

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Kristi F. Curtis, Circuit Court Judge

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NEWITT R. WALKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001052

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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**Apr 22 2024**

S.C. SUPREME COURT

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**ISSUE PRESENTED**

Whether the PCR court erred in denying post-conviction relief where Petitioner did not understand important constitutional rights that he waived as a result of his guilty pleas, since Petitioner's pleas were not knowingly, voluntarily, and intelligently tendered?

## STATEMENT

During the September 2018 term, an Horry County Grand Jury indicted Petitioner, Newitt Rodney Walker, for possession with intent to distribute (PWID) cocaine base. App. 145 – 146. During the October 2018 term, a Georgetown County Grand Jury indicted Petitioner for trafficking in heroin, 14 – 28 grams. App. 147 – 148. On February 25, 2019, Petitioner appeared before the Honorable Steven H. John, in the Georgetown County Court of General Sessions, for a plea hearing. Ronald Hazzard represented Petitioner. Keith Powell prosecuted the case. App. 1.

Petitioner pleaded guilty to reduced charges of trafficking heroin, 4 – 14 grams, first offense (reduced from trafficking heroin, 14 – 28 grams); and PWID cocaine base, first offense (reduced from PWID cocaine base, third offense). App. 3, ll. 7-25. As part of the plea bargain, the State agreed to dismiss by nolle prosequi a number of additional charges.<sup>1</sup> The State recommended concurrent sentences of seventeen years for trafficking heroin and fifteen years for PWID cocaine. App. 3, ll. 7-25. After the plea colloquy and the solicitor's rendition of the facts, the court found there was a substantial factual basis for the pleas and found Petitioner's guilty pleas were freely, voluntarily, and intelligently entered. The court accepted the pleas. App. 12, ll. 11-18. In mitigation, defense counsel noted Petitioner was addicted to drugs. App. 13, ll. 21-23. The court accepted the recommendation and sentenced Petitioner to serve concurrent terms of imprisonment of seventeen years for trafficking heroin, 4 – 14 grams, first offense; and fifteen years for PWID cocaine base, first offense. App. 15, ll. 17-25; App. 149 – 150. Petitioner

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<sup>1</sup> Those charges included approximately: three counts of distribution of heroin, two counts of distribution of heroin in proximity of a school, two counts of trafficking heroin, trafficking heroin proximity of a school, two counts of PWID marijuana proximity of a school, PWID cocaine, possession of cocaine, giving false information to police, and hit-and-run with property damage. Some of the offenses were alleged to be second offenses. App. 10, ll. 4-13; App. 14, ll. 4-14; App. 123, l. 9 – 124, l. 3. Defense counsel testified approximately sixteen charges were dismissed as part of the plea bargain. App. 124, ll. 2-3.

attempted to directly appeal his guilty pleas, but the appeal was dismissed by this Court for failure to comply with Rule 203(d)(1)(B)(iv), SCACR.

On February 24, 2020, Petitioner filed an application for post-conviction relief. App. 20 – 32. On August 13, 2020, the State made its return and motion for a more definite statement. App. 33 – 44. On September 9, 2022, a hearing was held on the matter before the Honorable Kristi F. Curtis. Thurmond Brooker represented Petitioner. Chelsey Marto represented the State. App. 45.

At the PCR hearing, Petitioner testified that counsel did not explain many of his important constitutional rights, including the presumption of innocence, the right to confrontation, the right to testify or not testify, and the right against self-incrimination. App. 76, l. 7 – 80, l. 17. Petitioner explained that had those things been explained to him, he would not have pleaded guilty but would have insisted on going to trial. App. 80, l. 18 – 81, l. 3. In contrast, defense counsel claimed he did advise Petitioner about his constitutional rights. Defense counsel alleged he gave detailed explanations to Appellant about his constitutional rights. App. 113, l. 4 – 117, l. 23; App. 126, ll. 20-22.

The court took the matter under advisement. On May 26, 2023, the PCR court issued an order of dismissal.<sup>2</sup> App. 131 – 144. The order of dismissal addressed the claim that Petitioner’s plea was invalid. App. 138 – 140. The order stated, “the record reflects that the plea was entered knowingly, voluntarily, freely, and intelligently.” App. 140. The order cited to specific portions of the plea colloquy. App. 140. The order concluded that “based on the plea hearing transcript,

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<sup>2</sup> The order of dismissal contained a finding that, “On cross-examination, Applicant responded he wants to reenter his plea. Applicant stated that he does not want to completely withdraw his plea, he simply seeks a reduction in time because he believes twelve years is reasonable for his crimes.” App. 135. This finding is simply unsupported by the record. Such testimony is not contained in the PCR transcript.

this Court finds the plea was entered knowingly, intelligently, freely, and voluntarily and cannot be withdrawn now. App. 140.

The order also addressed the claim that counsel failed to explain Petitioner's constitutional rights. The order stated, "This Court finds that allegation not credible. The plea transcript and Counsel's credible testimony at the PCR hearing show Applicant was informed by Counsel and the Court about his rights at great length." App. 142. The order also specifically addressed claims that counsel did not discuss Petitioner's Confrontation Clause rights and right to testify. App. 142 – 143. The order stated, "Applicant claims he was unaware of his rights under the Confrontation Clause. However, Counsel credibly testified that he informed Applicant about his rights at great length. He was also informed that he was waiving his right to call and confront witnesses at the plea hearing." App. 142. "Applicant claims he was not aware of his right to testify, However, Counsel credibly testified that he informed Applicant about his rights at great length. He was also informed that he was waiving his right to remain silent at the plea hearing." App. 143. The order stated the PCR court therefore found Petitioner was aware of those rights and waived them at the plea hearing. App. 142 – 143.

This petition for writ of certiorari follows.

## ARGUMENT

**The PCR court erred in denying post-conviction relief where Petitioner did not understand important constitutional rights that he waived as a result of his guilty pleas, since Petitioner's pleas were not knowingly, voluntarily, and intelligently tendered.**

Before a guilty plea may be accepted, it is required "that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." *Rollison v. State*, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001). "[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." *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) (emphasis removed). The record must establish the defendant has "a full understanding of what the plea connotes and of its consequence." *Boykin v. Alabama*, 395 U.S. 238, 244 (1969).

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and the deficient performance prejudiced the petitioner. *Id.* As seen, Petitioner testified counsel did not explain many of his important constitutional rights, including the presumption of innocence, the right to confrontation, the right to testify or not testify, and the right against self-incrimination. Counsel should have ensured that Petitioner understood the constitutional rights that he was waiving. Counsel's advice that Petitioner plead guilty when Petitioner lacked an understanding of the

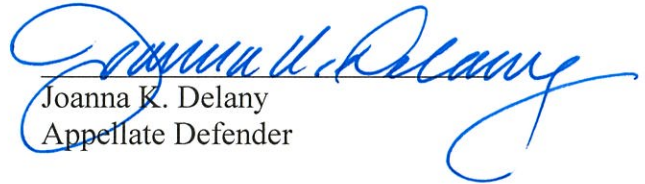
constitutional rights which he was waiving was deficient performance under prevailing professional norms. *Strickland*, 466 U.S. at 687.

The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). “[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill*, 474 U.S. at 58. “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.” *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing *Hill v. Lockhart*, *supra*). To establish prejudice when challenging a guilty plea, a PCR applicant 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.” *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018).

Petitioner’s decision to plead guilty was not knowingly, intelligently, and voluntarily made. As seen, Petitioner testified that if he had understood the rights he was waiving, he would not have pleaded guilty and would have insisted on going to trial. Counsel’s deficient performance resulted in Petitioner’s entry of pleas that were not knowingly, intelligently, and voluntarily tendered. *Hill v. Lockhart*, 474 U.S. at 56; *Frierson v. State*, 423 S.C. at 262, 815 S.E.2d at 436.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests that a writ of certiorari be granted to allow full briefing on this issue.



Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of April, 2024.

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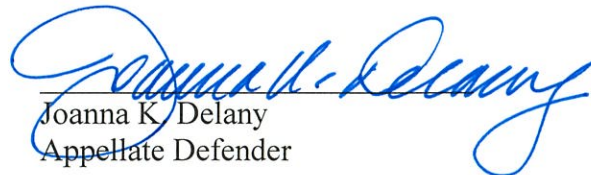
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Counsel for Newitt R. Walker states:

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 Kristi F. Curtis, which was held on September 9, 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 Newitt R. Walker.

Respectfully Submitted,

  
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Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of April, 2024.

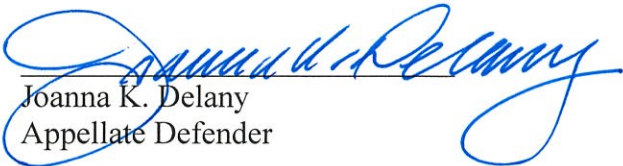
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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 22nd day of April, 2024.