

RECEIVED

Mar 04 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Kristi F. Curtis, Circuit Court Judge

CASEY FICKLING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001943

JOHNSON PETITION FOR WRIT OF CERTIORARI

Gary H Johnson
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

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR Court erred in finding plea counsel was effective when she failed to adequately meet with and advise petitioner of the evidence against him and potential defenses before recommending that he plead to his pending charges3

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

ISSUE PRESENTED

Did the PCR Court err in finding plea counsel was effective when she failed to adequately meet with and advise petitioner of the evidence against him and potential defenses before recommending that he plead to his pending charges?

STATEMENT

Petitioner was indicted on multiple offenses arising from a domestic disturbance by a Berkley County grand jury. The charges included domestic violence of a high and aggravated nature, unlawful conduct towards a child, and resisting arrest with a deadly weapon. App. 21 – 27. The alleged victim asserted petitioner struck her multiple times about the face and head and assaulted their young daughter by choking and restricting her breathing. App. 7, 1. 15 – 9, 1. 2. Officers claimed petitioner resisted arrest and fought for control of a service weapon. App. 8, 1. 18 –9, 1. 2. Petitioner appeared before the Honorable Jennifer McCoy and plead guilty on August 8, 2018. App. 1. Petitioner was represented by Deborah Littlejohn (hereinafter plea counsel) and Anne Williams appeared on behalf of the state. App. 1.

Petitioner filed for post-conviction relief alleging plea counsel was ineffective. App. 30 – 34. An amended application was filed asserting specific grounds regarding plea counsel’s failure to advise petitioner of his trial rights and failure to discuss the evidence and possible defenses to the allegations. App. 35.

Petitioner’s evidentiary hearing was before the Honorable Kristi F. Curtis on June 29, 2022. App. 44. Petitioner was represented by Christopher Geel with Samatha Weidauer appearing on behalf of the state. App. 44. Both petitioner and his trial counsel presented testimony. The PCR court denied petitioner’s application by order of dismissal dated October 16, 2024. App. 133 – 138.

This Petition for Certiorari follows.

ARGUMENT

The PCR Court erred in finding plea counsel was effective when she failed to adequately meet with and advise petitioner of the evidence against him and potential defenses before recommending that he plead to his pending charges.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984). “Thus, when challenging a guilty plea, a PCR applicant must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the applicant would not have pled guilty.” Ervin v. State of South Carolina, 438 S.C. 559, 565, 885 S.E.2d 387, 390 (2023) (internal citations omitted). In a guilty plea setting, “the prejudice analysis is limited to the outcome of the plea process—whether but for counsel's deficiency, the defendant would have declined to plead and instead proceeded to trial.” Frierson v. State, 423 S.C. 257, 263, 815 S.E.2d 433, 436 (2018). “In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea.” Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) “In other words, in order to satisfy the ‘prejudice’ requirement, the defendant must show that 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, 59 (1985).

How the issue was addressed during the PCR hearing.

Petitioner's initial meeting with plea counsel lasted all of ten minutes at which time she made a general inquiry into the facts of the case. App. 53, l. 21 – 54, l. 24. At this stage, petitioner denied having access to any discovery or having substantive discussions with plea counsel regarding the nature of the charges and possible defenses. App. 55, l. 24 – 56, l. 13. Petitioner's next meeting with plea counsel was via video-conference call regarding a potential bond modification hearing. App. 57, ll. 1 – 13. While plea counsel showed petitioner a "disk" that contained discovery material, including photographs of the alleged injuries, petitioner asserted he never received a copy of the material contained on the disk. App. 58, ll. 4 – 23. This meeting, like the first, was short, lasting approximately 15 to 20 minutes. App. 59, ll. 9 – 11. Like the initial meeting, there was no discussion about trial strategy. App. 61, ll. 13 – 24. This was followed by an additional, even shorter, video conference call telling petitioner they had a plea hearing scheduled. App. 62, l. 12 – 63, l. 12. Again, there was no discussion about contesting the charges or a trial strategy. App. 64, ll. 2 – 12. When the plea hearing took place, plea counsel informed petitioner not to worry over the paperwork, and that they would take care of the sentence "in court." App. 67, ll. 2 – 11. At this stage, petitioner had received his discovery. App. 67, ll. 12 – 24. Due to the limited communication with plea counsel, petitioner was not aware trial was an option since his charges were not serious enough. App. 69, l. 25 – 70, l. 16. While the plea court did inquire as to the voluntary nature of the plea and admonished petitioner he had the right to a trial, petitioner was "just going through the motions" and was not fully aware of these rights during the process. App. 71, l. 15 – 72, l. 23. Petitioner pointed to his limited educational background and his physical and mental health issues surrounding the plea as factors. App. 72, l. 20 – 73, l. 20.

How the PCR court ruled.

The PCR court found plea counsel's claims to have discussed the evidence and provided petitioner copies of the discovery material before his guilty plea credible. App. 137. The PCR court also found petitioner did not "set forth any viable defense counsel could have raised and did not meet his burden in this regard." App. 137.

How the PCR court erred.

Counsel's failure to properly communicate with petitioner demonstrates ineffective assistance of counsel. See Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876–77 (2018) ("Generally, where defense counsel does not communicate such an offer to the defendant, counsel has rendered ineffective assistance."); Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009) (holding "counsel is required to fully communicate with the client so that the client can make an informed decision regarding any proposals by the State."). This duty to communicate extends to discussing legal defenses and trial strategy before pushing an accused into a guilty plea. See Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991) (finding counsel ineffective who spoke with accused three times for a total amount of less than 30 minutes before entering a guilty plea).

In Berry v. State, 381 S.C. 630, 675 S.E.2d 425 (2009), plea counsel never discussed Berry's prior record as supporting a sentence enhancement. This failure to properly communicate with Berry undermined the voluntary nature of his plea.

[Plea] decisions must be made knowingly and voluntarily with the advice of constitutionally competent counsel. Simply saying 'I never gave it a thought' falls short of the Sixth Amendment guarantee of effective assistance of counsel. As a result, we find counsel's failure to even consider whether a paraphernalia conviction qualifies for enhancement, and so inform Berry, fell below the standard of objective reasonableness. We therefore find plea counsel provided constitutionally deficient representation.

Id., 381 S.C. at 635–36, 675 S.E.2d at 427.

Petitioner would not have plead guilty but for Counsel’s ineffective assistance.

Q. So just to put a fine point on this knowing what you know now would you have rejected this offer that you pled guilty to?

A. Absolutely.

Q. And demanded a trial?

A. Yes, sir.

Q. And the reason you didn’t do that back then is why?

A. Just ignorance. I didn’t know half the stuff I know now. I just didn’t know.

Q. And so when you say you didn’t know what you know now are you talking about the way the system works?

A. Yes, sir.

Q. Your right to a jury trial?

A. Right, to a jury trial. I never knew I could say no to the plea; I never knew that. I was just going through the motion with it.

App. 77, ll. 9 – 24.

The PCR court seems to have implied the burden was on petitioner to establish a valid defense to the charges. App. 137. This is an error of law. The proper standard is not whether or not petitioner presented a viable defense to the charges during the evidentiary hearing, but rather whether “but for counsel’s deficiency, the [petitioner] would have declined to plead and instead proceeded to trial.” Frierson v. State, 423 S.C. 257, 263, 815 S.E.2d 433, 436 (2018); see also Ervin v. State of South Carolina, 438 S.C. 559, 885 S.E.2d 387 (2023). Here, petitioner testified clearly that had plea counsel properly communicated his right to a jury trial, the nature of the evidence against him, and viable trial strategies, including potentially lesser included offenses,

petitioner would have refused to plead guilty and elected to have a jury trial. App. 77, ll. 9 – 24. Requiring the production of a valid defense confused the prejudice component and was an error of law. There is a “reasonable probability that, but for counsel's errors, [petitioner] would not have pled guilty.” Ervin, 438 S.C. at 565, 885 S.E.2d at 390 (2023) (internal citations omitted).

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this Court grant the writ of certiorari to allow full briefing on this issue.



Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of March, 2025.

RECEIVED

Mar 04 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Berkeley County

Honorable Kristi F. Curtis, Circuit Court Judge
—————

CASEY FICKLING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

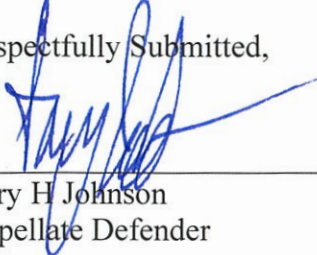
—————
PETITION TO BE RELIEVED AS COUNSEL
—————

Counsel for Casey Fickling 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 Kristi F. Curtis, which was held on June 20, 2022, 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 Casey Fickling.

Respectfully Submitted,


—————
Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of March, 2025.

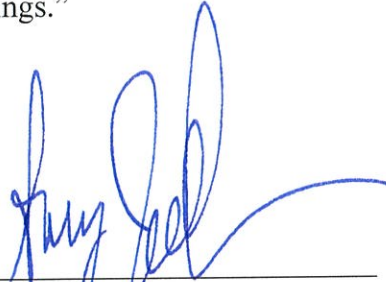
RECEIVED

Mar 04 2025

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

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."



Gary H Johnson
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

This 4th day of March, 2025.