

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge

ALONZO GIBSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001678

JOHNSON PETITION FOR WRIT OF CERTIORARI

JORDAN WAYBURN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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Feb 13 2025

S.C. SUPREME COURT

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ISSUE PRESENTED

Was Petitioner Alonzo Gibson's plea involuntary because he believed he was going to be quickly released rather than indefinitely confined pursuant to an SVP proceeding?

STATEMENT

Alonzo Gibson¹ pleaded guilty to second degree assault and battery on November 30, 2022, before judge Debra McCaslin. App. 1, 11:2-9, 14:3-20. At the same time, the state dismissed a charge for first degree criminal sexual conduct. App. 20:2-4. Gibson was represented at the plea hearing by Sarah Mauldin and the state by Ashley Wellman. App. 1. Assistant Attorney General Deborah Shupe was also present at the hearing. App. 1. The plea court sentenced Gibson to eighteen months in prison with credit for 265 days served. App. 23:10-16.

Gibson served the remainder of his sentence and was released from custody on February 10, 2023. App. 1. By the time of the PCR hearing, however, Gibson was confined in Clarendon County based on a petition under the SVP act dated December 14, 2022, in which the Attorney General alleged he is a sexually violent predator as defined by statute. App. 82. Judge R. Ferrell Cothran made a finding of probable cause on January 13, 2023. App. 83.

Gibson filed an application for post-conviction relief in March of 2023. App. 27. Judge J. Cordell Maddox held an evidentiary hearing on the application on March 21, 2024. App. 49. Gibson was represented at the hearing by Chelsey F. Marto; Donald Zelenka represented the state. App. 49. At the hearing Gibson, Mauldin, and Wellman each testified. App. 50. On September 16, 2024, the PCR court entered an order dismissing all of Gibson's claims. App. 81. It denied his claim that his guilty plea was not entered knowingly. App. 93.

¹ In some documents Petitioner's name is recorded "Alonza Gibson." Those are mistakes. C-Track entry dated 10/07/2024 (reply email from PCR counsel).

ARGUMENT

In his PCR application, Gibson alleged his plea was involuntary because he "didn't know at the time of the SVP civil action." App. 28. He believed that with the credit for time served, he would only be imprisoned for two more months. App. 28. The state had not yet served the SVP petition at the time of his plea. App. 21:8-16, 105. He learned of the pending petition on the day of the plea. App. 19:17-18, 65:22-66:5. The qualifying offense for the SVP petition is a 2013 third-degree CSC conviction. App. 106. The petition also considered his plea for the assault and battery at issue here as part of his criminal history. App. 106.

At the plea hearing Mauldin stated she wanted "time to consult with somebody that does SVP stuff on a regular basis and might have more information about it." App. 19:20-22. She has never handled an SVP case before and was "unfamiliar with the process." App. 67:1-3. Gibson testified at the PCR hearing he was "just thinking, okay, let me take a simple plea" and that he "didn't know all of this would come up." App. 54:12-14. He testified he did not talk to Mauldin about the impact, if any, of his plea on the potential SVP proceeding. App. 54:15-21. Mauldin did, however, warn him she was not aware of the potential SVP implications to pleading guilty and so she offered to postpone the plea so she could investigate. App. 66:8-17, 93. Gibson did not heed that warning because he "want[ed] to get out of the Lexington Jail one way or the other." App. 19:24-20:1. He testified he wanted to plead guilty "because I fully didn't understand about the SVP." App. 62:22.

The record should be clear that Gibson sincerely believed he would receive and serve his sentence for assault and battery and then be released. He had already served nearly a year, and he hoped little more than that would be owed. The PCR court did not make an adverse credibility finding. While the PCR court found Mauldin did warn him that some, unknown risk

of the SVP proceeding lingered, Gibson was not actually aware he faced a lifetime in prison at the time of the plea. He believed he was likely to be released that day, and the maximum sentence he faced was a little over two more years. S.C. Code Ann. § 16-3-600(D)(2). The point is not that Gibson chose to proceed or that Mauldin should have warned him about the risks. Gibson recognizes such is not a valid claim for ineffective assistance of counsel. *See Page v. State*, 364 S.C. 632, 637-38, 615 S.E.2d 740, 742-43 (2005).

Gibson argues instead that his plea was entered on the genuine—and erroneous—belief that he would serve an insignificant amount of time before his release. A guilty plea is voluntary only when the record "indicate[s] the defendant was fully aware of the consequences of his guilty plea." *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999) (citing *State v. Lambert*, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976); *see generally Boykin v. Alabama*, 395 U.S. 238, 242-44 (1969) (explaining the standards for an "intelligent and voluntary" plea and waiver). His plea was not intelligently entered because he did so without understanding he faced a lifetime in confinement regardless of the disposition of that charge. *See* 16 Corpus Juris, *Criminal Law* § 737, at 401 (1918) ("To authorize the acceptance and entry of a plea of guilty . . . the plea must be entirely voluntary. It must not be induced by fear, by misrepresentation, by persuasion, or by the holding out of false hopes, nor be made through inadvertence *or ignorance*." (emphasis added)). Because he was unaware of the potential confinement he faced, his plea was involuntary even though his present confinement results from a separate proceeding. He "fully didn't understand about the SVP" and, now that he does understand, he believes he needed to understand the SVP process and potential confinement before he pleaded guilty. App. 62:22, 64:12-15. That ignorance renders the plea involuntary.

CONCLUSION

Gibson respectfully requests this Court grant his petition for certiorari and allow further briefing on the issue.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of February, 2025.

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Counsel for Alonzo Gibson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge J. Cordell Maddox, which was held on March 21, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 Alonzo Gibson.

Respectfully Submitted,



Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of February, 2025.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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.”



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