

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County  
Lee S. Alford, Circuit Court Judge

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OCT 23 2013

S.C. Supreme Court

MONTEZ L. RUTLEDGE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000630

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR judge err in refusing to find that the guilty plea was rendered involuntary by the fact that petitioner did not receive a copy of the State's evidence against him until after entering a guilty plea, only met with his attorney twice and during those two meetings did not have adequate time to review all of the discovery material with the attorney?

## STATEMENT

In January of 2012, the York County Grand Jury indicted Rutledge for murder, two counts of attempted murder, burglary first degree, kidnapping, attempted armed robbery, two counts of possession of a pistol during the commission of a violent crime, criminal conspiracy and possession of a stolen pistol. On February 8, 2012, Rutledge appeared before the Honorable Michael G. Nettles and pled guilty as charged except as to the burglary charge which was reduced from burglary first degree to burglary second degree. Attorney Steven Schusterman represented Rutledge at the plea. Solicitor Kevin Brackett prosecuted the case on behalf of the State. Judge Nettles sentenced Rutledge to an aggregate sentence of thirty three (33) years. A direct appeal was not perfected.

On August 24, 2012, Rutledge filed an application for post conviction relief. The State filed a return on December 6, 2012. On June 30, 2013, Rutledge filed a supplemental application for post conviction relief. On March 4, 2013, an evidentiary hearing was held before the Honorable Lee S. Alford. Attorney Jordan Calloway represented Rutledge at the PCR hearing. Attorney J. Rutledge Johnson was present on behalf of the State. In a written order filed March 5, 2013, Judge Alford denied relief and dismissed the application. A timely notice of intent to appeal was served on March 22, 2013. This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred in refusing to find that the guilty plea was rendered involuntary by the fact that petitioner did not receive a copy of the State's evidence against him until after entering a guilty plea, only met with his attorney twice and during those two meetings did not have adequate time to review all of the discovery material with the attorney.

During the PCR hearing Rutledge testified that he met with his attorney twice and did not have the opportunity to review the discovery material during those two meetings. (App. p. 139, line 2 – p. 140, lines 1-21). Plea counsel confirmed that he only met with his client two times. (App. p. 158, lines 8-10). Plea counsel admitted that he did not provide Rutledge with the discovery material prior to the guilty plea. (App. p. 164, lines 1-11). Plea counsel further admitted that he did not discuss with Rutledge all of the documents provided by the State in discovery. (App. p. 164, lines 12-15). Rutledge testified that his lawyer told him all of his co-defendants “told on him.” (App. p. 139, line 22 – p. 140, lines 1-6). Rutledge testified that if he had seen the State's evidence, specifically statements from two co-defendants who said Rutledge had a gun but did not say Rutledge shot anyone, he would not have pled guilty and instead would have insisted on going to trial. (App. p. 142, line 21 – p. 143, lines 1-22).

In the order of dismissal the PCR judge wrote. “Based on the foregoing, this Court finds the Applicant's testimony concerning an involuntary guilty plea not credible, while finding Counsel's testimony at the PCR hearing credible. This court finds the Applicant pled guilty freely, voluntarily and without any coercion, threats or promises. Therefore, this allegation is denied.” (App. p. 187). The PCR judge erred.

In State v. Lopez, 352 S.C. 373, 378-379, 574 S.E.2d 210, 213 (Ct.App. 2002) the South Carolina Court of Appeals wrote:

A guilty plea must be an informed and intelligent decision. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). A guilty plea is valid if it represents a voluntary and intelligent choice among alternatives available to a defendant. Id.

The guilty plea in the present case does not represent a voluntary and intelligent choice among alternatives available because Petitioner never saw the State's evidence against him prior to entering a guilty plea.

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, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). 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, 104 S.Ct. 2052). 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, 104 S.Ct. 2052. “Under this prong, ‘[t]he 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, 104 S.Ct. 2052). 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, 104 S.Ct. 2052. “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. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). The Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274

(1969). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). “A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.’ ” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “The longstanding 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, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

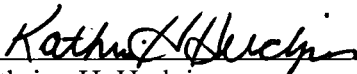
“The second, or ‘prejudice,’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. at 59, 106 S.Ct. 366. “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character 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).

Counsel was ineffective in failing to provide and review the discovery material with Petitioner. There is a reasonable probability that if Petitioner had reviewed the State's evidence against him, he would not have pled guilty and instead would have insisted on going to trial. The PCR judge erred in refusing to grant relief.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,

  
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Kathrine H. Hudgins  
Appellate Defender  
E-Mail: [khudgins@sccid.sc.gov](mailto:khudgins@sccid.sc.gov)  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201  
(803) 734-1343

ATTORNEY FOR PETITIONER

This 23rdth day of October, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO YORK COUNTY  
LEE S. ALFORD, CIRCUIT COURT JUDGE

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MONTEZ L. RUTLEDGE,

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STATE OF SOUTH CAROLINA,

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PETITION TO BE RELIEVED AS COUNSEL

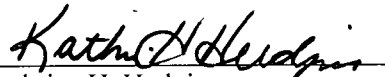
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Counsel for Montez L. Rutledge states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on February 4, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Montez L. Rutledge.

Respectfully submitted,



Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 11th day of October, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to York County  
Lee S. Alford, Circuit Court Judge

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MONTEZ L. RUTLEDGE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

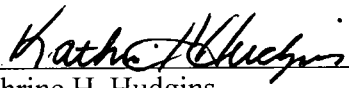
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CERTIFICATE OF SERVICE

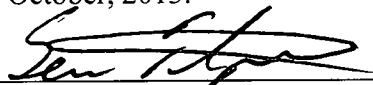
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Montez L. Rutledge, #349702, at Lee Correctional Institution 990 Wisacky Hwy. Bishopville, SC 29010 this 23rd day of October, 2013.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day  
of October, 2013.

  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022.