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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable William A. McKinnon, Circuit Court Judge

MICHAEL J. DENNIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000298

PETITION FOR WRIT OF CERTIORARI

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The court erred in denying post-conviction relief where counsel failed to investigate the prosecution's witnesses prior to advising Petitioner to plead guilty to the March 2020 incident, where the complainant (who was the only eyewitness) died prior to Petitioner's plea hearing, since counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, intelligently, and voluntarily entered 7

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ISSUE PRESENTED

Whether the court erred in denying post-conviction relief where counsel failed to investigate the prosecution's witnesses prior to advising Petitioner to plead guilty to the March 2020 incident, where the complainant (who was the only eyewitness) died prior to Petitioner's plea hearing, since counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, intelligently, and voluntarily entered?

STATEMENT

During the April term of 2021, a Richland County Grand Jury indicted Michael Dennis, Petitioner, for first-degree burglary, kidnapping, and armed robbery; offenses that occurred on March 17, 2020. During the August term of 2021, a Richland County Grand Jury indicted Petitioner for attempted murder and a second count of kidnapping; offenses that occurred on November 2, 2020. App. 129 – 138.

On April 5, 2023, Petitioner appeared before the Honorable Daniel Coble for a guilty plea hearing. Megan Eigenbrot represented Petitioner. Kathryn Cavanaugh prosecuted the case. App. 1. Petitioner pleaded guilty to the November 2, 2020, charges. He pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to the March 17, 2020, charges. The parties had negotiated a twenty-five-year sentence for the November, 2020, offenses. The court accepted the pleas. App. 11, l. 23 – 12, l. 23. Two accompanying counts of first-degree assault and battery were dismissed by nolle prosequi. App. 47, ll. 7-9. Sentencing was deferred. Petitioner was sentenced on or about May 9, 2023. App. 17, ll. 6-8; App. 139 – 148. At that time, he was sentenced to serve concurrent terms of imprisonment of twenty-five years for each offense. App. 139 – 148.

The allegations by the State regarding the March 17, 2020, incident were that Petitioner and a codefendant, who were both armed with handguns, forced their way into a residence on Crofts Avenue in Richland County, where a fifteen-year-old, J.W. (Complainant), was at home with his three-year-old brother. J.W. was known to Petitioner's codefendant from school. The State claimed the defendants demanded to know where J.W.'s older brother's guns were. According to the prosecutor, Petitioner placed J.W. in a headlock and fired his gun into the floor. Some items were stolen, including a PlayStation and a phone. J.W. ran to the neighbor's house

and called 911. J.W. identified Petitioner and his codefendant in a "show-up lineup." The solicitor stated that on a jail phone call the day after his arrest, Petitioner said he left the gun that was used in the transporting deputy's car, and the gun was located. App. 7, l. 11 – 8, l. 13. As seen, Petitioner was sentenced to twenty-five-year terms for the first-degree burglary, armed robbery, and kidnapping offenses arising from this incident.

Petitioner sought post-conviction relief (PCR). On April 17, 2024, Petitioner filed an application for PCR. App. 19 – 25. On June 26, 2024, the State made its return and partial motion to dismiss. App. 26 – 41. On or about August 13, 2024, Petitioner filed an amended PCR application. App. 42 – 43. On September 25, 2024, a hearing was held on the matter before the Honorable William A. McKinnon. Chelsey Marto represented Petitioner. D. Russell Barlow, III, represented the State. App. 44. The court heard testimony from Petitioner and from plea counsel.

Plea counsel testified Petitioner had difficulties understanding their discussions, and that she had to repeat herself a lot. She noted Petitioner exhibited "psychosis type behavior" during and after his arrest. She stated she observed that behavior in Petitioner during her representation. Petitioner was evaluated for competency, but he was determined to be competent. She noted medication appeared to help Petitioner, and that she did have some conversations with Petitioner which she believed he understood. App. 70, l. 16 – 72, l. 12.

Plea counsel testified that once Petitioner was arrested on his second set of charges, her "focus was on those charges, not so much the burglary and the prior kidnapping charge." App. 75, ll. 19-21. "We originally talked about those before he bonded out on the first set of charges." App. 75, l. 24 – 76, l. 1. Plea counsel testified she did not learn that the victim from the first case, J.W., passed away until after Petitioner's plea hearing. "The reason that is important is

because the victim is the only eyewitness to the incident. And I don't think the State could have proved the case without that victim. I was notified by his aunt, but it was only after the plea that I found out about that." App. 77, l. 19 – 78, l. 1. "I think that is in part because I, kind of, put those charges on the back burner. Had I known, I would have advised him not to plead to those charges. And I would have told the solicitor those can't be part of any plea deal, as they can't prove it." App. 78, ll. 2-6. Plea counsel stated she learned of J.W.'s death after Petitioner's pleas had been accepted by the court but before the parties reconvened for sentencing. App. 77, l. 19 – 80, l. 21; App. 82, ll. 13-16.

Plea counsel stated she would have advised Petitioner to go to trial had she known of the J.W.'s death prior to Petitioner's plea hearing. She stated she thought J.W. "was basically the entire case for the State," in that he called 911, provided suspect descriptions to law enforcement, and identified Petitioner as one of the suspects. App. 81, ll. 1-21. She stated it was her assessment that Petitioner "would have had a fair chance at trial" given J.W.'s death. App. 80, l. 22 – 81, l. 1. Plea counsel explained that once she was notified of the death by Petitioner's aunt, she searched for and found the obituary online. She stated the death occurred before the plea hearing. She admitted she should have checked "to see if the State still had their witnesses available" before she advised Petitioner to waive his right to trial.[1] App. 82, ll. 8-23.

Petitioner testified that he was willing to plead guilty to the November 2, 2020, charges but "never wanted to plead" to the March 17, 2020, incident described above. App. 51, ll. 19-25. Petitioner asserted plea counsel should have investigated the facts of his first case. Petitioner

[1] Despite learning this prior to sentencing, plea counsel surprisingly did not move to withdraw the plea—she did not make a formal request to withdraw the plea on the record; she only mentioned it to the plea judge in chambers prior to sentencing. App. 80, ll. 14-21. (The sentencing transcript was not before the PCR court. Therefore it is not included in the Appendix. App. 49, ll. 2-8.)

was asked: "*What facts did you not know before the plea*?" and he answered: "I was saying, in my first case, like, *a victim passed away and I didn't find that out until I talked to my auntie* and my little cousin. His lawyer has told him that one of my victims passed away and I never knew that or whatever." App. 55, ll. 5-15 (emphasis added). Petitioner stated he did not find that out until he talked to his aunt on the phone while he was at the jail and learned this information, and he then told plea counsel when counsel came to visit him. App. 55, ll. 16-23. Confusingly, however, Petitioner affirmed when asked that this was before his before his plea. App. 55, ll. 23-25. Petitioner was asked whether he learned the information when he was in the Alvin S. Glenn Detention Center (i.e., pretrial) or when he was at the Department of Corrections (i.e., post-sentencing). Petitioner stated he was at Alvin S. Glenn. He was then asked, "So was this before your plea?" and answered, "Yes, ma'am." App. 55, ll. 16-25. He clearly meant this was before his sentencing. As seen, plea counsel testified this information was learned after the plea but before sentencing. App. 77, l. 19 – 78, l. 1; App. 80, ll. 7-21. Petitioner would still have been at the Detention Center at that point, since he had not yet been sentenced to the Department of Corrections.

On February 7, 2025, the PCR court issued an order of dismissal. App. 90 – 128. The order addressed Petitioner's claim that counsel was "ineffective for failure to investigate the facts and circumstances regarding his case, specifically, that the victim and only eyewitness in his first set of charges passed away prior to the plea." App. 112. "This Court finds that Plea Counsel's failure to investigate the victim's obituaries to determine if they had passed away prior to a guilty plea is *not reasonable*. Nevertheless, Applicant testified that he knew that the victim passed away *before* he pled, but he did not provide that information to Plea Counsel." App. 113 (emphasis in original). "Moreover, to whatever extent Applicant was not entirely satisfied with

Plea Counsel's representation or investigations, he was presented with an opportunity to express his dissatisfaction of the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea." App. 114.

This petition for writ of certiorari follows.

ARGUMENT

The court erred in denying post-conviction relief where counsel failed to investigate the prosecution's witnesses prior to advising Petitioner to plead guilty to the March 2020 incident, where the complainant (who was the only eyewitness) died prior to Petitioner's plea hearing, since counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, intelligently, and voluntarily entered.

Plea counsel had a duty to independently investigate the case. Had she done so, she would have learned a key witness against Petitioner died, and, as she admitted, she would have advised Petitioner to plead not guilty. A guilty plea must be intelligently entered. Because Petitioner was not advised there was a fair probability he would succeed at trial, his *Alford* pleas were not intelligently tendered.[2]

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and the deficient performance prejudiced the petitioner. *Id.* at 687.

"Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596-97 (2007)). "[C]ounsel

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[2] As seen, Petitioner testified he always wanted a trial on these offenses, which stemmed from an incident that occurred on March 17, 2020. The argument contained in this petition applies to those offenses: indictment nos. 2021-GS-40-00317 – 00319.

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). "So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient." *Edwards*, 392 S.C. at 457, 710 S.E.2d at 65. "[I]nquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions . . ." *Strickland*, 466 U.S. at 691. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." *Id.*

"To show prejudice, the applicant "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*, 466 U.S. at 694. The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). "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." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing *Hill v. Lockhart*, *supra*). "The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial." *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018). "[W]here the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the

determination whether the error 'prejudiced' the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial." *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Plea counsel's performance was deficient—she admitted she did not independently investigate the witnesses in this case, and her failure was not strategic. Instead, she stated she simply put these charges on the "back burner" and focused on Petitioner's other case. Counsel's failure to take the charges off the metaphorical "back burner" before advising Petitioner to waive his right to trial on them was deficient under prevailing professional norms. *E.g.*, *Edwards v. State*, 392 S.C. at 456, 710 S.E.2d at 64 (criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case). The PCR court recognized this, concluding in its order of dismissal that "Plea Counsel's failure to investigate the victim's obituaries to determine if they had passed away prior to a guilty plea is *not reasonable*." App. 113 (emphasis in original).

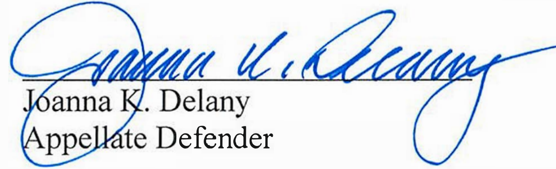
Plea counsel stated she would have advised Petitioner to plead not guilty to the charges had she known of Complainant's death, as he would have had a fair chance at trial. Petitioner was prejudiced. *E.g.*, *Stalk v. State*, 383 S.C. at 562, 681 S.E.2d at 594. The PCR court's conclusion that Petitioner was not prejudiced was unsupported by the record. The PCR court concluded that despite counsel's deficiency, "Applicant testified that he knew that the victim passed away *before* he pled, but he did not provide that information to Plea Counsel." App. 113 (emphasis in original). Petitioner testified he *did* tell plea counsel about learning J.W. had died.

App. 55, ll. 8-23. However, Petitioner did not learn this information until after his plea but before his deferred sentencing. App. 77, l. 19 – 78, l. 1; App. 80, ll. 7-21. The court's conclusion that Petitioner knew about J.W.'s death earlier stems for a misapprehension of the record. As seen, Petitioner was asked: "*What facts did you not know before the plea*?" and he answered: "I was saying, in my first case, like, *a victim passed away and I didn't find that out until I talked to my auntie* and my little cousin. His lawyer has told him that one of my victims passed away and I never knew that or whatever." App. 55, ll. 5-15 (emphasis added). Counsel confirmed she learned the information from the aunt after Petitioner's plea but before his deferred sentencing. Finally, the PCR court's conclusion that Petitioner should have told the plea judge he was dissatisfied with counsel's performance overlooks that Petitioner did not learn the critical information until after he had pleaded guilty.

Petitioner established both error and prejudice: this Court should grant the petition for writ of certiorari. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. at 687.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari to allow full briefing on this issue.



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This 20th day of May, 2025.

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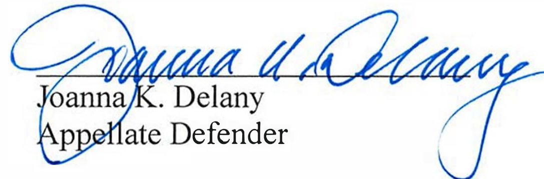
S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this 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.