

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Dec 20 2024

S.C. SUPREME COURT

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Certiorari to Florence County

Honorable Clifton Newman, Circuit Court Judge
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RANDALL LOYIS SIMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001349
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JOHNSON PETITION FOR WRIT OF CERTIORARI
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Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where plea counsel failed to inform Petitioner before he pled guilty that the complainant and only eyewitness in this attempted murder, first degree burglary, and armed robbery case, died, greatly weakening the state's evidence against Petitioner since there is a reasonable probability Petitioner would have rejected the state's favorable offer to plead guilty and would have insisted on proceeding to trial if counsel had properly informed Petitioner of this crucial information?

STATEMENT OF THE CASE

During the early morning hours of December 21, 2018, a man burglarized the home of Bruce Mullins in Florence. Once inside the residence, the perpetrator brandished a firearm, assaulted Mullins, and demanded money. While Mullins was handing the man cash from his pocket, the perpetrator fired his weapon striking Mullins in the head. Fortunately, the bullet merely grazed Mullins' head. Mullins called 911 and reported the burglary. App. 9, ll. 9-18. During the recorded call, Mullins identified the perpetrator as "Randy or Randall" and stated the man used to work for Mullins. App. 75, l. 22 – 76, l. 6.

A Florence County grand jury indicted Petitioner on June 6, 2019, for armed robbery, first degree burglary, attempted murder, and unlawful possession of a weapon. App. 123-124. On August 24, 2020, Petitioner pled guilty to the lesser included offense of assault and battery of a high and aggravated nature before the Honorable D. Craig Brown. App. 1-7. Assistant Solicitor J. Ryan White represented the state. Elizabeth Neyle represented Petitioner. App. 1.

The assistant solicitor explained to the plea court that Petitioner's case was originally scheduled for trial in January 2020, but it was continued at defense counsel's request. The case was scheduled for trial again in March 2020, but was indefinitely continued due to the pandemic and the closure of the courts. Since then, Mullins, the homeowner, died in June 2020 "making this case much more difficult to try." According to the assistant solicitor, the state was still prepared to try Petitioner based on Mullins' identification of "Randy" as the perpetrator during the 911 call. However, the solicitor acknowledged "it would be quite difficult to get that particular information in front of a jury." Consequently, the solicitor believed Petitioner's guilty plea to ABHAN was a "a good resolution" of the case. Tr. 10, l. 22 – 11, l. 19.

In exchange for Petitioner pleading guilty to ABHAN, the state dismissed the remaining charges pending against Petitioner. Judge Brown sentenced Petitioner to twelve years imprisonment suspended upon the service of six hundred days' time served and five years' probation. App. 17, ll. 8-13.

Petitioner did not appeal his conviction or sentence. On August 23, 2021, Petitioner filed an application for post-conviction relief (PCR). App. 19-33. The state filed a return to this application on December 20, 2021. App. 43-50. With the assistance of counsel, Petitioner filed an amended application on May 3, 2022, raising the claim argued in this petition. App. 51-53. An evidentiary hearing was convened on October 19, 2022, before the Honorable Clifton Newman. App. 54. Assistant Attorney General Danielle Dixon represented the state. Michael Lifsey represented Petitioner. App. 54.

Petitioner testified at the evidentiary hearing that he did not know Bruce Mullins, the complainant, was deceased until after Petitioner pled guilty and was released from jail. He maintained plea counsel never told him Mullins had died before Petitioner accepted the state's offer and pled guilty. Counsel did not discuss with him the potential impact Mullins' death would have had on his case. Petitioner testified that had he known Mullins had died, he would not have pled guilty. App. 67, l. 5 – 68, l. 9.

Elizabeth Neyle, Petitioner's plea counsel, testified that she learned in June 2020 that Mullins had passed way. She spoke with the prosecutor concerning Mullins' death and how it may impact Petitioner's case. According to Neyle, the solicitor "indicated he was not inclined to dismiss" Petitioner's charges despite the complainant's death. As a result of this news, Neyle wrote a letter to Petitioner dated June 16, 2020, in which she stated she had "very important updates to discuss with him regarding his case." Neyle then met with Petitioner at the jail where

he was incarcerated on June 24, 2020, and told him Mullins had died. Neyle remembered discussing with Petitioner how Mullins' death "changed a great deal of his case." She asked Petitioner whether, as a result of this change in circumstances, he wanted her to "try to get a better plea offer" or whether he still wished to "proceed to trial." Neyle testified that her notes from the meeting stated Petitioner was "open to a plea, wants to go home." App. 82, l. 19 – 83, l. 9.

By order filed August 9, 2024, the PCR court denied Petitioner relief. App. 114-122. The court found credible plea counsel's testimony that she informed Petitioner in June 2020 that the complainant had died. The court further found Petitioner's testimony that he did not know the complainant had died until after he pled guilty was not credible. Accordingly, the court determined Petitioner failed to prove counsel's performance was deficient and, because he was informed the complainant had passed way before he pled, Petitioner did not show prejudice. App. 119-120.

Because Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to plea counsel's deficient performance, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where plea counsel failed to inform Petitioner before he pled guilty that the complainant and only eyewitness in this attempted murder, first degree burglary, and armed robbery case, died, greatly weakening the state's evidence against Petitioner since there is a reasonable probability Petitioner would have rejected the state's favorable offer to plead guilty and would have insisted on proceeding to trial if counsel had properly informed Petitioner of this crucial information.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. In the context of a guilty plea, a petitioner must show that counsel's performance was deficient, and "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 v. Lockhart, 474 U.S. 52, 58-59 (1985); See Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). This Court has held that a "defendant's undisputed testimony that he would not have pled

guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.” Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000)); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

The difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.” Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). “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 v. Lockhart, 474 U.S. 52, 56 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)). “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.” Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

For whatever reason, plea counsel failed to inform Petitioner that the complainant died before Petitioner pled guilty. Petitioner only found out the complainant had died after he had pled guilty and was released from jail.¹ The complainant's identification of Petitioner as the perpetrator was the sole evidence against Petitioner. Given the complainant's death, it was unlikely the state would have been able to prove Petitioner's guilt beyond a reasonable doubt. The assistant solicitor acknowledged so during Petitioner's plea proceeding. While the complainant allegedly identified “Randy” as the perpetrator during the recorded 911 call after the burglary, the solicitor admitted it would be difficult to admit this evidence before a jury. See

¹ But see App. 11, ll. 8-17 (where the complainant's death is discussed on the record during Petitioner's plea proceeding).

App. 11, ll. 8-17. Accordingly, the complainant's death was crucial information Petitioner needed to know before he decided whether to plead guilty or proceed to trial. Counsel's failure to inform Petitioner of the complainant's death and how his death may have affected Petitioner's death constitutes deficient performance.


Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability that if Petitioner had known the complainant had died, he would not have pled guilty, but would have insisted on proceeding to trial. Given the complainant's death, the state had little evidence against Petitioner. The complainant was the only eyewitness to the burglary and there was no physical evidence against Petitioner. This change of circumstances certainly would have impacted Petitioner's decision to plead guilty.

Respectfully, this Court should hold plea counsel was deficient and Petitioner was prejudiced by counsel's deficient performance, reverse Petitioner's conviction, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented. Petitioner ultimately requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of December, 2024.

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Counsel for Randall Loyis Simpson states:

1. She is an 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, which was held on October 19, 2022, before the Honorable Clifton Newman, 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 the Court relieve her as counsel for Randall Loyis Simpson.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of December, 2024.

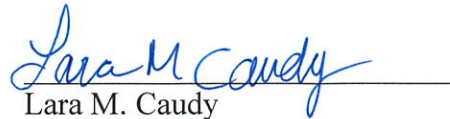
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CERTIFICATE OF COUNSEL

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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Senior Appellate Defender

South Carolina Commission on Indigent
Defense
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This 20th day of December, 2024.