

Apr 25 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )  
)   
George Riley Dreher, #334165, )  
)   
Applicant, )  
)   
v. )  
)   
State of South Carolina, )  
)   
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2022-CP-08-02034

**SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF PCR APPLICANT’S  
REQUESTED RELIEF**

**TO: THE HONORABLE WALTON MCLEOD, PRESIDING JUDGE FOR THE NINTH JUDICIAL CIRCUIT; AND DANIELLE DIXON, ATTORNEY FOR THE STATE OF SOUTH CAROLINA:**

THIS MATTER comes before the Court upon the Applicant’s, George Riley Dreher’s, Application for Post-Conviction Relief alleging ineffective assistance of counsel, filed on August 24, 2022 by his attorney of record, J. Taylor Bell. Respondent State of South Carolina, by and through its attorney of record, Danielle Dixon, subsequently filed a Return to Applicant’s Application for Post-Conviction relief on or about October 3, 2023, requesting this Court convene an evidentiary hearing be held regarding Applicant’s allegations.

A PCR hearing was thereafter held on March 11, 2024 in front of the Honorable Walton McLeod. Present at this hearing was J. Taylor Bell, on behalf of the Applicant, and Assistant Attorney General Danielle Dixon, on behalf of the Respondent for the State of South Carolina. Sworn testimony was taken from Applicant George Riley Dreher, and from his trial court plea counsel, Melisa W. Gay. At the conclusion of the PCR Evidentiary Hearing, the Court requested Supplemental Memorandums of Law in Support of the respective party’s position, and the foregoing is being presented in accordance therewith.

## APPLICANT'S GROUNDS FOR POST-CONVICTION RELIEF

In his PCR Application, Applicant asserted the following grounds on which he is being held in custody unlawfully within the South Carolina Department of Corrections:

“Plea Counsel denied Applicant’s right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Plea Counsel’s unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel’s error, Applicant would not have pled guilty and would have invoked his right to a jury trial. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying *Stickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel). Therefore, Applicant did not voluntarily, knowingly, and intelligently plead guilty. See *Boykin v. Alabama*, 395 U.S. 238 (1969).”

As the grounds set forth in the Application, Applicant set forth the following factual bases:

1. Counsel failed to investigate and interview witnesses, specifically Brandon Swain, and only after Applicant pled guilty did Plea Counsel file a motion to withdraw guilty plea and submitted to the Court an affidavit of Brandon Swain.
2. Counsel failed to inform Applicant of all available defenses and legal rights, specifically Applicant's right to compel witnesses to court.

### APPLICABLE STANDARD OF LAW

Applicant alleges plea counsel was ineffective for not fully investigating his case and properly advising him of his legal rights and defenses. To establish ineffective assistance of counsel, Applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) Applicant sustained prejudice because of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989).

"The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636,637 (1.985). To establish prejudice, Applicant must prove "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985). When reviewing a guilty plea, the Strickland deficiency prong remains unchanged, Applicant must show that counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58-59. To show prejudice, Applicant must show a reasonable probability exists "that, but for counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

The Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he is waiving, including the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman, 337 S.C. at 599.

"Admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874. An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20,546 S.E.2d 417,419 (2001).

"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. Defense counsel will not be deficient if they conduct "a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so." Edwards v. State, 392 S.C. 449,457, 710 S.E.2d 60, 65 (2011). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

Defense counsel is also responsible for informing "a defendant of the advantages and disadvantages of a plea agreement and the attendant statutory and constitutional rights that a guilty plea would forego." Libretti v. U.S., 516 U.S. 29, 50-51 (1995). When defense counsel allegedly fails to advise the defendant of a potential affirmative defense, "the resolution of the 'prejudice' inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." Hill, 474 U.S. at 59.

### **LEGAL ANALYSIS AND FACTUAL BASES FOR PCR RELIEF**

#### **I. Counsel failed to investigate and interview witnesses, specifically Brandon Swain, and only after Applicant pled guilty did Plea Counsel file a motion to withdraw guilty plea and submitted to the Court an affidavit of Brandon Swain.**

Applicant alleges that his plea counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty, but would have insisted on going to trial. It is well established in the Applicant's PCR record, that Applicant conveyed to plea counsel his affirmative defense of lack of criminal intent to commit the charge of Attempted Murder prior to entering his guilty plea. Specifically, Applicant informed his attorney that the moment before his vehicle struck a police

officer during a high-speed chase, his codefendant, Brandon Swain, grabbed the steering wheel and jerked it, thereby causing the vehicle to swerve into the victim.

In *State v. King*, our supreme court affirmed that "the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder." 422 S.C. 47, 55, 810 S.E.2d 18, 22 (2017) (quoting *State v. King*, 412 S.C. 403, 411, 772 S.E.2d 189, 193 (Ct. App. 2015)); S.C. Code Ann. § 16-3-29 (2015) ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.").

Considering the particular facts established in Applicant's case, it is clear that he informed his plea counsel that the vehicle striking the alleged victim was involuntary in nature and therefore, lacked any intent, specific or otherwise, to kill the police officer. The same lack of criminal intent would also be an applicable affirmative defense to the Applicant's plea charge to the lesser included offense of assault and battery of a high and aggravated nature. Upon notice of this affirmative defense, plea counsel failed to conduct a reasonable investigation into this defense, including interviewing witness Brandon Swain (hereinafter referred to as "Swain"), thereby resulting in the failure to procure direct evidence of the Applicant's innocence.

**a) Reasonableness of investigation and interview of Brandon Swain.**

At the PCR hearing of this case, plea counsel Melisa W. Gay was examined regarding her efforts to locate and interview Swain, and her advisement to Applicant for him to plea to the lesser included offense of assault and battery of a high and aggravated nature. Plea counsel was questioned by Applicant Counsel as to her efforts to locate Swain as a potential defense witness, responding that:

“Yes. Mr. Swain was evasive. We couldn’t find him. I understand that Mr. Dreher is now saying something about telling me he was living in the woods somewhere but I would have never sent my investigator in the woods looking for anybody. I don’t think that’s an appropriate way to look for a witness.” Dreher v. South Carolina, *PCR Hearing Tr. 34:24*, March 11, 2024.

Further stating:

“The way [Applicant] described it, we had to go down a path. And into the woods and all that. I don't know that I would have asked my client, the man who worked for me, Mr. Brooks to do that, too.” *PCR Hearing Tr. 56:12*.

Plea counsel went on to explain that her investigator Mr. Brooks was a “lay investigator”, and later clarified that “he does not have a SLED verification, he was not an investigator.” *PCR Hearing Tr. 55:11*. In addition to her admission that she would not send her lay investigator into the woods to find Swain, plea counsel also testified that she never attempted any type of service of a subpoena with the assistance of law enforcement, nor did she ask the circuit court to help effectuate the service of any type of subpoena to compel his testimony.

Despite plea counsel’s statement that she exercised reasonable efforts to secure the statement of Swain, she did not send her lay investigator to the known location of the witness, and failed to take any additional steps to utilize the Court, or law enforcement, to effectuate service of a related subpoena. The failure to take these steps is reflective of a lack of reasonable efforts to secure the statement of Swain, a vital witness to the Applicant’s defense. Additionally, her utilization of a “lay investigator” who was not licensed by SLED, resulted in the failure of plea counsel’s investigation to utilize investigative techniques to locate this witness that would have likely been known to a SLED licensed investigator in the same position. For these reasons, plea counsel’s rendered ineffective assistance by failing to conduct a reasonable investigation of Applicant’s case, and as her performance fell below an objective standard of reasonableness, Applicant sustained prejudice because of plea counsel's deficient performance.

**b) Lack of mere speculation as to result of failed independent investigation.**

In the Applicant's case, we are not left to conjecture as to whether the locating of Swain, and subsequently procuring his statement, would have resulted in the discovery of exculpatory information which would have been vital to the defense of his case. This is shown by the sworn "Affidavit of Brandon Swain" dated April 17<sup>th</sup>, 2021, after the Applicant entered into his guilty plea, stating:

"I was riding in the SUV driven by George (Lee) Dreher on Friday, April 10, 2020. Seconds before the accident I jerked the steering wheel while sitting in the passenger seat." Affidavit of Brandon Swain, April 17, 2021.

Brandon Swain's sworn statement directly supports the affirmative defense conveyed by Applicant to his plea counsel evidencing his lack of criminal intent to commit the offense of attempted murder. Specifically, showing that the moment before Applicant's vehicle struck a police officer during a high-speed chase, Swain grabbed the steering wheel and jerked it, thereby causing the vehicle to swerve into the alleged victim. Further, this statement directly lines up with other exculpatory evidence in the Applicant's case, including the Applicant's statement, as well as the digital evidence of the alleged victim's body cam that shows the vehicle "wobble to the left and when it wobbled to the left it hit the [victim] in the leg" at the moment of impact. *PCR Hearing Tr.*, 49:25.

This after-acquired direct evidence clearly corroborates the affirmative defense of lack of criminal intent by Applicant, thereby creating a clear reasonable probability that, but for counsel's shortcomings in her investigation, he would not have pled guilty, but would have insisted on going to trial. Additionally, the corroborating nature of Swain's statement would have been compelling

direct evidence that resulted in a high likelihood of the Applicant's affirmative defense succeeding at the trial of his case.

**II. Counsel failed to inform Applicant of all available defenses and legal rights, specifically Applicant's right to compel witnesses to court.**

As outlined above, plea counsel in Applicant's case failed to take the reasonable investigatory steps to procure the statement of Swain, whose subsequent sworn statement directly evidenced the affirmative defense of lack of criminal intent in the Applicant's case. In addition to failing to conduct a reasonable investigation, plea counsel also failed to advise of Applicant of his legal right to use the Court's compulsory powers to compel Swain to a Court appearance to secure his statement in support of Applicant's defense.

Specifically, plea counsel failed to advise Applicant of the ability to compel the presence of Swain in a compulsory manner through the utilization of South Carolina Rules of Criminal Procedure, Rule 13. Rule 13 (a)(1) states (in relevant part):

Upon the request of any party, the clerk of court shall issue subpoenas or subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. An attorney, as an officer of the court, may also issue and sign subpoenas or subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence at a specified court proceeding. Rule 13(a)(1), SCRCrimP.

By failing to advise Applicant of the alternative compulsory powers available to him to secure the presence of a witness, that plea counsel's lay investigator was unable to locate, she failed to properly advise him of his attendant statutory and constitutional rights that a guilty plea would forego. Plea counsel explains in her testimony that she never thought to utilize these compulsory processes. Therefore, she failed to conduct her representation within the range of competence demanded of attorneys by failing to inform Applicant of the processes within her, and the Court's,

control to produce Swain as a defense witnesses. The significance of this failure is evidenced through the contents of the after-procured statement of Swain, a witness vital to the affirmative defenses in Applicant's case.

Additionally, plea counsel failed to conduct her representation within the range of competence demanded of attorneys by failing to present the pre-plea investigatory efforts that she took to secure the statement of Swain in her subsequent Motion to Withdraw Guilty Plea Based on Newly Discovered Evidence. Applicant maintains that the Court would have given those investigatory steps significant weight in consideration of granting his post-plea motions. The explanation of these failed investigatory steps would have assisted the Court in distinguishing the Applicant's pre-plea assertion of his affirmative defense with the significance of the procurement of Swain's post-plea statement by emphasizing the difficulties plea counsel had in locating the witness beforehand. Applicant maintains that, but for the failure to competently present this information in Applicant's post-plea motions, he would have succeeded in his request for the Court withdraw his guilty plea on the basis of newly discovered evidence.

**a) Plea counsel's admissions regarding her failure to advise Applicant of compulsory processes to produce witness.**

In the examination of Applicant at the PCR Hearing, he testified that he was never advised that he had the right to utilize the subpoena power of the court to call Brandon Swain to testify. *PCR Hearing Tr. 15:13*. This failure to advise Applicant was acknowledged by plea counsel in her testimony when she stated that she did not subpoena Swain because "you can't subpoena someone without an address or at least a physical locality where you can serve it on him. That would be my position." *PCR Hearing Tr. 43:9*. However, plea counsel went on to admit in her testimony that law enforcement would have likely been able to find him, stating "... the police can find people I

can't... I do believe that if the police want to find somebody that they might stake them out in the middle of the night or something, I'm not going to do that." *PCR Hearing Tr. 46:13*.

Plea counsel further stated she never filed any motions in the circuit court to try to effectuate the service of a subpoena of Swain, and that she failed to seek any assistance of law enforcement to locate this vital witness in Applicant's case. *PCR Hearing Tr. 59:10*. Plea counsel maintained this subpoena process "... was not something that I thought through, because I have never done that before... I just have never thought to do that." *PCR Hearing Tr. 60:15*. She went on to explain, "there could have been some version of reality that I created some subpoenas situation to try to find the witness.. however, I didn't know where he was, so it would have been difficult for me to do that in my professional opinion." *PCR Hearing Tr. 60:25*. In making this statement, plea counsel appears to admit that, while it would have been difficult to navigate the subpoena process to procure the testimony of Swain without his address, she acknowledges it was possibility.

Plea counsel was then examined regarding whether she had, in her discussions with Applicant, advised him that she could utilize the subpoena powers of the court on his behalf, and utilize law enforcement to go locate Swain. She responded that:

"... if there was going to be a trial, probably we would have looked at it differently. I think that there wasn't a trial... So no, I may not have ever said, I honestly don't remember... I didn't know this concept of going to the court and saying, I can't find this person, will you send the sheriff to look out for him for a court date... I don't know that I thought that through." *PCR Hearing Tr. 73:21*.

When questioned if she ever advised Applicant about the right to the exercise the compulsory process to force people to come into court to testify under the threat of arrest or detainment through contempt, plea counsel responded:

“No, never use those words. So if I never used those words, that I had [the right] to compulsory process to force a witness to come, I never used those words. I did discuss the fact that if we had a trial, it would be great to find Brandon.” *Id.* at 76:4.

Upon review of plea counsel’s testimony at this PCR Hearing, it is clear that she fundamentally failed to advise Applicant of his legal rights and abilities under the South Carolina Rules of Criminal Procedure to compel Swain’s testimony in support of his affirmative defense. Plea counsel explained that, while she believes that law enforcement can find witnesses that she cannot locate, she thought that it would be difficult to exercise the powers set forth in Rule 13 because she didn’t have the exact location of the witness. Further, plea counsel’s testimony confirmed that she never even thought of utilizing the compulsory powers of the Court to compel Swain’s presence, as she had never exercised this compulsory process with the assistance of law enforcement in her previous representation of criminal defendants. Applicant maintains that plea counsel’s lack of experience in utilizing the compulsory processes of the Court to produce a defense witness does not excuse her failure to advise Applicant of the attendant statutory and constitutional rights in his case.

**b) Plea counsel’s admissions regarding failure to present failed investigatory steps in Applicant’s post-plea motions.**

When plea counsel was questioned if she ever presented the trial court with any factual arguments regarding the pre-plea investigatory efforts made to procure the statement of Swain during Applicant’s Motion to Withdraw Guilty Plea Based on Newly Discovered Evidence, she simply responded that “you have a copy of the motion ... I guess if it’s not in there it’s not.” *PCR Hearing Tr. 61:17.*

Based on plea counsel’s response to this question, it is clear that she did not sufficiently present the pre-plea investigatory steps taken to secure the statement of Swain in support of Applicant’s Motion to Withdraw Guilty Plea Based on Newly Discovered Evidence. As Swain’s

statement directly corroborates the affirmative defense of his lack of criminal intent for the crime of attempted murder, Applicant argues that the Court would have given those pre-plea investigatory steps significant weight in consideration of his request to withdraw his guilty plea. But for plea counsel's failure to competently present this information in Applicant's post-plea motions, Applicant would have likely succeeded in his request for the Court withdraw his guilty plea through his Motion to Withdraw Guilty Plea Based on Newly Discovered Evidence.

### **CONCLUSION**

Applicant presents the following Conclusions of Law, and request for relief based on the above-stated factual arguments and assertions:

Plea counsel failed to conduct her representation within the range of competence, and an objective standard of reasonableness demanded of attorneys in criminal cases. This is evidenced in her failure to conduct a reasonable investigation into Applicant's case, the failure to advise him of his rights, and by the failure to sufficiently present the failed investigative steps to the Court in her post-plea motions. Applicant has suffered actual prejudice by demonstrating to this Court that there is a reasonable probability that, but for plea counsel's unprofessional errors, the result of the proceeding would have been different. This prejudice is based on Applicant's contention that, but for plea counsel's errors as outlined above, he would not have pleaded guilty and would have insisted on going to trial.

Applicant maintains that plea counsel failed in her duty to make reasonable investigations, by failing to utilize reasonable investigatory steps, and the compulsory subpoena powers of the Court, to compel the testimony of a witness that was vital to Applicant's presentation of his affirmative defense. Applicant further argues that the result of this failure to conduct a reasonable

investigation is not left to mere speculation, as the contents of Swain's post-plea statement clearly shows exculpatory information that would have been vital to the defense of his case.

Applicant alleges plea counsel was ineffective for not fully investigating his case and properly advising him of his legal rights and defenses. Specifically, that Applicant maintains that plea counsel failed to advise him to the right to subpoena a vital defense witness by using the compulsory powers of the court to compel the witness's attendance. Applicant has shown plea counsel's performance fell below an objective standard of reasonableness, and Applicant sustained direct prejudice because of counsel's deficient performance. Applicant has demonstrated this failure through the testimony of plea counsel, and the factual bases as set forth above in this memorandum.

Additionally, Applicant maintains that his guilty plea was not entered into voluntarily, knowingly, and intelligently. Specifically, in that plea counsel did not sufficiently advise Applicant of his right to confront one's accusers, and to compel the presence of a defense witness through the compulsory powers of the Court, through the assistance of law enforcement, as set forth in the South Carolina Rules of Criminal Procedure. Applicant has presented sufficient cause in his PCR Application as to why he should be allowed to depart from the truth of his statements that were presented to the Court during his guilty plea. Further, Applicant would maintain that his guilty plea was not voluntary, knowing and intelligent in character as plea counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's errors, the Applicant would not have pled guilty, but would have insisted on going to trial.

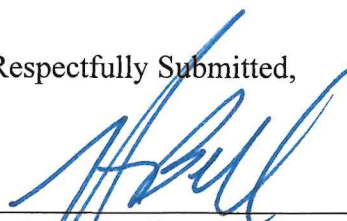
Applicant also maintains that plea counsel failed to properly inform defendant of the advantages and disadvantages of a plea agreement, and the attendant statutory and constitutional

rights that a guilty plea would forego by proceeding therewith. Again, plea counsel did not sufficiently advise Applicant of his right to confront one's accusers, and to compel the presence of a defense witness through the compulsory powers of the Court, through the assistance of law enforcement, as set forth in the South Carolina Rules of Criminal Procedure. Plea counsel's failure to properly advise him as to his rights to utilize the compulsory powers of the Court to present his affirmative defense, would have resulted in the production of exculpatory testimony, as evidenced by the Affidavit of Brandon Swain, and the affirmative defense of lack of criminal intent would have succeeded at trial in his charge of Attempted Murder.

Lastly, Applicant maintains that Plea counsel's representation failed to be within the range of competence, and an objective standard of reasonableness demanded of attorneys in criminal cases, as shown through her failure to present the failed investigative steps to procure Swain's statement to the Court in her post-plea motions. As Swain's statement directly corroborates the affirmative defense of his lack of criminal intent for the crime of attempted murder, Applicant maintains that the plea court would have given those pre-plea investigatory steps to locate the witness significant weight in consideration of his Motion to Withdraw Guilty Plea Based on Newly Discovered Evidence. But for plea counsel's failure to competently present this information in Applicant's post-plea motions, Applicant would have likely succeeded in his request for the Court withdraw his guilty plea through the Motion to Withdraw Guilty Plea Based on Newly Discovered Evidence.

Therefore, based on Applicants arguments, factual bases, and conclusions of law, Applicant would hereby reiterate his request to this Court to GRANT his request for Post-Conviction Relief from his related convictions and sentences, by GRANTING a new trial based on the ineffective assistance of plea counsel that has been established through these proceedings.

Respectfully Submitted,



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Date: **December 17, 2024**