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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

DEVONTE KE'WON ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000492

JOHNSON PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT OF THE CASE.....2

ARGUMENT

The PCR court erred in denying relief where, due to the advice of
counsel, Petitioner believed that his plea offer sentencing range
was for ten-to-twenty years, not fifteen-to-twenty years.5

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

ISSUE PRESENTED

Whether the PCR court erred in denying relief where, due to the advice of counsel, Petitioner believed that his plea offer sentencing range was for ten-to-twenty years, not fifteen-to-twenty years?

STATEMENT OF THE CASE

On June 26, 2017, Petitioner, Aaron and Khaliq Brown, and a fourth unknown male responded to a prostitution advertisement placed on the now-defunct website “Backpage.” The men traveled to the Baymont Inn off Interstate 77 near Fort Jackson in Richland County to meet the woman (victim) for sex. Petitioner purportedly entered the hotel room and pulled out a gun on the victim. She in turn pulled out a pellet gun, and the pair began to fight. The fight spilled into the hallway where it was captured on surveillance footage.¹ The victim sustained a gunshot wound to the abdomen. Petitioner sustained a gunshot wound to his hand. App. 8, l. 15-App. 10, l. 5. Law enforcement spoke with Petitioner and the Browns after the incident. Petitioner admitted he was at the location for sex. While he did not admit he was there to rob the victim, he did not outright deny that was the plan. One of the Brown brothers admitted to police that the group went to the location with the plan to rob the victim. App. 10, ll. 5-15.

Petitioner and the Brown brothers were arrested. During the September 2017 term, a Richland County grand jury returned indictments for Petitioner for attempted murder, armed robbery, criminal conspiracy, and possession of a weapon during the commission of a violent crime. App.25-26; 28-29; 31-32; 37-38. The state secured a subsequent indictment against Petitioner for unlawful possession of a weapon by a person convicted of a crime of violence during the September 2018 term of the Richland County grand jury. App. 34-35.

On January 16, 2020, Petitioner appeared before the Honorable DeAndrea G. Benjamin to enter a guilty plea. He was represented by retained counsel Aimee Zmroczek. The state was represented by R. Vance Eaton. App. 1. The state initially informed the court that Petitioner

¹ The surveillance cameras also caught Petitioner’s co-defendants in the hallway approaching the room while putting on gloves.

was pleading as indicted for a fifteen-to-twenty-year sentence. However, there was some confusion as the case had been up to plead before to reduced charges. Ultimately, the state allowed Petitioner to plead to assault and battery of a high and aggravated nature down from attempted murder. The state also withdrew the LWOP notice and dismissed an unrelated criminal sexual conduct with a minor third-degree charge. App. 3, l. 32-App. 6, l. 22.

The state requested Petitioner be given a twenty-year sentence. App. 10, l. 22-App. 11, l. 2. Petitioner's plea counsel requested a sentence between fifteen and seventeen years. App. 22, ll. 15-23. The court ultimately sentence Petitioner to eighteen years' imprisonment on the armed robbery and assault and battery of a high and aggravated nature charges, along with five years each on the remaining charges, with his sentences to run concurrently. App. 23, ll. 2-9.

Petitioner did not pursue a direct appeal of his convictions and sentences. Petitioner timely filed an application for post-conviction relief on July 27, 2020, alleging that plea counsel had changed his plea deal. He asserted that he first signed a plea offer in November of 2018 for ten-to-twenty years' incarceration, but when he pled in January 2020, the plea had changed to fifteen-to-twenty years' incarceration. App. 40-49. The state filed a return and motion for a more definite statement on March 12, 2021.² App. 50-57. An evidentiary hearing was held via WebEx before the Honorable Maite Murphy. Petitioner was represented by PCR counsel Timothy Griffith. The state was represented by D. Russell Barlow, III. App. 58.

Petitioner testified his original plea offer was for a sentence range of ten-to-twenty years and that he never rejected the offer. He stated he was presented with the offer, but plea counsel suggested they hold the offer out while they pursued an immunity hearing. Petitioner was

² An amended PCR application was never filed. However, on "January 3, 2024, applicant's counsel provided some clarity on the allegations" to the state. No documentation or further explanation regarding the clarification has been provided. App. 63, ll. 10-18.

unsuccessful at the immunity hearing. The solicitor repeatedly offered him twenty years, and when he would not accept that sentence Petitioner was served with LWOP notice. He maintained he had never turned down the sentencing range offer of ten-to-twenty years and that was what he had wanted to plead to. When he came to court, the plea was suddenly for fifteen-to-twenty years with the original ten-to-twenty years range scratched out. Petitioner believed that had the range been bigger, he would have received less time. App. 65, l. 3-App. 68, l. 10. On cross-examination, Petitioner conceded that he pled because he was ready to get everything done. App. 73, ll. 7-11; App. 75, ll. 7-10.

At the beginning of plea counsel's testimony, PCR counsel questioned whether she recalled the ten-to-twenty-year offer. She responded that she did not recall that plea offer. Petitioner then interrupted her testimony, proclaiming that plea counsel was lying, that he had a vivid recollection of the ten-to-twenty-year plea offer, and what had transpired when she brought the offer to him to discuss. He stated "[s]he said that plea was never offered. I'm going [sic] my eighteen. I'm straight. I got eight years left..." before exiting the WebEx hearing. App. 76, l. 4-App. 77, l. 9. On cross-examination, plea counsel again stated that she had no recollection of the ten-to-twenty years offer or to any changes being made to the plea sheet. She maintained the state was always seeking a minimum of twenty years' imprisonment. She also stated she made Petitioner's choices clear to him. App. 78, l. 25-App. 80, l. 7.

An order of dismissal was filed on September 12, 2024. App. 83-106. The PCR court found plea counsel's testimony credible and persuasive that there had never been an offer of ten-to-twenty years and that she had not altered the plea in any manner. Combined with the plea transcript, the PCR court found that Petitioner's plea was knowingly and voluntarily entered. App. 93-95.

ARGUMENT

The PCR court erred in denying relief where, due to the advice of counsel, Petitioner believed that his plea offer sentencing range was for ten-to-twenty years, not fifteen-to-twenty years.

A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969). Additionally, before a plea can be accepted, a defendant must be aware of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000).

“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 (2003) (citation omitted). “To establish deficient performance, a petitioner must demonstrate that counsel's representation ‘fell below an objective standard of reasonableness.’” Id. (quoting Strickland v. Washington, 466 U.S. 668, (1984)). “[T]o establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. at 534 (quotations and citation omitted).

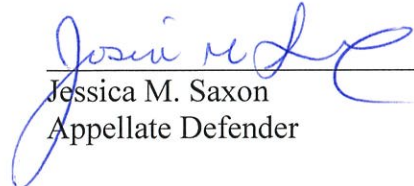
An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The “prejudice,” requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59 (1985). In other words, the

applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pled guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Importantly, “the voluntariness of a guilty plea is not determined by an examination of the 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 the record of the post-conviction hearing.” Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Petitioner’s plea was based on a fundamental misunderstanding of his sentencing exposure. Importantly, Petitioner would have taken the original 2018 plea offer had he not been convinced to pursue immunity. Based on the facts as presented at the plea, there was no possibility that Petitioner would be found immune from prosecution. Plea counsel’s advice at that stage was deficient, and the resulting prejudice was that Petitioner was unable to benefit from the most advantageous plea offer he received. This deficient performance was further compounded when plea counsel did not clarify the terms of the plea agreement with Petitioner prior to court, well over a year after he had signed the original plea offer. This resulted in prejudice to Petitioner as he entered a plea to a higher sentencing range than he bargained for. This was ineffective assistance of counsel.

CONCLUSION

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



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of July, 2025.

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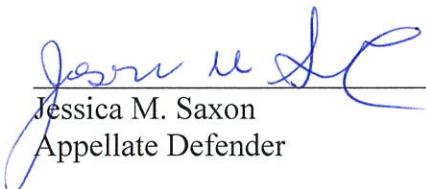
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Devonte Anderson 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 Maite Murphy, which was held on Jan. 9, 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 Devonte Anderson.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of July, 2025.

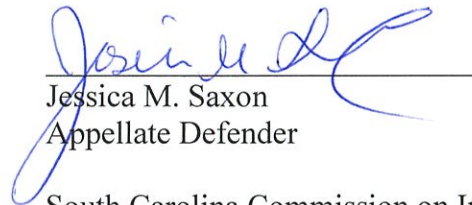
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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 18th day of July, 2025.