

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Marion County

Honorable Debra R. McCaslin, Circuit Court Judge  
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KENDELL A. GAMBLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000264  
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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

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**Jul 18 2024**

S.C. SUPREME COURT

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**ISSUE PRESENTED**

Whether the PCR court erred in finding plea counsel provided effective representation where counsel failed to ensure that the plea court reviewed the nature and elements of the charges that Petitioner pled to, causing his plea to be involuntarily and unknowingly entered into?

## STATEMENT OF THE CASE

During the February 2018 term of the Marion County grand jury, Petitioner was indicted in a twenty-four count indictment for one count of burglary first degree, seven counts of attempted armed robbery, seven counts of kidnapping, five counts of attempted murder, one count of discharging a firearm into a vehicle, one count of possession of a stolen handgun, one count of conspiracy, and one count of possession of a weapon during the commission of a violent crime. App. 31-37. Petitioner's brother and co-defendant, Jayme Gamble, was indicted on the same charges. App. 3, ll. 10-14.

The charges arose from the attempted robbery of the home of Hattie Pernell on the morning of July 21, 2017. At approximately 7:30 that morning Pernell heard a loud knock on her door. She did not recognize the vehicle in her driveway and when she looked through the peephole, she did not know the men at her door. Another household member, Lawanda Williams, also did not recognize the vehicle or the men. Concerned, Pernell dialed 911 just as the door to the home was forced open – the line remained open with 911 during the incident. Two men entered the home with guns and other weapons, ordered the women and children in the home to the floor and demanded money. The men were speaking with a third party on a cell phone who was directing them to find money. App. 10, l. 10-App. 12, l. 9.

911 dispatch, hearing the commotion on the open line, sent law enforcement officers to the home of Parnell. Deputy Causey and Deputy Herring were the first to arrive on scene. The deputies were awaiting backup when Causey decided to clear the backyard of the home. Armed with a department issued shotgun, Causey went into the backyard to attempt to secure the area. Unbeknownst to Causey, Petitioner and his brother had fled the house after realizing that there was no money and were hiding behind a shed trying to get back to their vehicle. As the brothers

made a run for their car, shots were fired and one struck Causey's shotgun causing him to drop the gun. The brothers made it to their vehicle and fled the scene. A high-speed vehicle chase ensued where shots were fired by both the brothers and law enforcement. The chase eventually ended when Jayme, who had been driving, lost control of the vehicle and crashed. Jayme fled on foot but was apprehended. Petitioner stayed at the scene of the accident and surrendered without further incident. App. 11, ll. 10-18; App. 12, l. 15-App. 14, l. 13. The entire incident was captured on either security home video or law enforcement dash cameras. App. 14, ll. 14-20.

On August 1, 2018, Petitioner and his brother appeared before the Honorable William H. Seals, Jr., to enter a guilty plea without recommendations<sup>1</sup> or negotiations to one count of burglary first degree, one count of attempted armed robbery, one count of kidnapping, three counts of attempted murder, and one count of possession of a weapon during the commission of a violent crime. App. 1; App. 3, ll. 16-21. The State was represented by Patti Parker. Petitioner was represented by Jonathan Hiller. Petitioner's brother was represented by Laura Hiller. App. 1. During the plea colloquy, Judge Seals informed Petitioner of the sentencing ranges for each charge and his constitutional rights that he'd waive by pleading guilty. Judge Seals also confirmed that Petitioner had plenty of time with his lawyer, was satisfied with his lawyer, and was not pleading guilty under a promise or threat. App. 5, l. 23-App. 9, l. 22. Judge Seals sentenced both brothers to fifty years imprisonment on the burglary first charge, twenty years imprisonment on the attempted armed robbery charge, thirty years imprisonment for the kidnapping charge, thirty years imprisonment for each attempted murder charge, and five years on the weapons charge. App. 29, ll. 11-20; App. 38-44.

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<sup>1</sup> The only recommendation by the State was that the sentences be run concurrently. App. 4, ll. 13-18.

A direct appeal was filed on behalf of Petitioner, but the matter was ultimately dismissed for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv). Petitioner timely filed an application for post-conviction relief on September 18, 2019, alleging *inter alia* that his counsel was ineffective in failing to have the plea court explain the nature and elements of the offenses he pled to, rendering his plea involuntarily and unknowingly entered. App. 45-76. The State filed a Return dated February 4, 2020. App. 77-84. An evidentiary hearing was convened on June 12, 2023, before the Honorable Debra McCaslin. The State was represented by Russell Barlow, II, and Petitioner was represented by Joshua Bailey. App. 85.

Petitioner testified that he remembered meeting with Counsel Hiller two or three times and that Counsel Hiller never explained what elements the State would have to prove if they proceeded to trial. App. 92, ll. 17-19; App. 95, ll. 9-14; App. 105, ll. 8-16. He also confirmed that Judge Seals never asked whether Counsel Hiller had explained to him the elements of each crime to which he was pleading guilty. App. 95, ll. 19-24; App. 96, ll. 9-11. According to Petitioner, he never received a copy of his discovery and did not speak with Counsel Hiller about his charges in any detail. App. 101, l. 21-App. 102, l. 4. Petitioner asserted that prior to the day of the guilty plea, he had not discussed pleading guilty with Counsel Hiller and was “blindsided” with the plea hearing when he got to court. App. 97, ll. 8-15. On cross-examination Petitioner testified that he pled guilty because he did not want to face a possible life sentence after trial. App. 111, ll. 22-25. However, he stated he would go to trial now as he was already serving fifty years. App. 113, ll. 8-13.

Counsel Hiller testified that he met with Petitioner at least ten times over the course of the representation. App. 119, l. 24-App. 120, l. 3. He stated that during the meetings he had “no doubt” that he had explained to Petitioner the elements that the State would have to prove at trial

for each charge. He confirmed it was his standard practice to review the charges and elements, as well as all the relevant collateral consequences. App. 127, ll. 3-17.

An order of dismissal was filed on December 6, 2023. App. 143-169. The PCR court found Counsel Hiller's testimony to be credible and persuasive and found Petitioner's testimony to be "generally not credible and not persuasive." App. 153. The PCR court found that Petitioner understood the charges and the sentences he faced at the time he entered his plea, that Counsel Hiller credibly testified he reviewed the elements of each charge with Petitioner and that Petitioner could not show prejudice. App. 153; App. 166.

This petition follows.

## ARGUMENT

The PCR court erred in finding plea counsel provided effective representation where counsel failed to ensure that the plea court reviewed the nature and elements of the charges that Petitioner pled to, causing his plea to be involuntarily and unknowingly entered into.

A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969). Additionally, before a plea can be accepted a defendant must be aware of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). A “trial judge is free to use any appropriate procedure for determining the accuracy of the guilty plea.” State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). Importantly, the plea judge “must be certain that the defendant understands the charge and the consequences of the plea and that the record indicates a factual basis for the plea.” Id. “The court must give the defendant adequate warning of the consequences of the plea in every case. The court’s warning should include an explanation of the defendant’s waiver of constitutional rights and a realistic picture of all sentencing possibilities.” Id. “Furthermore, abandonment of these rights cannot be due to ignorance or incomprehension for a plea of guilty is more than an admission of conduct, it is a conviction.” Id.

An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel’s representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The “prejudice,” requirement focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59 (1985). In other words, the

applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Importantly, “the 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).

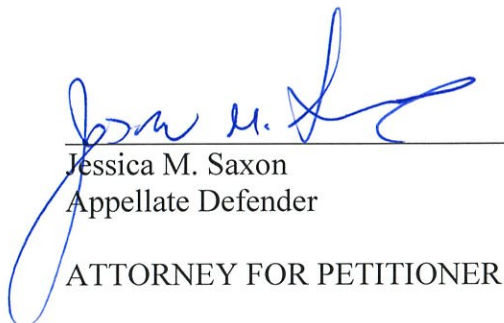
The plea transcript reveals that the plea judge did not perform a full colloquy with Petitioner because the judge failed to explain to Petitioner the nature and crucial elements of the charges that he was facing. The plea court did not even read the charges as contained in the indictment. Nor did the plea court question plea counsel as to whether he had reviewed the nature and crucial elements of the charges with Petitioner. Our Supreme Court made clear in Armstrong, supra, that the plea judge must be certain that the defendant understands the charges that he is pleading to at the time the defendant enters a guilty plea. That did not occur in Petitioner’s case.

At the PCR hearing Petitioner maintained that Counsel Hiller did not review the elements of the crimes with him prior to his guilty plea. Admittedly, the PCR court found this testimony not credible and relied upon Counsel Hiller’s testimony that he did review the elements with Petitioner prior to the plea to find Petitioner’s plea was voluntarily and knowingly entered. However, based on the plea transcript the plea court did not properly determine that Petitioner understood the charges against him prior to accepting his plea. As has been repeated by courts across this nation, a guilty plea is more than an admission of conduct, it is a conviction. Thus, for the entry of the guilty plea to be valid, the court must ensure that the defendant is aware of

the constitutional rights he is waiving, the nature and crucial elements of the charges, the sentencing potential, and the other pertinent collateral consequences at the time of the plea. The failure of Counsel Hiller to ensure the court informed Petitioner of the nature of the charges and crucial elements was deficient performance which rendered Petitioner's guilty plea unknowingly and involuntarily entered.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully request this Court grant the petition for writ of certiorari to allow full briefing of this issue.



\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 18<sup>th</sup> day of July, 2024.

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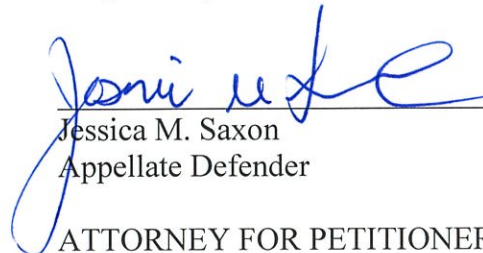
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kendell Allen Gamble 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 Debra R. McCaslin, which was held on June 12, 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 Kendell Allen Gamble.

Respectfully Submitted,

  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 18<sup>th</sup> day of July, 2024.

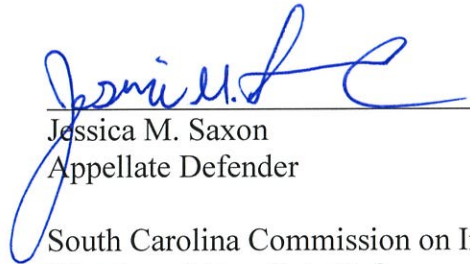
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CERTIFICATE OF COUNSEL

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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ATTORNEY FOR PETITIONER

This 18<sup>th</sup> day of July, 2024.