

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge  
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TONY TYRESE WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000513  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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JESSICA M. SAXON  
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South Carolina Commission on Indigent Defense  
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(803) 734-1330

ATTORNEY FOR PETITIONER

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**Sep 03 2024**

S.C. SUPREME COURT

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**ISSUE PRESENTED**

Whether the PCR court erred in finding Petitioner's guilty plea was knowingly and voluntarily entered where Petitioner never saw or signed the sentencing sheet in his case, where he was on medication at the time of his plea, and where he believed he was pleading guilty for a twenty-year sentence?

## STATEMENT OF THE CASE

Petitioner was indicted during the May 2018 term of the Richland County grand jury for murder, attempted murder, carjacking with great bodily injury, and possession of a weapon during the commission of a violent crime. App. 26-27; 29-30; 32-33. On October 13, 2020, Petitioner appeared before the Honorable Deandrea G. Benjamin to enter a negotiated guilty plea for concurrent thirty-year sentences on the murder, attempted murder, and carjacking charges. App. 1; App. 2, l. 23-App. 3, l. 2. The State dismissed the weapons charge as part of the plea deal. App. 22, ll. 9-11. At the plea hearing Petitioner was represented by Robert S. Forney and Tracy E. Pinnock. The State was represented by Lamar J. Fyall. App. 1. After a thorough plea colloquy, Judge Benjamin accepted the plea and sentenced Petitioner pursuant to the negotiated plea agreement to thirty years imprisonment on each charge, all sentences to run concurrently. App. 12, ll.7-14; App. 22, ll. 17-22; App. 28; App. 31; App. 34.

Petitioner did not appeal his convictions or sentences. On March 3, 2021, Petitioner filed a *pro se* application for post-conviction relief. App. 35-41. The State filed a return, motion for more definite statement, and partial motion to dismiss on June 1, 2021. App. 42-52. PCR Counsel Timothy Griffith submitted more detailed PCR claims in an email to opposing counsel on September 1, 2023. App. 53. An evidentiary hearing was convened on September 11, 2023, before the Honorable Daniel Cobb. Petitioner was represented by PCR Counsel Timothy Griffith. The State was represented by D. Russell Barlow, III. App. 54.

Petitioner testified that Counsel Forney only represented him for about two weeks prior to the guilty plea. He believed he was going to get a twenty-year sentence when he appeared in court to plead. Petitioner stated that Counsel Forney signed the sentencing sheet for him because he refused to sign it for a thirty-year plea deal. App. 58, l. 10-App. 59, l. 12; App. 60, l. 20-App.

61, l. 7. On cross-examination, Petitioner testified that he was on medication at the time of the plea. He stated Counsel Forney told him to “just agree so everything will go smoothly.” He stated that he did not remember large portions of the plea colloquy and asserted that he told the court he needed more time to speak with plea counsel. He conceded that the court told him the maximum sentences he could receive, and that he was there for a negotiated plea, but he maintained that he did not know the plea was for thirty years. App. 64, l. 5-App. 66, l. 4.

Counsel Forney testified that he was assigned to Petitioner’s case for approximately seven months prior to the guilty plea. Petitioner had been represented by another public defender prior to Counsel Forney’s involvement, and that individual had reviewed discovery with Petitioner. Counsel Forney testified he spent the majority of the representation preparing for trial because Petitioner informed him that he would plead for a twenty-year sentence and the State was only offering a plea to thirty years. Roughly six weeks before trial Petitioner wanted to have Counsel Forney removed from his case. During the hearing on the motion to relieve counsel, Petitioner stated for the first time that he wanted to plead guilty for thirty years. Counsel Forney stated that after the motion to relieve counsel he fully discussed a plea to thirty years with Petitioner and he agreed with Petitioner’s decision to plead guilty. Regarding the sentencing sheet, Counsel Forney explained that due to COVID procedures in place to limit physical contact, attorneys were permitted to sign sentencing sheets on behalf of clients as long as they provided additionally documentation<sup>1</sup> regarding the client’s rights. App. 67, l. 3-App. 70, l. 25; App. 72, l. 3-App. 73, l. 24

An order of dismissal was filed on March 18, 2024. App. 79-97. The PCR court found that Counsel Forney’s testimony was both credible and persuasive. The PCR court found

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<sup>1</sup> During the plea hearing, the court referenced a plea affidavit that had been reviewed by Petitioner and Counsel Forney. App. 11, ll. 16-21.

Petitioner's testimony to be neither credible nor persuasive. Regarding the voluntary and knowing nature of the plea, the PCR court found that based on the testimony of Counsel Forney and the plea colloquy, that Petitioner had a full understanding of the charges against him and the consequences he faced when he entered the plea. The PCR court clarified that Petitioner was aware that the negotiated sentence was for thirty years incarceration, that there was no evidence that Petitioner was on any medication at the time of the plea that affected his understanding, and that he had provided appropriate answers during the plea colloquy. The PCR court ruled that Counsel Forney was not deficient and that prejudice could not be established. App. 79-97.

## ARGUMENT

The PCR court erred in finding Petitioner's guilty plea was knowingly and voluntarily entered where Petitioner never saw or signed the sentencing sheet in his case, where he was on medication at the time of his plea, and where he believed he was pleading guilty for a twenty-year sentence.

A trial judge should not accept a guilty plea without an affirmative showing that it is 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).

“An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.” Wiggins v. Smith, 539 U.S. 510, 521 (2003) (citation omitted). “To establish deficient performance, a petitioner must demonstrate that counsel's representation ‘fell below an objective standard of reasonableness.’” Id. (quoting Strickland v. Washington, 466 U.S. 668, (1984)). “[T]o establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. at 534 (quotations and citation omitted).

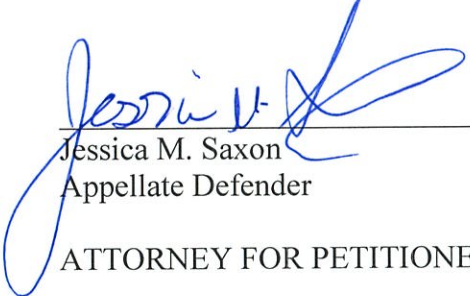
An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 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 pled 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).

At the time of his plea, Petitioner was medicated and confused about the terms of his plea deal. He had never seen nor signed the sentencing sheet that would have clarified his plea was to murder for a thirty-year sentence. Instead, he pled guilty under the mistaken belief that he would only get a twenty-year sentence. Counsel's failure to ensure Petitioner was fully aware of the details of his plea deal was deficient performance that prejudiced Petitioner, as he would not have pled guilty to a thirty-year, day for day sentence, had he understood the consequences of his plea. Petitioner's lack of understanding rendered his guilty plea unknowingly and involuntarily entered.

**CONCLUSION**

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

  
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Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 3rd day of September, 2024.

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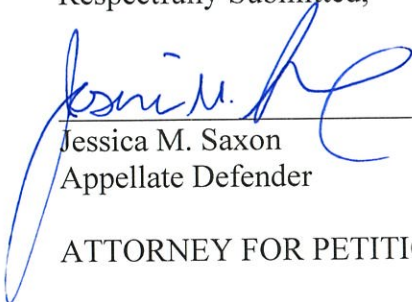
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Counsel for Tony Tyrese Williams states:

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 Daniel McLeod Coble, which was held on September 11, 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 Tony Tyrese Williams.

Respectfully Submitted,

  
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Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of September, 2024.

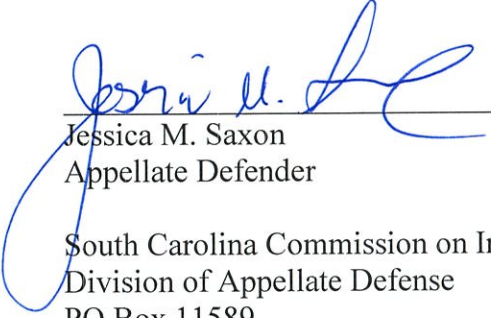
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CERTIFICATE OF COUNSEL

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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