

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jul 11 2025

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

LAMARCUS D. THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000160

PETITION FOR WRIT OF CERTIORARI

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 1

ARGUMENT

The PCR court erred finding petitioner’s guilty plea was voluntary
where counsel admittedly failed to show petitioner crucial
discovery in his case before petitioner made the decision to plead
guilty. 3

Guilty plea hearing 3

Evidentiary hearing 4

Discussion 5

CONCLUSION 10

ISSUE PRESENTED

Whether the PCR court erred finding petitioner's guilty plea was voluntary where counsel admittedly failed to show petitioner crucial discovery in his case before petitioner made the decision to plead guilty?

STATEMENT

On August 18, 2017, a Spartanburg County grand jury indicted petitioner for four counts of armed robbery, four counts of possession of a weapon during the commission of a violent crime, and six counts of intent to defraud lottery. App. 142—161. On October 17, 2019, petitioner pled guilty as indicted before the Honorable J. Mark Hayes, II. App. 1-27. James Cheek represented petitioner. Spencer Smith prosecuted for the state. App. 1.

Judge Hayes sentenced petitioner, pursuant to negotiations, to concurrent terms of twenty years' imprisonment for each count of armed robbery, five years' imprisonment for each count of possession of a weapon, and five years' imprisonment for each count of intent to defraud lottery.¹ App. 26, l. 21—27, l. 5; 162—174.

Thereafter petitioner filed for post-conviction relief (PCR). App. 29—37. On April 8, 2021, an evidentiary hearing was held before the Honorable J. Derham Cole. App. 50—96. Susannah Ross represented petitioner. William Ray represented the state. App. 50.

On January 15, 2025, Judge Cole signed an order denying PCR. App. 102—140. The PCR court found that the record and counsel James Cheek's credible testimony showed petitioner did not meet the burden of showing counsel was constitutionally ineffective where petitioner alleged Cheek did not provide and review all of his discovery prior to his deciding to plead guilty. App. 117. The court specifically found petitioner did not show any evidence of how additional preparation or communication would have resulted in a different outcome. App. 117. The court also found petitioner freely, knowingly, and voluntarily pled guilty and failed to establish and deficiency of counsel or any prejudice. App. 139.

This petition follows.

¹ The negotiation was current sentences between ten and twenty years. App. 17, ll. 10-13; 18, ll. 4-7.

ARGUMENT

The PCR court erred finding petitioner's guilty plea was voluntary where counsel admittedly failed to show petitioner crucial discovery in his case before petitioner made the decision to plead guilty.

Guilty plea hearing

At petitioner's guilty plea the state alleged that between January 16, 2017, and February 17, 2017, petitioner, armed with a weapon, robbed three convenience stores stealing cash, cigarettes, and lottery tickets. The solicitor specified that each instance was a black male with his face concealed, at three his face was concealed with a red bandanna. In two of the robberies the solicitor stated the clerk described the man as wearing "distinctive gray gloves" in the other two the clerk described the man as wearing "a distinctive pair of orange and black gloves." App. 13, l. 5—14, l. 12. Petitioner was found cashing some of the stolen lottery tickets in the days after the robberies. App. 14, l. 23—15, l. 8.

The solicitor told the plea court that upon searching petitioner's home police found a gun matching the description of the gun used in two of the four armed robberies. App. 18, ll. 18-22. He also told the court police found "numerous items, clothing items consistent to the robbery," including a pair of gray gloves and a pair of orange and black gloves that seemed to match perfectly. App. 15, l. 21—16, l. 7.

During the factual recitation the solicitor stated, "I showed [surveillance videos from the armed robberies] to Mr. Cheek." App. 14, ll. 13-15. After the factual recitation the solicitor confirmed to the plea court that he shared discovery with "the defense." App. 18, ll. 22-23.

The plea court found there was a substantial factual basis for the guilty plea and sentence petitioner to an aggregate term of twenty years' imprisonment. App. 26, l. 19—27, l. 5.

Evidentiary hearing

At his evidentiary hearing, petitioner testified Mr. Cheek did not thoroughly review his discovery with him prior to his deciding to plead guilty. App. 58, ll. 2-5. Petitioner admitted to possessing stolen lottery tickets but denied committing the armed robberies. He stated he now knew there was never an identification of the person that committed the armed robberies. App. 58, l. 11—59, l. 25; 60, l. 1—6, l. 4. Petitioner testified had he reviewed his discovery and understood the weaknesses in the state's case against him he would not have pled guilty. He stated he should have waited and gone to trial. App. 67, ll. 4-20.

Plea counsel, James Cheek, testified he had been practicing criminal law for forty-one years. App. 78, ll. 18-24. He said Chad Snyder was appointed in petitioner's case. Cheek testified his job with the public defender's office is to work with trial attorneys but that he does not try cases. App. 79, ll. 3-8. Eventually, Mr. Cheek got a referral to go and speak to Mr. Snyder's client, petitioner, at the jail. App. 79, ll. 15-22. Cheek testified he explained the charges and petitioner's options and told him he would give him time to consider his choices. App. 80, l. 15—81, l. 4.

During direct examination, Mr. Cheek claimed he reviewed petitioner's discovery with him. App. 81, ll. 13-25. He stated he did not leave discovery with petitioner due to security reasons but that he did show petitioner "a picture of him in a very distinctive cap" cashing stolen lottery tickets. App. 82, l. 1—83, l. 4. Later, during cross-examination, Mr. Cheek admitted he did not show petitioner the video evidence in his case. He stated, "I did not do that. If he wanted to review that, he could do that with his trial attorney in preparation for actual trial if he wanted to see the video." He also told petitioner it was not necessary for him to see all the discovery in his case because all he needed to see was the photograph of him cashing the lottery tickets. App.

88, l. 10—89, l. 13.

Additionally, Mr. Cheek could not recall whether he discussed the problems or inconsistencies in the state's evidence against petitioner and stated, "[n]ow whether or not I pointed out to him an inconsistencies, I don't know what the inconsistencies would have been because he didn't have his trial yet." App. 93, l. 6—94, l. 6.

Discussion

Counsel Cheek's representation of petitioner was deficient where he failed to review all of petitioner's discovery with him prior to petitioner's decision to plead guilty and petitioner was prejudiced where he testified, he would have proceeded to trial had he seen his discovery, specifically surveillance video of the armed robberies. As a result of Cheek's deficiency, petitioner's guilty plea was not voluntary where he did not have the benefit of reviewing all of his discovery prior to his decision to plead guilty.

The Supreme Court of South Carolina has considered the requirements of a voluntary and knowing guilty plea previously, including in the following cases.

In *State v. Hazel*, the Court held defendant's guilty plea was not knowing and therefore invalid because it was made without an understanding of the sentencing consequences. 275 S.C. 392, 271 S.E.2d 602 (1980). In that case neither defense counsel nor the plea court made defendant aware of the mandatory punishment for the offense they pled guilty to. *Id.*

In *Dover v. State*, the Court affirmed the lower court's grant of PCR, holding defendant's guilty plea was not voluntarily and understandingly made where defendant was not made aware of the consequences of his guilty plea.² 304 S.C. 433, 405 S.E.2d 391 (1991). In that case the defendant pled guilty to twenty-nine indictments including grand larceny, burglary, second

² The Court disagreed with the lower court's reasoning and affirmed the result on other grounds appearing in the record.

degree burglary and petit larceny and was given an aggregate sentence of twenty-five years' imprisonment. *Id.* at 434, 405 S.E.2d at 392. In that case the Court found defendant's plea was not voluntarily and understandingly made where defendant did not have a full understanding of the consequences of his plea where it was not established that defendant understood the severity of the crimes or the sentences they carried. *Id.* The Court analogized *Dover* to *Hazel* where the defendant was not made aware that her charges carried a mandatory life sentence.

In *Harres v. Leeke*, the Court reversed the lower court's grant of PCR and held defendants' guilty pleas were voluntary and knowing. 282 S.C. 131, 318 S.E.2d 360 (1984). In that case two defendants pled guilty to exhibiting obscene films and were sentenced. *Id.* at 132, 318 S.E.2d at 360. At the PCR hearing defendants testified it was their belief the plea court would sentence them to probation, and they were instead sentenced to active time. Based on the defendants' testimony during the plea hearing and their testimonies during the PCR hearing the Court found the guilty pleas were knowing and voluntary. *Id.* at 133, 318 S.E.2d at 361.

Unlike *Harres v. Leeke*, petitioner is *not* alleging he was promised a particular sentence if he pled guilty. He understood the negotiated sentence range the state offered that was not his allegation in support of relief. Rather, petitioner submits he should have had the benefit of reviewing important discovery so that he could make an informed decision regarding the state's offer to plead guilty.

In *Rollinson v. State*, the Court reversed the lower court's grant of PCR and held (1) counsel was not ineffective for failure to challenge the legality of a weapons frisk that led to discovery of drugs and (2) counsel was not ineffective in allowing defendant to plead guilty to both first and second offense drug charges. 346 S.C. 506, 507, 552 S.E.2d 290 (2001). In that case defendant pled guilty pursuant to a negotiated agreement to possession of crack cocaine

possession with intent to distribute crack cocaine second offense and carrying a pistol. *Id.*

At PCR the lower court found counsel was ineffective in allowing defendant to plead to second offense possession with intent to distribute at the same time he was pleading guilty to his first drug offense. *Id.* at 510, 552 S.E.2d at 292. The Court disagreed finding he “knowingly intelligently, and voluntarily agreed to plead guilty to both as part of a plea bargain where the state dropped three other drug charges. *Id.* The Court found there was a sufficient factual basis presented for both charges reasoning “[a]ll that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” *Id.* at 511, 552 S.E.2d at 292.

In *Sellner v. State*, the Court reversed the PCR court’s denial of relief, granted defendant a new trial, and held defense counsel’s advice to defendant that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counsel’s performance deficient. 461 S.C. 606, 607, 787 S.E.2d 525 (2016). In that case defendant was charged with armed robbery and because of prior convictions was subject to a sentence of life imprisonment without the possibility of parole. *Id.* at 608, 787 S.E.2d. at 526. At PCR, counsel testified there was no evidence that defendant had a gun during the robbery or that he made any representation of a weapon. *Id.* at 609, 787 S.E.2d at 527. The Court found “counsel’s advice to [defendant] that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counsel’s performance deficient and the PCR court erred in finding [] counsel effective. *Id.* at 612, 787 S.E.2d at 528.

Without the benefit of reviewing discovery petitioner could not have made a voluntary guilty plea. Petitioner did not have information that would have been critical to his

determination whether to continue to trial. Mr. Cheek's advice to plead guilty based on a single photograph of petitioner committing one of the multiple crimes for which petitioner was charged was deficient performance. The photograph petitioner saw was regarding the uncontested crime of defrauding the lottery. Petitioner made clear that he is knowingly cashed stolen lottery tickets but he denied committing the armed robberies. The surveillance video from those robberies was important evidence petitioner should have seen prior to making the decision to plead guilty to four counts of armed robbery. Instead, Mr. Cheek by his own admission, insisted to petitioner that one photograph sealed his fate.

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. *Boykin v. Alabama*, 395 U.S. 238 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights they are waiving. *Id.* Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers.

In addition to the requirements of *Boykin*, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). "Any defects in the information conveyed by defense counsel can be cured by information provided at the guilty plea proceeding. *Rollinson v. State*, 346 S.C. 506, 513, 552 S.E.2d 290, 293 (2001) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415, (1998)). "The knowing and voluntary nature of the plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel or

both.” *Id.* (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

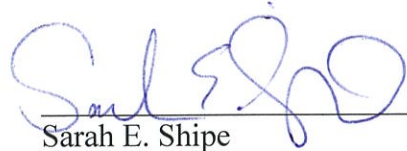
“An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.” *Wiggins v. Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). The two-part test also “applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill v. Lockhart*, 474 U.S. 52, 58 (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.” *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

In addressing the adequacy of a PCR applicant's guilty plea, it is proper to consider both the guilty plea transcript, and the evidence presented at the PCR hearing. *Id.* at 573, 713 S.E.2d at 615 (citing *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007)). “[T]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). *Sellner v. State*, 416 S.C. 606, 610–11, 787 S.E.2d 525, 527 (2016)

The PCR court wrongly found Mr. Cheek's was not ineffective where it was unreasonable for him to advise petitioner to plead guilty without having reviewed all relevant discovery with petitioner. Petitioner testified he pled guilty without having seen important discovery in his case, namely the surveillance videos of the four armed robberies. Defense counsel admitted he did not review the videos with petitioner prior to his decision to plead guilty.

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 11th day of July, 2025.