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Apr 23 2024
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Orangeburg County

Honorable Diane S. Goodstein, Circuit Court Judge

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MALCOM WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000094

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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SARAH S. SHIPE
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

# INDEX

## ISSUE PRESENTED

Whether the PCR court erred finding petitioner's guilty plea was knowing and voluntary where petitioner testified he would not have pled guilty to murder without negotiation or recommendation but for defense counsel' erroneous advice that he had no defense to present at trial?

## STATEMENT

On December 2, 2015, an Orangeburg County grand jury indicted petitioner for murder. App. 107-08. On October 12, 2017, petitioner pled guilty as indicted before the Honorable Edgar Dickson. App. 1-19. Petitioner was represented by Doug Mellard and Peggy Hinds. App. 1. Thomas Scott represented the state. App. 1. On October 17, 2017, Judge Dickson sentenced petitioner to thirty-two years' imprisonment. App. 21-28; 28, ll. 6-9.

Thereafter, petitioner filed an application for PCR. App. 30-38. An evidentiary hearing was held on September 9, 2019, before the Honorable Diane S. Goodstein. App. 50-86. Petitioner was represented by Jonathan Waller and the state was represented by Sara Gunton. App. 50.

On May 31, 2023, Judge Goodstein signed an order denying PCR. App. 87-107. The PCR court found petitioner's guilty plea was freely, knowingly, and voluntarily made. App. 97; 101. The court also found petitioner did not provide "evidence of any defenses or strategies he could have pursued had counsels been more fully prepared." App. 103.

This petition follows.

## ARGUMENT

The PCR court erred finding petitioner's guilty plea was knowing and voluntary where petitioner testified, he would not have pled guilty to murder without negotiation or recommendation but for defense counsel' erroneous advice that he had no defense to present at trial.

**Relevant facts**

At petitioner's guilty plea hearing the solicitor alleged that on July 29, 2015, petitioner stabbed his longtime girlfriend, Lateefah Williams, to death in a car and left her body in the woods. App. 11-13. The solicitor told the plea court that shortly after the incident petitioner called his aunt and told her what happened. App. 13, ll. 19-22. Petitioner later made statements to the 911 operator and to law enforcement. App. 13, l. 23-14, l. 19.

At the PCR hearing petitioner testified that defense counsel told him he did not have any discussed potential defenses. App. 59, ll. 6-12. However, petitioner testified he believed he was entitled to self-defense or at the very least an instruction on lesser included offenses. App. 65, ll. 8-13; 70, ll. 11-17. Petitioner testified there was a struggle in the car with the decedent and indicated that his actions that resulted in her death were in self-defense. App. 70. Ll. 11-17. Petitioner contended defense counsel knew these facts but erroneously told him that the facts did not support self defense or a lesser included offense and instead suggested he plead guilty. App. 66, l. 18-67, l. 5.

Defense counsel stated that he had an investigator do independent investigation in petitioner's case outside of the discovery he received from the state. App. 80, ll. 1-24. He testified he spoke to petitioner's family and visited the area where decedent was found and spoke to people that were present. App. 80, ll. 4-24.

Counsel testified petitioner's version of the incident was consistent throughout his representation. App. 76, l. 25-77, ll. 4. He testified based on his knowledge of the case petitioner did not have any defenses and he therefore did his best to investigate mitigation. App. 77, ll. 13-18. Counsel said prior to petitioner's guilty plea he discussed voluntary manslaughter with petitioner and explained why it was not applicable in his case. App. 78, ll. 1-16. Defense counsel denied knowing anything about petitioner and decedent having a "struggle" in the car before her death. App. 76, ll. 15-21.

**Discussion**

The PCR court erred finding trial counsel was not ineffective because counsel's performance was deficient where petitioner testified there were facts supporting self-defense or at the very least facts supporting lesser included offenses. Petitioner was prejudiced where he pled guilty because of counsel's erroneous advice that he could not raise self-defense at trial.

A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that the applicant was prejudiced by that deficiency. *Hill v. Lockhart*, 474 U.S. 52 (1985). Plea counsel is ineffective within the meaning of the Sixth Amendment only when the applicant satisfies both requirements. *Id*.

The two-part *Strickland v. Washington*, 466 U.S. 668, (1984) test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas, the first half of the *Strickland* test is nothing more than a restatement of the standard of attorney competence already set forth in *Tollett v. Henderson*, 411 U.S. 258 (1973) and *McMann v. Richardson*, 397 U.S. 759 (1970). The prejudice requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, to satisfy the

prejudice requirement, the applicant must show there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 US at 58-59.

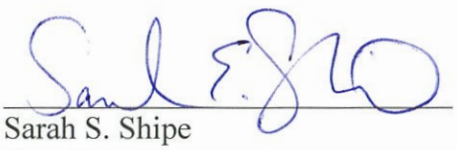
Counsel was deficient where he made an unreasonable decision not to pursue self-defense in petitioner's case and instead advised petitioner to plead guilty. Petitioner testified that but for counsel's erroneous advice he would have pursued a trial.

In many guilty plea cases, the "prejudice" inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. Similarly, where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial. *See, e.g., Evans v. Meyer*, 742 F.2d 371, 375 (C.A.7, 1984) ("It is inconceivable to us ... that [the defendant] would have gone to trial on a defense of intoxication, or that if he had done so he either would have been acquitted or, if convicted, would nevertheless have been given a shorter sentence than he actually received"). As the Court explained in *Strickland*, these predictions of the outcome at a possible trial, where necessary, should be made objectively, without regard for the "idiosyncrasies of the particular decision maker." *Id*. 466 U.S., at 695.

Petitioner was prejudiced where counsel failed to diligently pursue a valid claim of self-defense resulting in petitioner pleading guilty and receiving thirty-two years in prison. Had counsel fully investigated petitioner's claim of self-defense petitioner would have chosen a trial.

## CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.



Sarah S. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of April, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Malcom Williams 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 Diane S. Goodstein 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 him as counsel for Petitioner.

Respectfully Submitted,

Sarah S. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of April, 2024.

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**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."

Sarah S. Shipe
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This 23rd day of April, 2024.