STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Apr 09 2024

S.C. SUPREME COURT

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Certiorari to Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

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CHEVIS JAKE MORRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001908

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# JOHNSON PETITION FOR WRIT OF CERTIORARI

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## INDEX

## ISSUE PRESENTED

Did the PCR judge err in refusing to find that the guilty plea was rendered involuntary by plea counsel's failure to fully explain the legal basis of the motion to suppress Petitioner's statement to the police as involuntary and in violation of the Fifth Amendment right to counsel?

## STATEMENT

In March of 2017, the Anderson County Grand Jury indicted Petitioner, Chevis Jake Morris, for burglary first degree, murder, and possession of a weapon during the commission of a violent crime, indictments #2017-GS-04-00727 – 728. (App. pp. 22-25). On August 6, 2018, Petitioner appeared before the Honorable R. Scott Sprouse in Oconee County. Petitioner agreed to have the Anderson County pleas heard in Oconee County. (App. p. 2, lines 4-10; p. 5, lines 16-21). Petitioner pled guilty to burglary first degree and voluntary manslaughter. Additionally, Petitioner waived grand jury presentment and pled guilty to armed robbery. (App. p. 5, line 22 – p. 6, lines 1-5; pp. 26-27). Pursuant to negotiations with the State, Judge Sprouse sentenced Petitioner to thirty (30) years concurrent for each charge. Petitioner did not file a notice of intent to appeal. (App. pp. 28-30).

On February 15, 2019, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 31-36). On September 27, 2019, the State filed a return and motion for more definite statement. (App. pp. 37-50). On February 1, 2021, Petitioner filed an amended PCR application. (App. pp. 51-53). On February 28, 2023, an evidentiary hearing was held before the Honorable Perry H. Gravely. Sarah M. Henry represented Petitioner at the PCR hearing. Chelsea Marto represented the State. In a written order filed on November 29, 2023, Judge Gravely denied relief and dismissed the application. (App. pp. 110-139). A timely notice of intent to appeal was filed on December 14, 2023. This petition for writ of certiorari follows.

## ARGUMENT

**The PCR judge erred in refusing to find that the guilty plea was rendered involuntary by plea counsel's failure to fully explain the legal basis for a motion to suppress Petitioner's statement to the police as involuntary and in violation of the Fifth Amendment right to counsel.**

Petitioner pled guilty to the charged offense of burglary first degree, the reduced charge of voluntary manslaughter, and waived grand jury presentment and pled guilty to armed robbery for a negotiated sentence of thirty (30) years. In the amended PCR application Petitioner alleged that:

> Trial counsel failed to request and hold a Jackson v. Denno hearing to determine the voluntariness of the Applicant's statement to police prior to the guilty plea. Applicant maintains that he informed Ms. Byford [plea counsel] that he was under the influence of drugs during the police interview and that he asked for an attorney during the interview. Applicant alleges that Ms. Byford told him that he could not challenge the statement and he could not recant the statement. Applicant alleges that the statement was not voluntarily given and alleges that he would not have pled guilty if he had known he could challenge the statement.

(App. p. 52).

During the PCR hearing Petitioner testified that after his arrest during a police interview on July 31, 2016, at the Anderson County Sheriff's Office, Petitioner requested an attorney. (App. p. 71, line 3 – p. 72, 73, 74, line 1). A video of the interview was marked as Applicant's Exhibit #3 and admitted in evidence without objection. (App. p. 73, lines 9-13; p. 74, lines 7-13). Petitioner testified that after he requested an attorney but before an attorney was provided, the interview continued, and he made incriminating statements. (App. p. 74, lines 15-24). According to Petitioner, counsel did not discuss moving to suppress the statements as involuntary. (App. p. 74, line 25 – p. 75, lines 1-18). Petitioner asserted that the incriminating statements were false. (App. p. 75, lines 21-24). Petitioner testified that he was unaware that he could challenge the statements and believed that if challenged, the statements would have been

suppressed. (App. p. 76, lines 18-24). Petitioner confirmed that if he had known that the statements could have been excluded, he would not have pled guilty and instead would have exercised his right to a jury trial. (App. p. 77, lines 1-6).

Plea counsel testified as follows at the PCR hearing:

> We watched the video together. I worked him through all of my legal reasoning regarding his first initial request for a lawyer, which you heard. If you play about four more minutes of that video, what you'll also hear is Mr. Morris stand up and start to walk off and he said, "Wait, wait, wait." And they come back, and he says, "If you just let me see my little girl." They say they can't do that because that's giving you something. They'll argue that it's not voluntary.
>
> He starts crying, and then I believe at 17 minutes and 22 seconds into the video, I think he starts talking. So I explained to him that there's – the State's going to be able to make a really strong argument that you reinitiated conversation. I think we even discussed some case law on that issue.

(App. p. 97, line 17 – p. 98, lines 1-8). Plea counsel also recalled discussing Petitioner's drug use prior to the interview with the police as well as the fact that Petitioner was sleep deprived when he made the incriminating statements. (App. p. 98, line 9 – p. 99, lines 1-6).

In the order of dismissal the PCR judge wrote:

> This Court finds counsel Byford's testimony credible, and finds Applicant failed to show counsel Byford was deficient in her advice and investigation or any resulting prejudice under the Sixth Amendment. Counsel Byford explored and prepared for the possibility of suppressing Applicant's post-arrest statements, and discussed the possibility of a suppression hearing with Applicant. The main factor in Applicant's decision to plead was not whether his statements could be suppressed, but if the State would offer him a reduced charge of voluntary manslaughter.

(App. p. 131). The PCR judge erred. Petitioner's statements were both involuntary and in violation of Petitioner's Fifth Amendment right to consult with an attorney during a custodial interrogation. Plea counsel was deficient in failing to fully explain the legal basis of the motion to suppress Petitioner's statement to the police as involuntary and in violation of the Fifth Amendment right to counsel

"The Fifth Amendment guarantees the right to speak with counsel upon request in a custodial setting. U.S. Const. amend V; Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). If a suspect invokes her right to counsel, police interrogation must cease unless the suspect herself initiates further communication with police. Id." State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001). In State v. Johnson, 413 S.C. 458, 466–67, 776 S.E.2d 367, 371 (2015), the South Carolina Supreme Court wrote:

> When analyzing a criminal defendant's invocation of her right to counsel, a trial court must make two separate inquiries:
>
> First, courts must determine whether the accused actually invoked his right to counsel. See, e.g., Edwards v. Arizona, 451 U.S. at 484–85 [101 S.Ct. 1880] (whether accused "expressed his desire" for, or "clearly asserted" his right to, the assistance of counsel); Miranda v. Arizona, 384 U.S. at 444–45 [86 S.Ct. 1602] (whether accused "indicate[d] in any manner and at any stage of the process that he wish[ed] to consult with an attorney before speaking"). Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked. Edwards v. Arizona, 451 U.S. at 485, 486, n. 9 [101 S.Ct. 1880].Smith v. Illinois, 469 U.S. 91, 95, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984) (per curiam).

During the interview with the police Petitioner, after seventeen minutes and fourteen seconds, said, "I need to talk to a lawyer." (Applicant's Exhibit #3, Police Interview with Petitioner (17:14)). The police advised that was his decision but if so, they could no longer talk with him about the case. Petitioner asked about the current warrants and the warrants the police were seeking. Petitioner then asked, "What if I talk to a lawyer?" (Applicant's Exhibit #3, Police Interview with Petitioner (17:16)). The police advised Petitioner that he was going to be charged whether he talked to a lawyer or not. Petitioner then said, "I just want to see my little girl, man." (Applicant's Exhibit #3, Police Interview with Petitioner (Applicant's Exhibit #3, Police Interview with Petitioner (17:17)). The police explained that they could not promise him

anything in exchange for a statement. Petitioner then said, "I am willing to tell my side of the story." (Applicant's Exhibit #3, Police Interview with Petitioner (17:20)).

In the order of dismissal the PCR judge found that, "Defense counsel reasonably investigated and recognized this re-initiation of communication by him would be an issue of concern concern [sic] for them if they went to trial and tried to suppress the statement." (App. p. 130). The PCR judge erred. Petitioner invoked his right to counsel when he said, "I need to talk to a lawyer." (Applicant's Exhibit #3, Police Interview with Petitioner (17:14)). While counsel may have advised Petitioner that the State would argue that he re-initiated contact with the police, she failed to advise him that the State still had to show that he knowingly and intelligently waived the right he had invoked. ("Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked. Edwards v. Arizona, 451 U.S. at 485, 486, n. 9 [101 S.Ct. 1880].Smith v. Illinois, 469 U.S. 91, 95, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984) (per curiam)." State v. Johnson, 413 S.C. 458, 466–67, 776 S.E.2d 367, 371 (2015)). Petitioner did not knowingly and intelligently waive the right to an attorney that he previously asserted. Plea counsel was ineffective in failing to fully explain the law with regard to initiating further communication with the police after asserting the right to counsel and the requirement of a knowing and intelligent waiver of the right to counsel previously asserted.

As to the involuntary nature of the incriminating statements, the South Carolina Supreme Court in In re Tracy B., 391 S.C. 51, 66, 704 S.E.2d 71, 78–79 (Ct. App. 2010), wrote:

> "A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession." State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing Jackson v. Denno, 378 U.S. 368, 377, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964)). In conducting the due process analysis,

> "courts look to the totality of circumstances to determine whether a confession was voluntary." Withrow v. Williams, 507 U.S. 680, 693, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993). The pertinent circumstances include "the youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep." Pittman, 373 S.C. at 566, 647 S.E.2d at 164 (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 226, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)). No one factor is determinative; each case requires careful scrutiny of all the surrounding circumstances. Pittman, 373 S.C. at 566, 647 S.E.2d at 164 (citing Schneckloth, 412 U.S. at 226, 93 S.Ct. 2041).

Careful scrutiny of all the surrounding circumstances, including Petitioner's drug use prior to the interview with the police, the fact that Petitioner was sleep deprived when he made the incriminating statements, and Petitioner's crying prior to making the statements all support an argument that the incriminating statements were not voluntary. Plea counsel was ineffective in failing to fully explain the law with regard to involuntary statements. Plea counsel's failure to fully explain the basis for a motion to suppress Petitioner's incriminating statements rendered the guilty plea involuntary.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by

counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "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). "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, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999), the South Carolina Supreme Court wrote:

> Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. Id. Specifically, a defendant must be aware of the privilege against self incrimination, the right to a jury trial, and the right to confront one's accusers. This Court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). 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. Id.

In Dalton v. State, 376 S.C. 130, 138–39, 654 S.E.2d 870, 874 (Ct. App. 2007), the South Carolina Court of Appeals wrote:

> "[T]he voluntariness of a guilty plea is not determined by an examination of the 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 the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). "When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing." Roddy, 339 S.C. at 33, 528 S.E.2d at 420. In 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 any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997).

The guilty pleas in the present case were rendered involuntary by plea counsel's failure to fully explain the legal basis for a motion to suppress Petitioner's incriminating statements. The error was not cured during the guilty plea hearing because Petitioner did not fully understand the defense he was waiving with regard to the incriminating statements. Petitioner was prejudiced by the error.

In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

> In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), "[I]n order to satisfy the 'prejudice' requirement, the defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial."

There is a reasonable probability that, but for counsel's error, Petitioner would not have pled guilty and instead would have insisted on going to trial. The PCR judge erred in refusing to grant relief. Petitioner is entitled to post-conviction relief.

## CONCLUSION

This Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of April, 2024.

STATE OF SOUTH CAROLINA

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---

PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Chevis Jake Morris 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 Perry H. Gravely, which was held on Feb. 28, 2023, 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 Chevis Jake Morris.

Respectfully Submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of April, 2024.

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S.C. SUPREME COURT

**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."

Kathrine H. Hudgins
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ATTORNEY FOR PETITIONER

This 9th day of April, 2024.