

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

Edward W. Miller, Circuit Court Judge  
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**RECEIVED**

AUG 01 2013

**S.C. Supreme Court**

EFRAIN PEREZ MARTINEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000292

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel provided ineffective assistance in derogation of petitioner's Sixth Amendment right to counsel in advising petitioner to plead guilty when petitioner did not understand the charges against him?

## STATEMENT

On December 14, 2010, petitioner was indicted for incest. App. 59. Petitioner subsequently waived presentment for a charge of second degree criminal sexual conduct with a minor. App. 61; 51. On January 12, 2011, petitioner pled guilty before the Honorable Robin B. Stilwell. App. 1. Bryna Stokes Seay represented the State. App. 1. Nihar Manhar Patel represented petitioner. App. 1. Judge Stilwell sentenced petitioner to twenty years' imprisonment on the CSC charge and ten years' imprisonment on the incest charge. App. 9, ll. 11 – 17. Petitioner did not appeal.

On June 7, 2011, petitioner filed an application for post-conviction relief. App. 11. On December 20, 2012, a hearing was held on petitioner's PCR application before the Honorable Edward W. Miller. App. 25. Richard H. Warder represented petitioner. App. 25. Karen C. Ratigan represented the State. App. 25. Judge Miller denied petitioner's application and on January 22, 2013, issued a written order of dismissal. App. 51. This petition follows.

## ARGUMENT

Plea counsel provided ineffective assistance in derogation of petitioner's Sixth Amendment right to counsel in advising petitioner to plead guilty when petitioner did not understand the charges against him.

Plea counsel's performance was constitutionally deficient and prejudiced petitioner. See Strickland v. Washington, 466 U.S. 668 (1984). "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). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012).

"Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted). The Supreme Court has "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under Strickland." Id. at 1481 (quoting Strickland v. Washington, 466 U.S. 668, 689 (1984)).

Petitioner did not receive effective assistance of counsel because his attorney told him he would only receive a ten-year sentence. App. 35, ll. 4 – 11. At the time of plea counsel's representation, petitioner was unable to read English. App. 35, ll. 17 – 19. Petitioner also spoke little English. App. 30, ll. 18 – 22. Plea counsel failed to explain the collateral consequences of petitioner's guilty plea, including the difference between serious and non-serious charges, electronic monitoring, and the sexual registry. App. 38, ll. 16 – 39, l. 12. Plea counsel admitted that he had "little contact" with petitioner. App. 48, ll. 4 – 5.

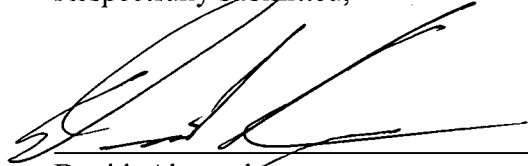
This constituted deficient performance. This Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant's trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. This Court found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

In this case, plea counsel's failure to fully advise petitioner of the consequences of his plea, telling him he would only receive a ten-year sentence, and petitioner's inability to understand the English language rendered his plea unknowing and involuntary. Petitioner was prejudiced by plea counsel's deficient conduct. Petitioner testified that he would not have pled guilty had he known he would receive more than ten years' imprisonment. App. 39, ll. 5 – 7. Under these circumstances, the PCR court erred in denying petitioner's application.

CONCLUSION

For the foregoing reasons, this Court should grant the petition with the ultimate relief of allowing petitioner to withdraw his guilty plea.

Respectfully submitted,

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

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 1<sup>st</sup> day of August, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
EDWARD W. MILLER, CIRCUIT COURT JUDGE

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EFRAIN PEREZ MARTINEZ,

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PETITION TO BE RELIEVED AS COUNSEL

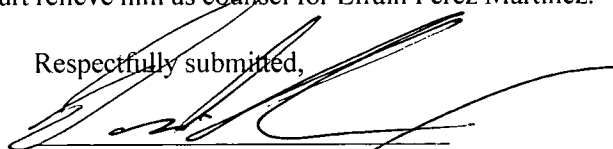
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Counsel for Efrain Perez Martinez states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on December 20, 2012. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Efrain Perez Martinez.

Respectfully submitted,



David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 1st day of August, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County  
Edward W. Miller, Circuit Court Judge

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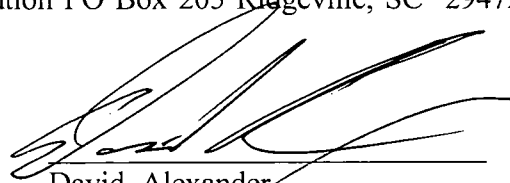
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CERTIFICATE OF SERVICE

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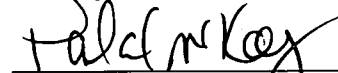
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also served upon Efrain Perez Martinez, #344331, at Lieber Correctional Institution PO Box 205 Ridgeville, SC 29472 this 1st day of August, 2013.



David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day  
of August, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.