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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge

JAMAL KHALID RIOS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000005

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Petitioner's plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), was voluntarily, knowingly, and intelligently entered when trial counsel (1) failed to adequately investigate Petitioner's alibi witness, Ashley Lindsey, who would have testified that Petitioner was with Lindsey at Lindsey's house at the time of the shooting, and (2) coerced Petitioner to plead because he was facing a sentence of life without parole if convicted at trial, where the evidence established Petitioner would not have pled but would have proceeded to trial if counsel had properly investigated and did unduly pressure Petitioner?

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted Petitioner on July 17, 2020, for attempted murder, possession of a firearm during the commission of a violent crime, use of a vehicle without permission, and resisting arrest; on July 22, 2022, for unlawful possession of a firearm by a person convicted of domestic violence first degree; and on September 16, 2022, for first degree domestic violence. App. 132-141.

On October 11, 2022, Petitioner pled pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to the lesser included offense of assault and battery of a high and aggravated nature (ABHAN) and unlawful possession of a firearm by a person convicted of domestic violence first degree before the Honorable J. Mark Hayes, II. Assistant Solicitor James Hunter represented the state. Beverly Jones and James Cheek represented Petitioner. App. 1. Petitioner was sentenced to twenty years for ABHAN and five years concurrent for the weapons offense. App. 24, l. 20 – 25, l. 2. The state dismissed the remainder of Petitioner's charges in exchange for his plea. App. 2, ll. 12-15.

On September 29, 2023, Petitioner filed an application for post-conviction relief (PCR). App. 27-34. The state filed a return to this application on July 25, 2024. App. 35-54. With the assistance of counsel, Petitioner filed an amended application on August 23, 2024, raising the claim argued in this petition. App. 55. An evidentiary hearing was held on September 3, 2024, before the Honorable R. Lawton McIntosh. Assistant Attorney General Shayla Flores represented the state. Rodney Richey represented Petitioner. App. 56.

Petitioner testified at the hearing that he always wanted to go to trial. He was convinced the state did not have sufficient evidence to convict him. Petitioner emphasized the state's lack of DNA and fingerprint evidence as well as any eyewitnesses who would have identified him as

the shooter (besides the individual who was shot). Petitioner also had an alibi. He testified that he was at Ashley Lindsey's house at the time of the shooting. Leah McGregor dropped Petitioner off at Lindsey's house around nine o'clock on the night of the shooting and the shooting did not happen until "eleven, twelve o'clock." Between the state's lack of evidence and his alibi defense, Petitioner believed he would have been acquitted of attempted murder if he had proceeded to trial. App. 79, l. 1 – 89, l. 17.

Petitioner testified that, despite the state's lack of evidence and his alibi defense, he was ultimately coerced into pleading pursuant to Alford. Petitioner explained that shortly before he pled, the state served him with notice of its intent to seek a sentence of life without parole pursuant to S.C Code Ann. § 17-25-45. After the notice was served, Petitioner's trial counsel, Beverly Jones, then recruited the help of fellow attorney, James Cheeks, and Petitioner's family to convince him to plead guilty. Petitioner testified that trial counsel and his family told him he was too young to risk facing a sentence of life without parole and, if he accepted the state's offer, he would "still have time" outside of prison after he served his sentence. Petitioner admitted that zero to twenty years sounded "way better than life without parole." App. 79, l. 1 – 89, l. 17.

Petitioner also presented the testimony of Ashley Lindsey as evidence of his alibi defense. Lindsey testified that Petitioner was at her house the day of the shooting. At some point, Leah McGregor picked Petitioner up and drove him to a "block party." McGregor eventually drove Petitioner back to Lindsey's house around dusk. Lindsey was in the shower when Petitioner arrived so their son opened the door for him. Lindsey testified that upon his arrival, Petitioner came into the bathroom and asked to borrow her phone. They spent the remainder of the night "talking, chilling" on the couch in her living room. Lindsey explained that while she and Petitioner were together in the living room, she saw a news article about the

shooting on Facebook. She asked Petitioner about the shooting because the description of the suspect sounded like Petitioner. Petitioner denied being involved and Lindsey realized that Petitioner was with her at the time of the shooting. Lastly, Lindsey testified that when Petitioner returned from the block party, he was wearing the same clothes he was wearing before he went to the party and she did not see any blood on his clothes. App. 93, l. 10 – 98, l. 13.

Beverly Jones, Petitioner's trial counsel, testified that she represented Petitioner on all of his pending charges. Petitioner denied shooting the victim of the attempted murder charge and told Jones he was with Ashley Lindsey at the time of the shooting. App. 62, ll. 2-16. Accordingly, Jones interviewed Lindsey. Lindsey told Jones that Petitioner was with her the night of the shooting and she never saw any blood on Petitioner's clothing. Lindsey was prepared to testify to such if Petitioner proceeded to trial. Jones testified that she filed an alibi notice and prepared a subpoena for Lindsey. App. 66, l. 8 – 67, l. 12.

However, Jones admitted she was concerned that Lindsey's testimony was somewhat inconsistent with the statement Leah McGregor gave to law enforcement in which McGregor said she saw Petitioner the night of the shooting, that Petitioner was bloody, and that Petitioner talked to McGregor "about being sorry that he had to shoot somebody." App. 70, l. 15 – 71, l. 15.

Jones testified that eventually, Petitioner's case was placed "on the published trial docket" and Petitioner was served with notice of the state's intent to seek a sentence of life without parole because of his prior record. Around that time, James Cheek, another attorney in Jones's office, became involved with Petitioner's case because Cheek had known Petitioner's family for years and had previously represented Petitioner. App. 69, l. 4 – 70, l. 8.

Jones admitted that Petitioner wanted a jury trial up until the day before he pled pursuant to Alford. That day, the day before the plea, Jones had "back and forth" negotiations with the

assistant solicitor prosecuting the case. Jones also had a "protracted discussion" with Cheek and Petitioner about whether Petitioner should accept the state's offer and plead. Jones testified that she and Cheek told Petitioner that "what he [Petitioner] thought was his alibi that was gonna win the day for him, might not be enough to overcome the" victim's identification of Petitioner as the shooter. There was also another witness who had allegedly seen Petitioner "at the scene" of the shooting. Jones said she tried to express to Petitioner her concern that if Petitioner went to trial, he would be convicted and be sentenced to life without parole. Such a sentence at Petitioner's age was "darn serious." App. 74, l. 18 – 76, l. 12.

Jones asserted that she did not "coerce" Petitioner to plead guilty. She testified, "If you know anything about Jamal Rios [Petitioner], you don't make him do anything he doesn't want to. He's very - - he can be very strong minded." Jones concluded that she believed pleading was "definitely" in Petitioner's "best interest." App. 76, l. 14 – 77, l. 4.

The PCR court denied Petitioner relief. App. 106-131. The court found trial counsel's investigation was reasonable and that Petitioner failed to present any evidence trial counsel "would have discovered had she been more prepared." App. 123. Consequently, the court concluded Petitioner failed to show he would have opted to go to trial but for counsel's lack of investigation. App. 123.

The PCR court further found Petitioner freely, knowingly, and voluntarily pled guilty. App. 130. The court determined the record showed Petitioner knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty. App. 129-130.

Because Petitioner did not voluntarily, knowingly, and intelligently plead pursuant to Alford, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), was not voluntarily, knowingly, and intelligently entered when trial counsel (1) failed to adequately investigate Petitioner's alibi witness, Ashley Lindsey, who would have testified that Petitioner was with Lindsey at Lindsey's house at the time of the shooting, and (2) coerced Petitioner to plead because he was facing a sentence of life without parole if convicted at trial, where the evidence established Petitioner would not have pled but would have proceeded to trial if counsel had properly investigated and did unduly pressure Petitioner.

Petitioner always wanted a jury trial. The state had no physical or forensic evidence against him and Petitioner had a solid alibi defense. Petitioner only pled pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), because trial counsel failed to properly investigate Petitioner's alibi witness and later coerced Petitioner to plead because the state served Petitioner with notice of its intent to seek a sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45 if Petitioner was convicted at trial. Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability Petitioner would have gone to trial if counsel had properly investigated and did not unduly pressure Petitioner to plead.

"A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). "Where allegations of ineffective assistance of counsel are made, the question becomes, 'whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.'" Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686).

Courts evaluate allegations of ineffective assistance of counsel using a two pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88. "Under this prong, 'the proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

"The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea." Hyman v. State, 397 S.C. 35, 43, 723 S.E.2d 375, 378-79 (2012) (citing Hill v. Lockhart, 474 U.S. 52, 58 (1985)). "In the guilty plea context, the inquiry with respect to the counsel's alleged deficiency turns on whether the plea was voluntarily, knowingly, and intelligently entered." Id. (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000)). Furthermore, "the second, or 'prejudice,' requirement . . . focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. (quoting Hill, 474 U.S. at 59). "Therefore, 'a defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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. (quoting Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011)).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Therefore, "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." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

"Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (quoting Strickland, 466 U.S. at 691) (internal quotation marks omitted). "One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable." Id. (citing Grooms v. Solem, 923 F.2d 88, 90 (8th Cir. 1991)).

Here, Petitioner did not voluntarily, knowingly, and intelligently plead because of trial counsel's deficient performance. Counsel failed to properly investigate Ashley Lindsey as an alibi witness. Lindsey testified at the evidentiary hearing that Petitioner was with Lindsey at her house at the time of the shooting. The two hung out on the couch in her living room that night. Lindsey further explained that she saw a news article about the shooting on Facebook while she was with Petitioner and asked him if he was involved. Petitioner denied being involved and Lindsey realized he could not have been the shooter because he was with her during the shooting.

Moreover, trial counsel unduly pressured Petitioner to plead because the state had served Petitioner with notice of its intent to seek a sentence of life without parole if Petitioner was convicted at trial. Trial counsel believed Petitioner was too young to risk being sentenced to life

without parole. Counsel recruited the help of fellow attorney James Cheek, who previously represented Petitioner and was familiar with Petitioner's family, as well as Petitioner's brother, to convince Petitioner to waive his right to a jury trial and plead.

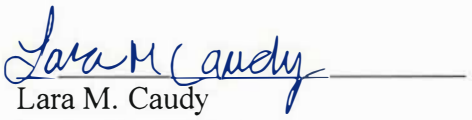
Petitioner was prejudiced by counsel's deficient performance because he would not have pled pursuant to Alford if counsel had properly investigated his alibi defense and did not unduly pressure him to accept the state's offer. Even counsel admitted that Petitioner wanted a jury trial up until the day before he pled, which is the day counsel brought in James Cheek, and had a "protracted discussion" with Petitioner. Petitioner did not believe the state had sufficient evidence to convict him given the lack of physical or forensic evidence of his guilt. Petitioner believed he would have been acquitted had he proceeded to trial given the state's lack of evidence coupled with his alibi defense. He only pled because counsel coerced him.

Respectfully, this Court should hold Petitioner did not voluntarily, knowingly, and intelligently plead pursuant to Alford, reverse Petitioner's convictions, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the question presented. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of May, 2025.

STATE OF SOUTH CAROLINA

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamal Khalid Rios states:

1. She is a senior 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, which was held on September 3, 2024, before the Honorable R. Lawton McIntosh, 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 the Court relieve her as counsel for Jamal Khalid Rios.

Respectfully Submitted,

Lara M Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of May, 2025.

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May 20 2025

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

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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This 20th day of May, 2025.