THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2024-000979

Thomas Stafford,.....Petitioner,

v.

State of South Carolina, ...Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF CASE

For an incident occurring on December 3, 2012, the State charged Thomas Stafford with felony driving under the influence (DUI) resulting in death and leaving the scene of an accident resulting in death. A. 3-8. On October 3, 2013, Mr. Stafford pled guilty before the Honorable Robert E. Hood. Anna Good represented Mr. Stafford, and Rick Collins represented the State. 9-56. Judge Hood sentenced Mr. Stafford to concurrent terms of seventeen years. A. 1-2, 55.

Mr. Stafford appealed to the Court of Appeals of South Carolina but moved to dismiss that appeal as no issues were preserved for appeal during the guilty plea. *State v. Stafford* Appellate Case No. 2010-170387. The Court of Appeals granted to motion to dismiss on November 11, 2014 and the Remittitur issued on November 30, 2014.

On May 22, 2015, Mr. Stafford filed an application for post-conviction relief (PCR). A. 61-66. On December 5, 2016, the State filed a return. A. 68-72. On June 23, 2023, the Honorable Edward N. Miller convened an evidentiary hearing. Undersigned counsel represented Mr. Stafford, and Donald J. Zelenka represented the State. A. 69-200. On July 3, 2023, Mr. Stafford submitted a post-hearing brief. A. 302-20. On January 19, 2024, Judge Miller issued an order of dismissal. A. 321-45. On March 7, 2024, Mr. Stafford filed a Rule 59(e), SCRCP motion and proffered the State's proposed order, which is identical to the order of dismissal. A. 346-81. On May 3, 2024, the State filed a response in opposition to the motion. A. 382-97. On May 22, 2024, Judge Miller denied the motion. A. 398-411. This petition for a writ of certiorari follows.

STATEMENT OF FACTS

On December 3, 2012, Mr. Stafford was driving a 2003 Nissan Pathfinder westbound on I-20 near mile marker 62 in Lexington County. A Department of Transportation cleaning crew was working on this section of the highway. Mr. Stafford's vehicle struck one of the workers, Nicholas Johnson, who died instantaneously from his injuries. Mr. Stafford stopped his vehicle nearby. Toxicology results from the South Carolina Law Enforcement Division ("SLED") revealed Mr. Stafford had Xanax and Methadone in his blood system, both of which were prescribed by doctors who were aware of each other's prescriptions. The State charged Mr. Stafford with felony driving under the influence ("DUI"), death resulting, and leaving the scene of an accident, death resulting. A. 18-26, 83-86.

On October 3, 2013, Mr. Stafford plead guilty to felony DUI and leaving the scene of an accident. The plea to leaving the scene of an accident was pursuant to *North Carolina*

v. Alford, 400 U.S. 25 (1970). The plea judge twice asked Mr. Stafford to explain, in his own words, the mearing of an *Alford* plea. Mr. Stafford was not able to do so. A. 14-15. First Sargent Chris Shelton, of the South Carolina Highway Patrol, addressed the plea judge and asked for the maximum sentence allowed by law. A. 35. Trial counsel requested a sentence "between two and five years." A. 50.

Dr. Donna Schwartz Maddox, a forensic psychiatrist, testified at the evidentiary hearing. At the request of trial counsel, Dr. Maddox examined Mr. Stafford at the Lexington County Detention Center on January 13, 2023. She considered Mr. Stafford "at risk for neurological and cognitive deficits" and requested neuropsychological testing. Mr. Stafford had poor memory, which can be caused by "psychiatric reasons" or "brain damage." On a "neurological exam," Mr. Stafford has "nystagmus," which can be a symptom of "cognitive dysfunction." Dr. Maddox also wanted blood tests and an an neurologist or neuropsychologist to perform an "EEG to make sure he had not had a seizure." A. 74-79.

Trial counsel obtained the services of Dr. Tora Brawley, a neuropsychologist. When Dr. Brawley evaluated Mr. Stafford, "he did not give a good effort" and "she did not continue testing." In addition to malingering, Dr. Maddox testified a person might not put forward a good effort during testing for "psychiatric reasons" or because "they may be tired." Dr. Maddox's involvement in Mr. Stafford's pre-trial investigation ended at this point. A. 79-81.

Dr. Maddox testified about her involvement in Mr. Stafford's post-conviction investigation. Dr. Brawley saw Mr. Stafford again, and "he gave adequate effort." Dr. Brawley's testing confirmed Dr. Maddox's initial findings. Mr. Stafford "had difficulty in

memory, in motor testing, and his verbal memory was severely impaired." Mr. Stafford's "speed and dexterity were impaired on his right hand." Dr. Brawley also discovered "asymmetries in the brain." A. 81-82.

Dr. Maddox also testified about her consultation with Dr. Thomas Pritchard, a neurologist at the Medical University of South Carolina. Dr. Pritchard performed an EEG, "which was normal." Dr. Pritchard opined Mr. Stafford "had amnesia for the events of 2012." A. 82-83.

Dr. Maddox considered Mr. Stafford's social history. He had "a very unstable childhood," including "attend[ing] 19 different schools," "numerous moves," witnessing domestic violence in his mother's unstable relationships, and being a victim of sexual abuse." Mr. Stafford's biological father was an "opiate addict." Mr. Stafford was prescribed opiates for back pain and became addicted. He voluntarily went to a methadone clinic to get off opiates. At the same time, another medical provider prescribed Klonopin. That Mr. Stafford was prescribed methadone and Klonopin at the same time is not the best medical practice. A. 83-86.

Dr. Maddox offered her opinion about Mr. Stafford's behavior at the time of the accident. Mr. Stafford went to the methadone clinic at 6:00 a.m. that morning. He worked and had a light lunch. Klonopin can "cause sedation." Mr. Stafford "has some motor dysfunction, that could have impaired the speed of his reflexes when his brain processed the DOT worker on the side of the road." These factors also explain why Mr. Stafford drove

approximately an eighth of a mile after wreck and before he pulled over. A. 86-88; *see also* Applicant's Ex. 2, 3 (A. 202-211).[1]

STANDARD OF REVIEW

Under the first prong of *Strickland v. Washington*, a defendant "must show that counsel's representation fell below an objective standard of reasonableness," which must be judged under "prevailing professional norms." 466 U.S. 668, 688 (1984). "The first prong—constitutional deficiency—is necessarily linked to the practice and expectations of the legal community: The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010) (internal quotations omitted). "If the State contends the alleged deficiency resulted from a strategic decision made at trial, counsel must articulate a valid reason for employing a certain strategy." *Freiburger v. State*, 413 S.C. 243, 247, 775 S.E.2d 391, 393 (Ct. App. 2015); *cf. Ingle v. State*, 348 S.C. 467, 560 S.E.2d 401 (2002).

The second prong of *Strickland* requires a defendant establish this deficiency prejudiced him. "The 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." *Strickland,* at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id. "*In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018)[2]

[1] Dr. Maddox also testified about issues with Mr. Stafford's competency during the pendency of the PCR. A. 88-90.

[2] *See also Thompson v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (adhering to *Smalls*).

(citing *Strickland*, 466 U.S. at 695-96 (explaining that the court must analyze how individual errors of counsel affect the important factual findings in a particular case)).

"The decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea." *Lee v. United States*, 582 U.S. 357, 367 (2017). The High Court cautioned, "Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Rather, they should look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.*

This Court's "standard of review in PCR cases depends on the specific issue before" it. *Mangal v. State*, 421 S.C. 85, 91-92, 805 S.E.2d 568, 571 (2017). The appellate court will "defer to a PCR court's findings of fact and will uphold them if there is any evidence in the record to support them." *Id*. This Court will "not defer to a PCR court's rulings on questions of law." *Id*. "Questions of law are reviewed de novo, and [the appellate court] will reverse the PCR court's decision when it is controlled by an error of law." *Id*.

ARGUMENTS

Question I

Should this Court require post-conviction relief judges to draft the final orders in PCR cases in order to ensure the findings of fact and conclusions of law, required by S.C. Code Ann. § 17-27-80, are those of the court, rather than an advocate, and to preserve the separation of powers between the judicial branch and executive branch as required by S.C. Const. Art. I, § 8?

"S.C. Code Ann. §17-27-80 (1976), requires the PCR court to 'make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.'" *McCray v. State*, 305 S.C. 329, 330, 408 S.E.2d 241, 241 (1991). *See also Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992). The PCR court did not do that, but

rather delegated the responsibility of drafting the order to the Attorney General's Office. Compare Order of Dismissal (A. 321-45) with State's proposed order (A. 357-81). Mr. Stafford objected to the procedure followed in this case. A. 347-49.

The reasoning in the proposed order is entirely that of an advocate and not an independent judicial officer, which violates the separation of powers. S.C. Const. Art. I, § 8. In capital cases, this Court "strongly encourage[s] PCR judges to draft their own findings of fact and conclusions of law." *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004). The admonition in *Hall* is consistent with the lower court's responsibility to "safeguard the rights of litigants." *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012).

This Court expressed its ongoing frustration with the validity of final orders in PCR cases during the oral argument in *Kevin S. Epting v. State*, Appellate Case No. 2017-000696, on November 21, 2019, at 11:17 – 13:05.[3] One Justice referred to the Attorney General's Office drafting the final PCR order as "the classic case of the fox guarding the henhouse," observed PCR applicants have the right to have their issues litigated, and called on the criminal defense bar "to fix this problem." Another Justice stated the entire Court shares these concerns.

In *Fishburne v. State*, this Court recognized the significant issues involved in drafting PCR orders:

> [B]ecause the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming—

[3] http://media.sccourts.org/videos/2017-000696.mp4. *Epting* involved the Attorney General's Office drafting the final order, the PCR judge signing the order that failed to address all the issues, and the applicant's attorney not filing a Rule 59(e), SCRCP motion. On December 4, 2019, this Court dismissed *certiorari* as improvidently granted.

> such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80.

427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019). *Fishburne* set a lofty goal for "[t]he preparation and finalization of a PCR order [to be] a collaborative effort." 427 S.C. at 516, 832 S.E.2d at 589 (2019). The final order in this case was not a "collaborative effort."

The order denying the Rule 59(e) motion—also drafted by the Attorney General's Office—accused Mr. Stafford of "misread[ing] both the intent and effect of *Hall* and *Fishburne*. A. 399. The order also states, "The process of submitting proposed orders is built into our rules." A. 402 (citing Rule 5(b)(3), SCRCP). The bench and bar would benefit from his Court's additional guidance regarding the proper procedure for preparing final orders in PCR cases. Here, the final order is an advocacy position drafted by "the fox guarding the henhouse," rather than true judicial findings of fact and conclusions of law. Thomas Stafford's PCR case illustrates exactly why a PCR court should not delegate the judicial function of drafting final PCR orders to an advocate. This Court, accordingly, should grant the writ and consider the issue.

Question II

Was trial counsel ineffective for not moving to withdraw the guilty plea when the State changed the plea negotiations on the eve of the guilty plea, Thomas Stafford was confused during the guilty plea, and the State did not honor its agreement to remain silent on the recommended sentence?

"In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 473 (2009) (citing *Boykin v. Alabama,* 395 U.S. 238, 241 (1969)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an

objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Id.* 384 S.C. at 413, 683 S.E.2d at 475. (citing *Hill v. Lockhart,* 474 U.S. 52 (1985)). "When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing." *Id.* (citing *Anderson v. State,* 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)).

This Court consistently holds trial counsel ineffective for failing to enforce plea agreements. In *Jordan v. State*, "Jordan insisted on proceeding to trial. Jordan only agreed to plead guilty when he believed the solicitor would neither oppose nor recommend probation." 297 S.C. 52, 54, 374 S.E.2d 683, 684-85 (1988). "When the solicitor disregarded the agreement," trial counsel "failed to draw" the trial court's "attention to the plea bargain and then failed to move to withdraw [the] guilty plea." *Id*., 297 S.C. at 54, 374 S.E.2d at 685. This Court held trial counsel's failure to protect the "right to enforce the plea agreement with the Solicitor's office fell below 'prevailing professional norms.'" *Id*. (citing *Strickland,* 466 U.S. at 694). "Considering the original vehemence of Jordan in pursuing his right to trial by jury," the Court further held "that there is a reasonable probability that but for the fact that Jordan's attorney failed to object to the continuation of the guilty plea proceeding once the solicitor reneged on the plea bargaining agreement, that Jordan would not have pleaded guilty, but would have insisted on going to trial." *Id*. 297 S.C. at 54–55, 374 S.E.2d at 685.

In *Thompson v. State*, "Thompson initially planned to go to trial because the codefendant was not willing to testify against him" but "decided to pursue a plea bargain only after the codefendant decided to testify against him." 340 S.C. 112, 114, 531 S.E.2d

294, 295 (2000). "During the plea negotiations, the trial judge told the attorneys he would not consider a youthful offender sentence and he would impose a sentence of at least 20 years, but not the maximum of 30 years." *Id*. In addition, "the solicitor was not going to make a specific sentence recommendation." *Id*. During sentencing, "[t]he solicitor requested the maximum 30 year sentence and Thompson's attorney did not object." *Id*. "Like the attorney in *Jordan,* Thompson's attorney's failure to object fell below prevailing professional norms." *Id*., 340 S.C. at 116, 531 S.E.2d at 296. Regarding the prejudice prong of *Strickland*, "The fact that Thompson was unsure whether to plead guilty up until the last minutes before trial coupled with the fact that he was under the impression the solicitor would not make a sentencing request is enough evidence to demonstrate a reasonable probability that Thompson would not have pled guilty but for his attorney's ineffective assistance." *Id*., 340 S.C. at 117, 531 S.E.2d at 297.

Mr. Stafford's case is similar to both *Jordan* and *Thompson*. All of the email correspondence shows that Mr. Stafford did not want to plead guilty unless the State dismissed the charge for leaving the scene of an accident. The emails illustrate trial counsel's understating that Mr. Stafford would have to "plea to just the one charge of felony [DUI] death." Applicant's Ex. 12 (A. 239-40); *see also* Applicant's Ex. 13 (A.241) ("The plea would be to plea to felony DUI (1-25 yrs.). In exchange for pleading guilty, the [S]tate is dismissing the Leaving the Scene of an Accident, death resulting (0-25 yrs.)[4] and DUI 2nd."). The post-plea emails further confirm this understanding. Applicant's Ex. 14 (A. 242-44) (Jim Kornmeyer stating, "I was under the impression that the hit and run was being

[4] Trial counsel was incorrect. Leaving the scene of an accident, resulting in death, actually carries a penalty of "not less than one year nor more than twenty-five years." S.C. Code Ann. § 56-5-1210(A)(3).

dismissed as part of the plea, but that was not the case."). Applicant's Ex. 14 also confirms that the State's requirement to plead guilty to the leaving the scene of an accident was not known to Mr. Stafford until the eve of the guilty plea.

At the evidentiary hearing, Lisa Kornmeyer, Jim Kornmeyer, Lillian Williford, and Tina Orlowski testified they observed Mr. Stafford to be confused during the guilty plea regarding the charge of leaving the scene of an accident. E.g. 120-22, 134, 136-38, 177; *see also* A. 140-41 (Mr. Stafford explaining his confusion). These observations are confirmed by the transcript of the guilty plea when Mr. Stafford is not able to explain the meaning of an *Alford* plea in his own words. A. 14-15.

Additionally, Mr. Stafford's case is similar to both *Jordan* and *Thompson* because the State did not honor the plea agreement. In *Jordan*, the State agreed to "neither oppose nor recommend probation." 297 S.C. at 54, 374 S.E.2d at 684-85. In *Thompson*, the State agreed it "was not going to make a specific sentence recommendation" but during sentencing, "[t]he solicitor requested the maximum 30 year sentence." 340 S.C. at 114, 531 S.E.2d at 295. During the PCR hearing, it became apparent that the Solicitor agreed the prosecution would remain silent on the sentence to be imposed by the court and would not to oppose Mr. Stafford's sentencing request of two to five years, not oppose concurrent sentences for the two charges. A. 168, 185, 191, 193-96.

The factual findings of the Order support this agreement but stop short of making the ultimate factual finding. *E.g.* A. 329 (Trial counsel "indicated that there never was an agreed sentence, but the prosecutor agreed to not oppose concurrent sentences and take no position on sentences requests."), A. 330 (The Solicitor "recalled the meeting in chambers

with the judge prior to the plea noting the plea would be straight up with the *Alford*[5] plea on leaving the scene, but he was not recommending anything as the solicitor."), A. 334-35 ("This Court finds that the actual plea offer that was accepted at the entry of the plea was that [Mr. Stafford] would plead guilty to felony DUI resulting in death and plead guilty under *North Carolina v. Alford* to leaving the scene of an accident resulting in death without a negotiated sentence, without a recommendation by the prosecution and the defense was free to argue whatever sentence it deemed appropriate."). The Order—drafted by the Attorney General's Office as an advocate for the prosecution—departs from the evidence by not acknowledging that the full and complete nature of the in chambers discussion where the Solicitor promised not to oppose Mr. Stafford's sentencing request of two to five years, not oppose concurrent sentences for the two charges, and to remain silent on the sentencing recommendation. As seen, the State did not remain silent on sentencing when First Sargent Chris Shelton, of the South Carolina Highway Patrol, addressed the plea judge and asked for the maximum sentence allowed by law. Tr. 27. The Attorney General's Office undoubtably minimized the role of the Solicitor's promise during in chambers conference in order to save this conviction, *i.e.* "the classic case of the fox guarding the henhouse." Once this Court recognizes the full impact of the Solicitor's promises, it is apparent that the plea agreement included the State remaining silent on the length of the sentence. Once this Court makes this finding of fact, then *Jordan v.* State, 297 S.C. 52, 374 S.E.2d 683 (1988) and *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000) require this Court to order a new trial. Trial counsel, accordingly, rendered

[5] *North Carolina v. Alford*, 400 U.S. 25 (1970).

constitutionally deficient performance not moving to withdraw the guilty plea when the State breeched the agreement to remain silent on sentencing.

Under the first prong of *Strickland*, trial counsel was deficient for not objecting to the Solicitor's breach of the plea agreement and for not moving to withdraw the guilty plea. Like in *Jordan* and *Thompson*, Mr. Stafford's longstanding desire that the charge for leaving the scene of an accident to be dismissed with a guilty plea is evidence that he would not have plead guilty but for trial counsel's diffident performance.

Mr. Stafford will address two additional points: (1) testimony by the Solicitor and trial counsel that a jury trial was imminent and (2) the Solicitor's testimony about his opinion of the strength of the State's case.

First, the Solicitor testified that, had Mr. Stafford not pled guilty on October 3, 2013, then Mr. Stafford's case would have proceeded to trial that week. Trial counsel testified that, if Mr. Stafford had not pled guilty, then his case would have proceeded to trial that week or the following week. This Court should not assign any weight to this testimony for four reasons. First, October 3, 2013 was a Thursday (A. 317), and it is not conceivable that a felony DUI trial would commence on a Thursday. Second, the Judicial Branch Website reveals that no General Sessions Court was scheduled for Lexington County during the week of October 7, 2013 (A. 319). Third, the uncontested evidence at the PCR hearing was that the State intended, prior to any jury trial, to seek direct indictments for reckless homicide and assault and battery of a high and aggravated nature (A. 239-41), but a review of the Judicial Branch Website reveals the State never sought

direct indictments for these offenses.[6] Fourth, the test is not whether a jury trial was imminent, but rather whether Mr. Stafford would have proceeded to trial absent trial counsel's deficient performance. As was the case in *Jordan* and *Thompson*, the contemporaneous evidence shows that Mr. Stafford would have proceeded to trial but for trial counsel's failure to protect his right to enforce the guilty plea.

Second, during the evidentiary hearing, the Solicitor offered his opinion about the strength of the State's case regarding the leaving the scene of an accident. This Court should not rely on this testimony because the purported strength of the State's case is not the relevant test. "When a defendant alleges his counsel's deficient performance led him to accept a guilty plea rather than go to trial, [post-conviction courts] do not ask whether, had he gone to trial, the result of that trial would have been different than the result of the plea bargain." *Lee*, 582 U.S. at 364 (internal quotations omitted). "That is because, while [courts] ordinarily apply a strong presumption of reliability to judicial proceedings, [courts] cannot accord any such presumption to judicial proceedings that never took place." *Id*. (internal quotations omitted). Post-conviction courts "instead consider whether the defendant was prejudiced by the denial of the entire judicial proceeding to which he had a right." *Id*. (cleaned up). Notably, trial counsel documented a defense: "Tom still believes that various scenarios painted by the prosecution were not true. Tom says he pulled over

[6] During the PCR hearing, trial counsel testified Mr. Stafford could not be convicted of felony DUI, reckless homicide, and assault and battery of a high and aggravated nature, but the Solicitor wanted the jurors to have multiple options. This testimony is inconsistent with *State v. Greene*, 423 S.C. 263, 280, 814 S.E.2d 496, 505 (2018) ("one homicide is limited to one homicide punishment per defendant"). However, trial counsel contemporaneous advised, "If he does not plead guilty, we would be going to trial on the felony DUI, leaving the scene of an accident, and reckless homicide (which the solicitor will indict in front of the grand jury before trial). Potentially 75 years." Applicant's Ex. 13 (A. 241).

voluntarily and the prosecution painted a picture of two civilian heroes bringing Tom to a stop. There are obviously two different sides to that story and we put our side regarding the leaving the scene on the record showing he pulled over and did not try to speed up past them." A. 243. Having a jury trial would have allowed Mr. Stafford to present this defense.

The Order is not supported by the testimony of Mr. Stafford and his family members regarding the prosecutor changing the plea negotiations as the last moment. The emails presented during the evidentiary hearing portray not only the family members' understanding of the guilty plea negotiations, but also trial counsel and Mr. Stafford's understanding of the guilty plea negotiations. The Order acknowledges Mr. Stafford's uncontested PCR hearing testimony:

> [Mr. Stafford] testified that he was originally willing to plead to felony DUI, but not leaving the scene of the accident. He claimed he felt bad about the accident. As to plea negotiations, he thought he was guilty of felony DUI but not guilty of leaving the scene. . . . He stated that there was a period during the plea that he was confused. He thought everything happened so fast. He also though *N.C. v. Alford* was not adequately explained to him by counsel.

A. 328. At the evidentiary hearing, Lisa Kornmeyer, Jim Kornmeyer, Lillian Williford, and Tina Orlowski testified they observed Mr. Stafford to be confused during the guilty plea regarding the charge of leaving the scene of an accident. These observations are confirmed by the transcript of the guilty plea when Mr. Stafford is not able to explain the meaning of an *Alford* plea in his own words. A. 14-15. Although this testimony is summarized in the A. 327-28, the relevant findings of fact ignore this testimony. A. 332-39. Mr. Stafford's guilty plea was not knowing and voluntary. *Hill v. Lockhart,* 474 U.S. 52 (1985); *Boykin v. Alabama,* 395 U.S. 238 (1969); *Rolen v. State*, 384 S.C. 409 683 S.E.2d 471 (2009). Mr. Stafford was prejudiced by trial counsel's failure to move to withdraw the guilty plea. *See*

Smalls, supra. This Court should grant the writ and consider the question.

Question III

Was trial counsel ineffective for not conducting a complete mental health evaluation of Thomas Stafford when that evaluation would have revealed a defense to leaving the scene of an accident and would have provided valuable mitigation evidence that would have resulted in a more favorable sentence?

Trial counsel has a duty to investigate. *See*, *e.g.*, *Ard v. Catoe*, 372 S.C. at 332, 642 S.E.2d at 597 ("We find respondent proved that trial counsel should have further investigated and more thoroughly challenged the gunshot residue evidence."). This duty to investigate includes consulting expert witnesses. *See McKnight v. State*, 378 S.C. 33, 661 S.E.2d 354 (2008) (counsel rendered ineffective assistance when she failed to investigate medical evidence contradicting the State's experts' testimony on the link between cocaine and stillbirth); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015) (finding trial counsel ineffective for not consulting expert to refute state's medical evidence). The duty to conduct a reasonable investigation includes not only the client's guilt or innocence but also evidence that would mitigate the sentence. *See, e.g., Wiggins v. Smith*, 539 U.S. 510 (2003); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008).

The S.C. Commission on Indigent Defense adopted performance standards for public defenders and appointed counsel in non-capital cases.[7] Regarding sentencing, these

[7] Found at https://sccid.sc.gov/docs/SCCID%20%20Performance%20Standards%20(Non-Capital)%20for%20Public%20Defenders%20and%20Assigned%20Counsel%20as%20adopted%20by%20SCCID%206-7-2013%20with%20revised%20Preamble%208-22 2013.pdf (last viewed Feb. 25, 2025). Regarding evidence of the prevailing professional norms, the Supreme Court of the United States has looked to publication of the National Legal Aid and Defender Association, "the American Bar Association, criminal defense and public defender organizations, authoritative treatises, and state and city bar publications." *Padilla*, 559 U.S. at 367. The SC Commission of Indigent Defense Performance Standards in Non-Capital Case are modeled on the National Legal Aid and

standards require counsel "to ensure all reasonably available mitigating and favorable information likely to benefit the client is presented to the court" (Guideline 8.1(3)), "to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted" (Guideline 8.1(6)), to obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition" (Guideline 8.3(3)), and to present "information favorable to the defendant concerning such matters as the offense, mitigating factors and relative culpability, prior offenses, personal background, employment record and opportunities, education background (Guideline 8.6(4)).

In assessing the investigation in *Strickland*, the Court stated that "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitation on investigation." Any decision to halt investigation must be assessed for reasonableness. *Strickland* at 690-91. When assessing the reasonableness of an investigation, it is necessary to consider not only the evidence already known to counsel, but also whether this evidence would lead a reasonable attorney to conduct further investigation. *Wiggins*, 539 U.S. at 527. *See also Council*, 380 S.C. at 173, 670 S.E.2d at 363 ("Even the limited information obtained should have put counsel on notice that Respondents background, with additional investigation, could potentially yield powerful mitigating evidence"). Counsel need not investigate every possible line of mitigating evidence regardless of how likely that evidence would be to

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Defender Organization's Performance Guidelines for Defense Representation. Found at https://www.nlada.org/defender-standards/performance-guidelines (last viewed Feb. 25, 2025).

strengthen a mitigation case; however, a limited investigation must be supported by "reasonable professional judgments." *Wiggins*, 539 U.S. at 533.

When assessing the reasonableness of an investigation, it is necessary to consider not only the evidence already known to counsel, but also whether this evidence would lead a reasonable attorney to conduct further investigation. *Wiggins*, 539 U.S. at 527. *See also Council*, 380 S.C. at 173, 670 S.E.2d at 363 ("Even the limited information obtained should have put counsel on notice that Respondents background, with additional investigation, could potentially yield powerful mitigating evidence"). Counsel need not investigate every possible line of mitigating evidence regardless of how likely that evidence would be to strengthen a mitigation case; however, a limited investigation must be supported by "reasonable professional judgments." *Wiggins*, 539 U.S. at 533.

Here, Dr. Maddox examined Mr. Stafford at the Lexington County Detention Center and identified a history of memory loss, deficits on a mental status examination, and evidence of cognitive disfunction. A. 74-79; Applicant's Ex. 1 (A. 201). Dr. Maddox recommended opined, "It is my opinion to a reasonable degree of medical certainty that Mr. Stafford needs neurological testing" and "to be evaluated by an neurologist." *Id*. Evidence presented at the evidentiary hearing revealed that trial counsel failed to complete these recommendations. A. 79-81. As part the failure to follow through on these recommendations, trial counsel did not develop the proper rapport with Mr. Stafford prior to the neurological testing. A. 110.

Had trial counsel complied with Dr. Maddox's recommendations, the Dr. Maddox would have been able to complete her evaluation. A. 81-88; Applicant's Ex. 2, 3 (A. 202-11). Dr. Maddox diagnosed Mr. Stafford with Post Traumatic Stress Disorder ("PTSD")

and Opiate Use Disorder, In a Controlled Environment. *Id*. The Opiate Use Disorder resulted from medical doctors prescribing opiates to treat Mr. Stafford's back pain. Dr. Maddox testified that Mr. Stafford was under medical care at the time of the accident, which included doctors simultaneously prescribing Xanax and Methadone, which is contrary to the best medical practices. Although trial counsel provided the sentencing judge some information about Mr. Stafford's history of sexual abuse, that information lacked the medical conclusions regarding PTSD and the resulting effects.

Dr. Maddox further opined that, as a result of his cognitive deficits, Mr. Stafford would take a longer amount of time to process the accident, which contributed to the amount of time that elapsed before he stopped his vehicle. A. 86-88. This testimony provides a defense to the charge of leaving the scene of an accident, which requires an element of knowledge. This testimony could also be offered as mitigation during sentencing.

Mr. Stafford was prejudiced by trial counsel's failure to investigate. *See Smalls, supra.* The presentation of the evidence during the guilty plea of the charge for leaving the scene of an accident was aggravating rather than mitigating. Dr. Maddox's report mitigated this evidence and even provided a defense. Had trial counsel completed the investigation, the Mr. Stafford would have go to trial on this offenses or received a shorter sentence. Dr. Maddox also presented compelling mitigation evidence regarding Mr. Stafford's history of trauma and cognitive disfunction. Had trial counsel presented this evidence, then Mr. Stafford would have received a shorter sentence.

Most General Sessions Court cases are resolved through guilty plea. The bench and bar would benefit from this Court guidance about trial counsel's duty to conduct a proper

investigation to present mitigating evidence to a sentencing court. This Court should grant the writ and consider the question.

CONCLUSION

For the foregoing reasons, this Court should grant the writ and consider the questions presented.

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