

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Jocelyn J. Newman, Circuit Court Judge

MATTHEW DARAZS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001769

JOHNSON PETITION FOR WRIT OF CERTIORARI

SARAH E. SHIPE
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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May 07 2025

S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred finding petitioner's guilty plea was voluntarily made where the state violated the terms of the guilty plea agreement when two investigators and the solicitor recommend petitioner receive the maximum sentence of eighty years' imprisonment where petitioner's understanding was the state would make no recommendation as to sentence?

STATEMENT

In October 2017, a Lexington County grand jury indicted petitioner for three counts of criminal sexual conduct (CSC) with a minor, second degree, incest, and assault and battery, first degree. App. 133-142. On March 27, 2018, petitioner pled guilty before the Honorable William P. Keesley. App. 1-48. Petitioner was represented by David Mauldin and Kate Usry prosecuted for the state. App. 1.

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 49-57; 68-70. On June 8, 2023, an evidentiary hearing was held before the Honorable Jocelyn Newman. App. 71-110. Ola Johnson represented petitioner and Taylor Z. Smith was present on behalf of the state. App. 71.

On September 19, 2023, Judge Newman signed an order denying PCR. App. 111-132. The PCR court found petitioner was advised regarding sentence and pled guilty “freely, voluntarily, knowingly, and intelligently.” App. 123. The court found there was “no broken plea agreement” and petitioner did not establish any deficiency of defense counsel where counsel did not object or ask to withdraw the plea after the state’s request for maximum sentence. App. 123-124.

This petition follows.

ARGUMENT

The PCR court erred finding petitioner's guilty plea was voluntarily made where the state violated the terms of the guilty plea agreement when two investigators and the solicitor recommend petitioner receive the maximum sentence of eighty years' imprisonment where petitioner's understanding was the state would make no recommendation as to sentence.

Relevant facts

During petitioner's guilty plea hearing the solicitor told the court the state was dismissing four other charges in exchange for petitioner's guilty plea, there were otherwise no negotiations or recommendations from the state. App. 4, ll. 3-16; 10, ll. 19-21; 19, l. 23—20, l. 12. Petitioner pled guilty and the court accepted his plea. App. 27, ll. 1-17.

After victim impact statements, the lead investigator addressed the court and stated, "I have never seen a case as severe as this." App. 34, ll. 21-25. The investigator also declared that petitioner had confessed he was grooming another of his children, a child not included in the underlying charges. App. 35, ll. 9-13. At the conclusion of their statement, they requested the maximum sentence be imposed. App. 35, ll. 14-16. Another investigator addressed the court and asked for the maximum sentence. App. 36, ll. 15-19. Immediately after, the assistant solicitor declared, "[w]e echo the West Columbia Police Department as well as the victims in asking for a consecutive max sentence, so a total of eighty years." App. 36, ll. 20-25.

Ultimately, the plea court sentenced petitioner, at thirty-nine, to an aggregate term of fifty years' imprisonment. App. 37, l. 14; 45, l. 21—47, l. 18.

At petitioner's PCR hearing he testified that defense counsel explained he could receive zero to eighty years' imprisonment from the plea court. App. 77, ll. 3-4. Petitioner's

understanding was that the state would not recommend any particular sentence. App. 77, ll. 19-22; 79, ll. 6-22.

Defense counsel testified the agreement with the state was that petitioner would plead guilty to the indicted charges and other charges would be dismissed. App. 95, ll. 13-15. He agreed he told petitioner there was no sentence recommendation from the state. App. 97, ll. 17-24. Defense counsel also told petitioner the court could sentence him to eighty years' imprisonment, but the hope was petitioner would get less time. App. 96, ll. 10-21. He testified he did not know the solicitor would request the maximum and if he had known he would have informed petitioner. App. 100, ll. 24-25. Counsel's understanding of without recommendation was that the state and defense are free to argue for a sentence, but the plea court is not bound by either request. App. 95, l. 18—96, l. 9

Discussion

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). Where a defendant was represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. *Id.* In order to show prejudice in the context of a guilty plea a defendant must show there was a reasonable probability that, but for counsel's errors he would not have plead guilty and would have insisted on going to trial. *Id.* at 59.

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea. *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980)). Although the trial court is

not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea. *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

When determining issues relating to guilty pleas, the appellate court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984). 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. *Id.*

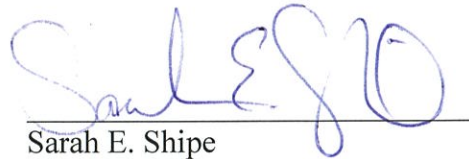
Petitioner's guilty plea was not valid where he was not aware the state intended to ask for the maximum sentence in his case. In fact, petitioner's understanding was that the state would make no request or recommendation to the plea court regarding his sentence. While he was aware of the potential that he may receive eighty years' imprisonment he was not aware the prosecuting solicitor and two law enforcement officers would add to the factual recitation and request the maximum sentence.

Additionally, counsel was ineffective for failure to object or withdraw petitioner's guilty plea where the state violated the terms of the plea agreement by requesting a maximum sentence. Petitioner was prejudiced by counsel's deficient performance because due to counsel's failure to make a motion to withdraw petitioner's plea, the plea court was not able to exercise its discretion. *See Rolan v. State*, 384 S.C. 409, 413-14, 683 S.E.2d 471, 474 (2009); *State v.*

Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982) (holding that the withdrawal of a guilty plea is generally within the sound discretion of the trial court). In *State v. Rikard*, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006) the court of appeals held Rikard was not entitled to withdraw her guilty plea. In that case the Rikard appealed her guilty plea arguing the plea court erred in denying her motion to withdraw her plea after the state asked for the maximum sentence during the plea where the state earlier indicated, on the sentencing sheet, that it would make no recommendation. *Id.* This case differs from *Rikard*, where the court found the reliance on the sentencing sheet was “unavailing.” Additionally, counsel testified petitioner may not have proceeded with the guilty plea if he had known the state would request the maximum sentence and that if defense counsel had known petitioner would receive a fifty-year sentence he would have recommend petitioner go to trial “because that’s a life sentence.” App. 94, ll. 1-3; 100, l. 24—101, l. 4.

CONCLUSION

Based on the foregoing argument, petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of May, 2025.

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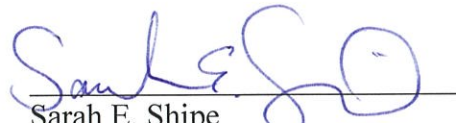
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Matthew Darazs states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Jocelyn J. Newman, which was held on June 8, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Matthew Darazs.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of May, 2025.

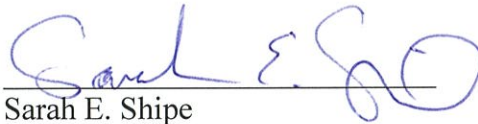
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her 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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