "battery." App. 8-9. After Judge Maddox attempted to explain it to her, she asked again, "So battery means touching in a sexual connotation?" App. 9. When the court asked if she had recently reviewed the statement she gave to law enforcement, she said she had not. App. 9. Plea counsel then admitted they had not reviewed her statement in the six months prior to the plea. App. 9-10.

At the PCR hearing, petitioner testified that plea counsel never showed her the statutes under which she was charged. App. 66. She had no access to the paperwork in her case. App. 66. She did not understand "what all is included in criminal sexual conduct" until she got to prison and looked it up in the law library. App. 66.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.'" Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and

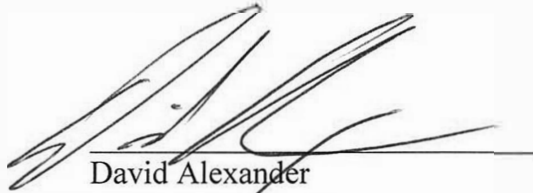
intelligent choice among the alternative courses of action open to the defendant.’ ” Hill v. Lockhart, 474 U.S. 52, 56 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)). Because a guilty plea is equivalent to a conviction, the trial court's determination of voluntariness must consider that “[i]gnorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality.” Boykin v. Alabama, 395 U.S. 238, 242-43 (1969).

“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). “Specifically, the voluntariness of a guilty plea is **not determined by an examination of a specific inquiry made by the sentencing judge alone**, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Roddy, 339 S.C. at 33, 528 S.E.2d at 420 (emphasis added).

As stated in Suber and Roddy, the PCR court must consider the record of the PCR hearing. The PCR court here found that plea counsel’s testimony that she discussed the elements of the offenses was credible. App. 129. This finding was error because it failed to take into account the plea colloquy which showed petitioner did not understand the terms contained in the statute or the solicitor’s recitation of facts. Petitioner did not understand the crime to which she was pleading guilty, which constitutes ineffective assistance of plea counsel. Petitioner’s plea was unknowing and involuntary. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.

A handwritten signature in black ink, appearing to read 'D. Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of December, 2023.

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Certiorari to Oconee County

Honorable Perry H. Gravely, Circuit Court Judge

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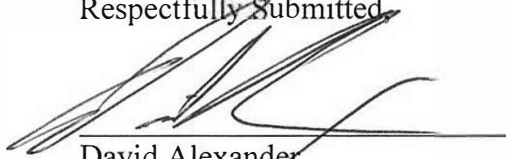
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Edna Sluder states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Perry H. Gravely, which was held on February 27, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Edna Sluder.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of December, 2023.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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.”

A handwritten signature in black ink, appearing to read 'DAVID ALEXANDER', written over a horizontal line.

David Alexander
Appellate Defender

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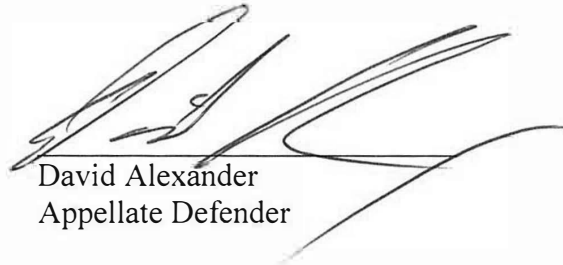
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APPELLATE CASE NO. 2023-000995

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Johnson Petition for Writ of Certiorari and Appendix in the above-referenced case have been served upon Donald J. Zelenka, Esquire, and Russell Barlow, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Edna Sluder, #382012, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 6th day of December, 2023.



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