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Jun 13 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable R. Lawton McIntosh, Circuit Court Judge

MARSHALL D. LEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-002149

JOHNSON PETITION FOR WRIT OF CERTIORARI

SARAH E. SHIPE
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ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the PCR court erred finding defense counsel was not ineffective for failure to adequately investigate petitioner's self-defense claim and instead encouraged him to plead guilty as indicted where petitioner would have proceeded to trial but for counsel's deficient performance?

STATEMENT

On June 4, 2020, a Cherokee County grand jury indicted petitioner for murder and possession of a weapon during the commission of a violent crime. App. 112—113. Petitioner pled guilty as indicted, pursuant to a negotiated sentence, before the Honorable R. Keith Kelly on October 17, 2022. App. 1-21. Michael Berry represented petitioner. App. 1. Adrienne Barry prosecuted for the state. App. 1.

Judge Kelly accepted petitioner's guilty plea and sentenced petitioner, according to the negotiation, to concurrent terms of thirty years' imprisonment for murder and five years' imprisonment for possession of a weapon. App. 12, ll. 16-18; 21, ll. 2-5.

Petitioner filed an application for PCR. App. 23—31; 51. An evidentiary hearing was held before the Honorable R. Lawton McIntosh on September 3, 2024. App. 52—78. Rodney Richey represented petitioner. App. 52. Shayla Flores represented the state. App. 52.

On November 22, 2024, Judge McIntosh signed an order of dismissal. App. 80—111. In the order the PCR court found petitioner failed to establish any constitutional violations or deprivations entitling him to relief. App. 81. Specifically, the court found defense counsel's investigation was reasonable and that petitioner "offered little more than mere speculation" regarding what evidence would have been discovered had counsel been more prepared. App. 91. Accordingly, the court found petitioner failed to show that he would have proceeded to trial but for counsel's lack of investigation. App. 91. The court concluded defense counsel's representation was not deficient, and counsel conducted a reasonable investigation. App. 92.

This petition follows.

ARGUMENT

The PCR court erred finding defense counsel was not ineffective for failure to adequately investigate petitioner's self-defense claim and instead encouraged him to plead guilty as indicted where petitioner would have proceeded to trial but for counsel's deficient performance.

Guilty plea hearing

At petitioner's guilty plea hearing the state alleged decedent, through her work as an escort, arranged to meet petitioner on September 24, 2019, and was never seen again. Decedent's phone reflected her last calls and text messages were between decedent and petitioner. Additionally, her phone location appeared to show decedent had been to petitioner's home. App. 7, l. 6—8, l. 18.

Petitioner spoke with police and initially told them decedent never arrived at his home. App. 8, ll. 23-25. Police searched the area around petitioner's home and found decedent's body in a nearby gully. App. 9, l. 3-25. Petitioner's statement to police developed and he later admitted he saw decedent that day. The last statement petitioner gave police was that decent arrived with another man. That man tried to rob petitioner and in self-defense he shot decedent, but the man got away. App. 10, l. 12—11, l. 19. The solicitor concluded, that while the state could not say how it happened, the facts were that petitioner shot and killed decedent. App. 11, ll. 20-22.

Petitioner agreed with the facts and pled guilty as indicted to a negotiated sentence of thirty years' imprisonment. App. 2, ll. 14-18; 5, ll. 10-25; 12, ll. 11-18. At the conclusion petitioner apologized to decedent's family. App. 15, ll. 16-20.

Evidentiary hearing

At his evidentiary hearing, petitioner asserted defense counsel did not adequately

investigate his case in order to present self-defense at trial. App. 59, l. 14—60, l. 25. He testified he met decedent online and they arranged to meet at his home. Decedent arrived late because of a flat tire. He testified decedent had a man named Alan with her. While petitioner was trying to change decedent's tire, Alan attacked petitioner. Petitioner said he shot his gun in self-defense. App. 57, l. 21—59, l. 11; 64, ll. 22-25. He mentioned there was physical evidence at his home that supported his version of events and that he told defense counsel about these items, but counsel never followed through with investigating the evidence. App. 65, ll. 1-25; 66, ll. 8-14. Petitioner testified counsel told him self-defense was inapplicable to the facts in his case. App. 60, ll. 12-22.

Petitioner testified he wanted to go to trial and in fact his case was up that week. Defense counsel told petitioner if he got convicted at trial he would be sentenced to life imprisonment. App. 62, ll. 9-12. Petitioner felt coerced to plead guilty because he believed if he proceeded to trial and lost, he would get the maximum punishment life imprisonment. App. 63, ll. 13-21.

Defense counsel testified he discussed self-defense with petitioner and although he did not know exactly what happened he thought it was credible that there was another person with decedent when she arrived at petitioner's home. App. 71, ll. 1-20. He denied that he told petitioner self-defense did not apply to the facts in his case. Counsel indicated petitioner's evolving statements to police made self-defense difficult. App. 71, ll. 8-24.

Regarding his investigation, he stated the attorney previously appointed had petitioner evaluated for mental competency and petitioner was found competent. App. 72, ll. 11-18. Counsel said during his representation he reached out to a doctor to see if any medications petitioner took would have negatively impacted petitioner but there was no connection. App. 72, l. 19—73, l. 3.

Counsel agreed petitioner's case was meant to go to trial and stated he was prepared to try the case. App. 73, ll. 7-11. He testified he advised petitioner if he were found guilty at trial, he would likely receive a life sentence. App. 73, ll. 15-23. Counsel said petitioner made the decision to plead guilty the Friday before his trial. App. 74, ll. 8-11.

Discussion

Our State's Constitution and legislature have ensured persons accused of a crime will enjoy these rights. The Constitution of the State of South Carolina provides:

> The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

S.C. Const. art. 1, § 14; see also S.C. Const. art. 1, § 3 (due process rights) (emphasis added).

The South Carolina Code confirms these guarantees by allowing criminal defendants to compel witnesses to appear in their favor and to produce witnesses and evidence at trial. *See* S.C. Code Ann. § 17–23–60 (1976); S.C. Code Ann. § 19–7–60 (1976). These safeguards ensure the accused will benefit from a fair and impartial trial.

"Guilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results." *Brady v. United States*, 397 U.S. 742, 758, 90 S.Ct. 1463, 1474 (1970). The difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). The longstanding test for determining the validity of a 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) (internal quotations omitted) (applying the two-part test for

claims of ineffective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984) to claims of the same against plea counsel).

"[T]he voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Id.* On the other hand, the prejudice requirement focuses on whether "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *Id.* 474 U.S. at 59, 106 S.Ct. at 370. "[T]he 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." *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 615-12 (2011).

Furthermore, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *see also Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007) ("Without a doubt, '[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.'") (quoting *Thompson v. Wainwright*, 787 F.2d 1447, 1450 (11th Cir. 1986)). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Lounds*, 380 S.C. at 460, 670 S.C. at 649 (quoting *Ard*, 372 at 331-32, 642 S.E.2d at 597); *see also Sneed v. Smith*, 670 F.2d 1348, 1353 (4th 1982) ("To meet this standard, an attorney must at a minimum, 'conduct appropriate investigations, both factual and legal, to

determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.'") (quoting *Coles v. Peyton*, 389 F.2d 224, 226 (4th 1968)).

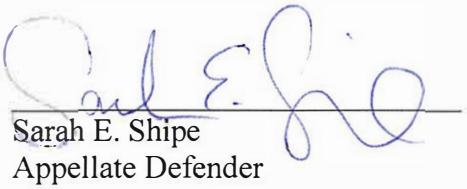
"Few rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers v. Mississippi*, 410 U.S. 284, 302, (1973); *see also California v. Trombetta*, 467 U.S. 479, 485 (1984) (finding the Due Process Clause of the Fourteenth Amendment affords criminal defendants a meaningful opportunity to present a complete defense); *State v. Hutton*, 358 S.C. 622, 631 (Ct.App.2004) (recognizing fundamental fairness requires criminal defendants be granted a meaningful opportunity to present a complete defense); *State v. Harris*, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct.App.1993) ("Due process requires that a criminal defendant be given a reasonable opportunity to present a complete defense."). "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers*, 410 U.S. at 294.

Counsel was deficient where he was aware of petitioner's claim of self-defense that could have, and should have, been explored more thoroughly in preparation of his defense. *See McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Petitioner testified there was evidence to support his claims at his home and that counsel refused to go and investigate that evidence.

Petitioner was prejudiced where he would have proceeded to trial but for counsel deficiency in investigating the case to sufficiently prepare a case of self-defense. *See Hill v. Lockhart*, 474 U.S. 52, 56 (1985). Petitioner testified he wanted to go to trial and planned to go to trial. He testified that counsel told him self-defense was not applicable in his case and petitioner felt coerced to plead guilty because of the threat of losing at trial and receiving a sentence of life in prison.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on the issue.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of June, 2025.

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RESPONDENT

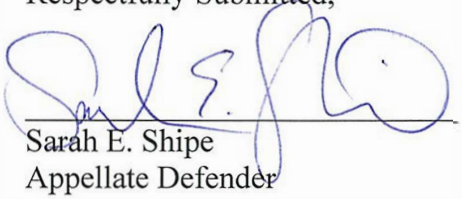
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marshall Lee 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 R. Lawton McIntosh, which was held on Sept. 3, 2024, 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 Marshall Lee.

Respectfully Submitted,



Sarah E. Shipe
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This 13th day of June, 2025.

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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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Appellate Defender

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ATTORNEY FOR PETITIONER

This 13th day of June, 2025.