THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable George M. McFaddin Jr.

Appellate Case No. 2024-001270

Justin M. Pringle #379795, Petitioner,

v.

State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

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II. Did the PCR court err in finding Petitioner knowingly, intelligently, and voluntarily pled guilty?

STATEMENT OF THE CASE

Multi-Count Indictment

On November 20, 2018, the Florence County Grand Jury indicted Petitioner, Justin Pringle, for the following offenses: Murder, Armed Robbery, Burglary in the first degree, and Criminal Conspiracy. (App. 144 – 146). Notably, the indictment for criminal conspiracy provided, in relevant part: "That [Petitioner] did in Florence County on or about December 24, 2017[,] combine with *Curtis Roy Nelson*[1], and/or with other persons, for the purpose of accomplishing a criminal or unlawful object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Armed Robbery[.]" (App. 146) (emphasis added).

Plea Hearing

On April 12, 2019, Petitioner appeared before the Honorable Thomas A. Russo and pled guilty under *North Carolina v. Alford*[2] to the lesser included offense of Voluntary Manslaughter and Armed Robbery. (App. 1 – 21). Plea Counsel Karen Parrott represented Petitioner, and Assistant Solicitor J. Ryan White prosecuted the case on behalf of the State. Judge Russo accepted the *Alford* plea and imposed the negotiated concurrent sentences of thirty (30) years for each conviction.

Direct Appeal

On April 22, 2019, Petitioner filed a Notice of Appeal. (App. 22 – 23). Petitioner subsequently submitted the required explanation for appealing under Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The South Carolina Court of Appeals issued an Order dismissing the appeal on July 31, 2019, for failing to provide a sufficient explanation as required

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[1] Curtis Nelson is the Co-Defendant who testified at the PCR hearing that Petitioner was not present or involved in the murder, and the he would have testified on Petitioner's behalf.
[2] *North Carolina v. Alford*, 400 U.S. 25 (1970).

by Rule 203(d)(1)(B)(iv), SCACR. (App. 28). The Court of Appeals issued the Remittitur on August 16, 2019. (App. 29).

PCR Applications and Return

On October 28, 2019, Petitioner filed an application requesting Post-Conviction Relief (PCR), alleging ineffective assistance of counsel. (App. 30 – 39). Specifically, Petitioner raised the following allegations in the initial PCR application: (1) involuntary guilty plea, (2) failure to investigate, and (3) failure to move to quash the indictment. The State filed a Return to the PCR application on January 21, 2020. (App. 40 – 46). Petitioner subsequently filed an amended PCR application on August 27, 2020, alleging:

> 1. Prior to the guilty plea, [Petitioner's] counsel failed to explain the details of the [Petitioner's] guilty plea and sentencing to [petitioner].
>
> 2. [Petitioner's] counsel failed to provide a copy of the state's evidence to the [Petitioner].
>
> 3. [Petitioner's] counsel failed to meet with [petitioner] a sufficient number of times to properly review the evidence.
>
> 4. [Petitioner's] counsel failed to ensure that the sentencing sheets were properly filled out to indicate the status of the charges.
>
> 5. [Petitioner's] counsel failed to interview co-defendants Curtis Nelson and Anthony Hudson regarding these charges.
>
> 6. [Petitioner's] counsel failed to interview Amos Cameron or Barbara McGill, who were present during the incident.
>
> 7. ~~[Petitioner's] counsel failed to interview Johnny Cameron, who provided information to law enforcement.~~[3]
>
> 8. [Petitioner's] counsel failed to interview Sgt. Josie Royal and inmate William Dilmer and Quant Bryant regarding a letter related to co-defendant Curtis Nelson.

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[3] Allegation number seven was stricken from the record because Johnny Cameron was the Victin in the case.

9. [Petitioner's] counsel failed to interview inmate Carl McDowell regarding a letter reported as being from [petitioner].

10. ~~[Petitioner's] counsel failed to retain a ballistics expert or a DNA expert to review the evidence in this case.~~[4]

11. [Petitioner's] counsel coerced the [petitioner] into entering the guilty plea by stating to the [petitioner] that he could not 'win at trial.'"

(App. 47 – 49).

PCR Evidentiary Hearing

On June 15, 2022, Petitioner appeared before the Honorable George M. McFaddin, Jr., for an evidentiary hearing on the allegations of ineffective assistance of counsel. (App. 50 – 106). Ola Johnson represented the Petitioner, and Assistant Attorney General D. Russell Barlow, II, appeared on behalf of the State. The Petitioner, Co-Defendant Curtis Nelson, and Plea Counsel testified at the evidentiary hearing.

Petitioner Justin Pringle

Relevant to this appeal, Petitioner testified at the hearing that Plea Counsel never discussed the details of his plea or the negotiated sentence. (App. 55). Petitioner also testified that he had a problem with the sentencing sheet because "they weren't filled out properly." (App. 56, lines 18-22). Petitioner further testified that Plea Counsel never answered his question about whether the sentencing sheet had been properly marked as an indicted charge or a waiver of presentment to the Florence County Grand Jury. (App. 56 – 57). Notably, Petitioner testified that Plea Counsel failed to interview Co-Defendant Curtis Nelson, and that he wanted Plea Counsel to interview his co-defendants. (App. 57; App. 58, lines 18-19).

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[4] Petitioner withdrew allegation number ten at the evidentiary hearing. (App. 54).

On cross-examination, Petitioner reiterated that the sentencing sheets were not completed correctly but was unable to explain how he was prejudiced. (App. 61, line 21 – 62, line 2). Petitioner also testified that the sentencing sheets marked as Defendant's Exhibit No. 1 were different than what Plea Counsel reviewed with him in court. (App. 62). Notably, Petitioner restated that he asked Plea Counsel to interview his co-defendants and witnesses; specifically, Curtis Nelson. (App. 62 – 63).

Petitioner testified that he did not remember the Plea Court informing him that he was giving up constitutional rights when he pleaded guilty. (App. 66). Petitioner also testified that Plea Counsel did not sufficiently explain his rights to him. (App. 66). After reviewing the plea affidavit marked as Defendant's Exhibit No. 2 and the plea hearing transcript, Petitioner did not recall stating he was satisfied with Plea Counsel's representation, that he was not forced into pleading guilty, or that he was pleading on his own free will. (App. 67 – 68).

On re-direct examination, Petitioner addressed the allegation regarding the sentencing sheets in further detail:

PCR Counsel: Mr. Pringle, going back to the sentencing sheets that were marked Defense Exhibit 2, do you recall reviewing these boxes about whether or not the charges indicted or whether or not it's a waiver of presentment and being confused about that on those sheets because there are not marked? Do you recall that?

Petitioner: Yes, sir.

PCR Counsel: Okay. So you reviewed the boxes on the sentencing sheets, and are any of them marked?

Petitioner: No, sir.

PCR Counsel: So it didn't tell you whether or not it was as indicted or whether or not it was a waiver of presentment?

Petitioner:	Yes, sir.
PCR Counsel:	And were you confused by that?
Petitioner:	Yes, sir.
PCR Counsel:	Okay. Did you ask your attorney to explain that to you?
Petitioner:	Yes, sir.
PCR Counsel:	Did she fail to do that?
Petitioner:	Yes, sir.

(App. 68 – 69).

Co-Defendant Curtis Nelson

On direct examination, Co-Defendant Curtis Nelson testified that he was present when the Victim was murdered, and that the Petitioner was not present during the murder. (App. 70 – 71). Co-Defendant Nelson also testified that Petitioner was not involved in the Victim's murder, and that he was willing to share this information with Petitioner's attorney. (App. 70 – 71). Co-Defendant Nelson further testified that, to his knowledge, Plea Counsel never attempted to contact him about obtaining a statement from him, and that he would have been willing to testify about this information. (App. 71). Notably, Co-Defendant Nelson testified that he never received a phone call or letter from his attorney about Plea Counsel trying to obtain a statement from him. (App. 71).

On cross-examination, Co-Defendant Nelson acknowledged that he was not one of the first people arrested related to this murder, and that he never provided a statement to the police. (App. 72 – 73).

Plea Counsel Karen Parrott

Relevant to this appeal, Plea Counsel maintained that "[Petitioner] told me that he went in the [Victim's] house, so he was guilty of the burglary, but he denied being the shooter." (App. 76,

lines 18-23). Plea Counsel identified the sentencing sheets marked as Defense Exhibit No. 1 as copies of the original documents. (App. 80). Plea Counsel also claimed that Petitioner was not prejudiced by the sentencing sheet issue because she discussed voluntary manslaughter being a lesser-included offense of murder and reviewed the plea affidavit with him. (App. 80). Notably, Plea Counsel purportedly sent an email to Co-Defendant Nelson's attorney but did not receive a response. (App. 80 – 81; App. 86).

Plea Counsel noted that Petitioner made the decision to plead guilty, and that she agreed with that decision. (App. 84). Plea Counsel maintained that Co-Defendant Nelson's testimony would not have been helpful because "it would have made me then question the whole story again[.]" (App. 86).

On cross-examination, Plea Counsel claimed, "[Petitioner] is smiling at me because he knows he's been caught, sir." (App. 89). Based on her notes, Plea Counsel stated that Petitioner wanted her to "get him the best offer" but also testified that "[Petitioner] wants his trial next term." (App. 90). Plea Counsel acknowledged that she does not have a copy of the email she allegedly sent Co-Defendant Nelson's lawyer. (App. 91). Petitioner also admitted that she did not notice that the box was unchecked on the sentencing sheet, and that she usually reviews this issue on the sentencing sheet prior to a guilty plea. (App. 94).

Under Advisement

At the close of evidence, the PCR Court noted that he would send his ruling via email. (App. 96).

Order of Dismissal

On August 9, 2024, the PCR Court filed an Order of Dismissal, finding Petitioner "failed to establish any constitutional violations or deprivations that would require this Court to grant his

application for post-conviction relief." (App. 107 – 141; App. 122). The PCR Court also found Plea Counsel's testimony at the evidentiary hearing credible and persuasive. (App. 123). The PCR Court further found both Petitioner's and Co-Defendant Nelson's testimony at the hearing not credible or persuasive. (App. 123; App. 129).

Specifically, the PCR Court made the following findings in the Order of Dismissal:

> 1. [Petitioner] understood the charges and sentences he faced at his plea hearing . . . 2. [Petitioner] understood the details and circumstances of an Alford plea . . . 3. [Petitioner] clearly indicated he was satisfied with Plea Counsel . . . 4. [Petitioner] understood his right to a jury trial and that he waived those rights by pleading guilty . . . 5. [Petitioner] indicated no promises were made to him, and his decision to plead guilty was voluntary . . . 6. [Petitioner] was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings . . . 7. [Petitioner] understood the sentencing range . . . 8. [Petitioner] was clearly advised of his right to appeal . . . 9. [Petitioner] agreed with the allocation of the facts surrounding the State's case against him, and he still wanted to plead guilty . . . 10. [Petitioner] plea was qualified as a freely, knowingly, and voluntarily entered into....

For all allegations, the PCR Court found that Petitioner "failed to present sufficient evidence to prove the first prong of the *Strickland* test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms." The PCR Court also found that Petitioner "failed to present specific and compelling evidence that, but for Plea Counsel's errors or omissions, he would not have pled guilty and would have insisted on going to trial." (App. 129; App. 132). The PCR Court further found that Petitioner "ha[d] not established any constitutional violations or deprivations that would require this Court to grant his application." (App. 139).

Relevant to this appeal, the PCR Court found that the following allegations are without merit:

Allegation 5: Failure to Interview Co-Defendants Curtis Nelson.

The PCR Court found that Petitioner "failed to overcome the 'strong presumption that

counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.'" (App. 132). The PCR Court also found that "Plea Counsel's ***credible*** testimony on these witnesses forecloses any finding of deficiency on her part." (App. 132) (emphasis in original). The PCR Court further found that "to whatever extent [Petitioner] was not entirely satisfied with Plea Counsel's representation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea." (App. 132).

Involuntary Guilty Plea

Allegation 1: Failure to Explain the Guilty Plea and Sentencing Details.

Allegation 4: Failure to Ensure that the Sentencing Sheets Were Properly Filled Out to Indicate the Status of the Charges.

Allegation 11: Plea Counsel Coerced Applicant into Pleading Guilty.

The PCR Court found that "the combination of the record and Plea Counsel's ***credible*** testimony at the evidentiary hearing provides [Petitioner] knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* [*v. Alabama*, 395 U.S. 238 (1969)]." (App. 136 – 137) (emphasis in original). The PCR Court also found that "the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice", and "[t]he plea transcript reflects that [Petitioner] entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions." (App. 137). The PCR Court further found that Petitioner "presented no valid reason why he should be able to depart from the statements made during his guilty plea." (App. 137).

Additionally, the PCR Court found that Petitioner "did not allege any facts tending to prove

he was prevented from informing the plea court that Plea Counsel failed to properly prepare and investigate or failed to review discovery with [Petitioner]." The PCR Court also found that Petitioner "freely, knowingly, and voluntarily pled guilty." (App. 137).

Relief Sought

On August 9, 2024, Petitioner filed a Notice of Appeal. (App. 142 – 143). Petitioner now seeks a writ of certiorari for this Court to review the denial of his PCR application.

STANDARD OF REVIEW

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *See Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel and finding ineffective assistance of counsel from a guilty plea where: (1) counsel's advice was not within the range of competence demanded of attorneys in criminal cases; and (2) "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial")); *see also Missouri v. Frye*, 566 U.S. ____, 132 S.Ct. 1399 (2012) (finding the Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected, and reaffirming *Hill v. Lockhart*); *see generally Jamison v. State*, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014) (finding "we must reject the State's claim that the waiver of trial and admission of guilt encompassed in a guilty plea necessarily preclude post-conviction relief in *all* cases", and holding "a PCR Petitioner may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.") (emphasis in original).

To establish ineffective assistance of counsel, a Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims). "First, a [Petitioner] must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Cherry v. State,* 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). "The second prong of the *Strickland* test

requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 118, 386 S.E.2d at 625 (internal citations omitted).

In a PCR action, "[t]he burden of proof is on the Petitioner to prove his allegations by a preponderance of the evidence." *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Strategic "[d]ecisions made [by counsel] in ignorance of relevant, available information cannot be characterized as strategic." *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014). "Ordinarily, the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." *Smalls v. State*, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Notably, "for the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of 'a reasonable probability . . . the factfinder would have had a reasonable doubt' cannot possibly be met." *Id.* 422 S.C. at 191, 810 S.E.2d at 845.

As to appellate review, "this Court will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them." *Thompson v. State*, 423 S.C. 235, 239, 814 S.E.2d 487, 489 (2018), reh'g denied, (June 12, 2018). This Court also reviews questions of law de novo and will reverse if the PCR court's decision is controlled by an error of law. *Smalls*, 422 S.C. at 180–81, 810 S.E.2d at 839, reh'g denied, (March 29, 2018).

ARGUMENT

I. THE PCR COURT ERRED IN FINDING PLEA COUNSEL PROVIDED EFFECTIVE ASSISTANCE WHEN COUNSEL FAILED TO CONDUCT A REASONABLE INVESTIGATION BY NOT CONFIRMING WITH CO-DEFENDANT NELSON'S ATTORNEY WHETHER NELSON WOULD PROVIDE A STATEMENT BASED ON NELSON'S EXONERATING TESTIMONY AT THE PCR HEARING THAT PETITIONER WAS NOT PRESENT OR INVOLVED IN THE MURDER AND THAT HE WOULD HAVE TESTIFIED ON PETITIONER'S BEHALF.

The United States Supreme Court has held "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691; *See Wiggins v. Smith*, 539 U.S. 510, 527 (2003). "In assessing the reasonableness of an attorney's investigation, . . . a court must not only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." *Wiggins*, 539 U.S. at 527. Notably, this Court has held, "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

Furthermore, "while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Lounds v. State*, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (quoting *Ard*, 372 S.C. at 331-32, 642 S.E.2d at 597). The duty to conduct a reasonable investigation extends to consulting and possibly presenting expert witnesses. *See McKnight*, 378 S.C. at 46, 661 S.E.2d at 360-61; *Lounds*, 380 S.C. at 462, 670 S.E.2d at 650 (finding it "was not objectively reasonable given the defense theory of the case" for trial counsel not to call witnesses who would have "added significantly to the credibility of

petitioner's case"); *see also Hicks v. State*, 314 S.C. 280, 443 S.E.2d 907 (1994) (finding ineffective assistance of counsel when there is a reasonable probability the result would have been different had trial counsel introduced relevant and favorable evidence at trial).

Deficient Performance

In this case, Plea Counsel's performance was deficient, as it fell below an objective standard of reasonableness "under prevailing professional norms." *See Hill*, 474 U.S. at 57-59. Specifically, Plea Counsel failed to conduct a reasonable investigation by not confirming with Co-Defendant Nelson's attorney whether Nelson would have provided a statement based on Nelson's exonerating testimony at the PCR hearing that Petitioner was not present or involved in the murder, and that he would have testified on Petitioner's behalf. (App. 70 – 71). *See generally Praylow v. Martin*, 761 F.2d 179 (4th Cir. 1985) (provides that a defendant's stated interest in pleading guilty does not relieve counsel of his duty to investigate possible defenses).

The PCR Court's Order failed to address Plea Counsel's duty to conduct a reasonable investigation and Co-Defendant Nelson's exonerating testimony, particularly where Petitioner told Counsel to interview Nelson. (App. 70 – 71; App. 132). The PCR Court's Order erroneously found, "Plea Counsel's ***credible*** testimony on these witnesses forecloses any finding of deficiency on her part." (App. 132) (emphasis in original). However, the PCR Court's Order failed to provide any basis for finding Co-Defendant Nelson's testimony not credible or persuasive.

Regardless of whether Plea Counsel sent an email to Co-Defendant Nelson's attorney, it is objectively unreasonable for Counsel to not follow-up with Nelson's attorney for confirmation despite being the only co-defendant named in Petitioner's indictment for Criminal Conspiracy. (App. 146). *See Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (holding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of

ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness").

Prejudice

Plea Counsel's unreasonably deficient performance prejudiced Petitioner because there is a reasonable probability that, but for Plea Counsel's errors, Petitioner would not have pled guilty and went to trial. *See Hill*, 474 U.S. 52. Specifically, Plea Counsel's deficient performance adversely affected Petitioner's right to effective assistance of counsel because it prevented Petitioner from having Co-Defendant Nelson's statement exonerating him of the murder. Petitioner's *Alford* plea corroborates that he did not admit to the factual basis of the plea, and it enhances the importance of Co-Defendant Nelson's testimony at the PCR hearing.

Although PCR Counsel did not argue that Co-Defendant Nelson's testimony also applies under Section 17-27-45(C) of the South Carolina Code of Laws, Petitioner did present "evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence." *See* S.C. Code § 17-27-45(C). Co-Defendant Nelson's testimony at the PCR hearing requires vacation of the Petitioner's convictions and sentences in the interest of justice because Petitioner is entitled to relief.

Therefore, the PCR Court erred in finding Plea Counsel provided effective assistance by failing to conduct a reasonable investigation because Petitioner would not have pled guilty and went to trial. *See Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted) (finding "there is a reasonable probability that, but for [trial] counsel's unprofessional errors, the result of the proceeding would have been different.").

II. THE PCR COURT ERRED IN FINDING PETITIONER KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY PLED GUILTY.

The United States Supreme Court has held, "Guilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results." *Brady v. United States*, 397 U.S. 742, 758 (1970). An "unsound result" occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin v. Alabama*, 395 U.S. 238 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him); *see also Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding a defendant must understand the sentencing consequences of his plea for it to be considered voluntarily given).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." *Suber v. State,* 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Specifically, "the voluntariness of a guilty plea is not determined by an examination of a 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 also from the record of the PCR hearing." *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011). Notably, this Court found a defendant who pleads guilty upon advice of counsel may only attack the voluntary and intelligent character of the plea by showing that advice he received from counsel was not within range of competence demanded of attorneys in criminal cases. *See Richardson v. State*, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993).

In *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) and *Evans v. State*, 363 S.C. 495, 611 S.E.2d 510 (2005), this Court abandoned the view that, in criminal matters, the Circuit Court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment. Therefore, the court of General Sessions has subject matter jurisdiction to try criminal

cases. *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499 (citing S.C. Const. Art. I, § 11, which states that the circuit court is the general trial court with original jurisdiction in civil and criminal matters).

Although an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment. The indictment is a notice document that is required by our state constitution and statutes. *Evans*, 611 S.E.2d at 517. "The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to appraise him of the elements of the offense and to allow him to decide whether to pled guilty or stand trial." *Evans*, 611 S.E.2d at 517.

Section 17-23-130 of the South Carolina Code of Laws provides that a defendant may waive his right to presentment of an indictment to a grand jury to seek immediate disposition of the charge. In *State v. Smalls*, this Court held the following: (1) "signing a sentencing sheet for a charge to which a defendant has pled guilty constitutes a written waiver of presentment"; and (2) "a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and signifies that the defendant has been notified of the charges to which he had pled guilty". *Smalls*, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

Deficient Performance

In this case, Plea Counsel's performance was deficient, as it fell below an objective standard of reasonableness "under prevailing professional norms." *See Hill*, 474 U.S. at 57-59. Specifically, Plea Counsel failed to sufficiently explain the issues related to the sentencing sheets based on the lesser included offense of voluntary manslaughter. (App. 55). *See generally Alexander*, 303 S.C. at 542-3, 402 S.E.2d at 485-86 (1991 (finding the petitioner's own

testimony that he would have proceeded to trial but for counsel's misadvice as to sentencing was "the only evidence in the record on this point" and was sufficient to satisfy the prejudice prong of the *Strickland* test); *see generally Shirley v. State*, 306 S.C. 241, 411 S.E.2d 215 (1991) (When a defendant is represented by counsel during the plea process and enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was withing the range of competency demanded of attorneys in criminal cases).

Prejudice

Plea Counsel's unreasonably deficient performance prejudiced Petitioner because there is a reasonable probability that, but for Plea Counsel's errors, Petitioner would not have pled guilty and went to trial. *See Hill*, 474 U.S. 52. Specifically, Plea Counsel's deficient performance adversely affected Petitioner because he was confused and did not sufficiently understand why he was accepting an *Alford* plea to the lesser-included offense of voluntary manslaughter and armed robbery. Therefore, the PCR Court erred in finding petitioner knowingly, intelligently, and voluntarily pled guilty.

CONCLUSION

Based on the foregoing reasons, Petitioner Justin Pringle respectfully requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,

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