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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge

TROY BRAXTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000381

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether petitioner's guilty plea was rendered involuntary because he did not understand the full consequences of his plea due to his plea counsel's inaccurate advice that pleading guilty to voluntary manslaughter would limit his sentencing exposure to 2-to-30 years?

STATEMENT

The June 2020 term of the Spartanburg County grand jury indicted petitioner for five counts of armed robbery, murder, two counts of possession of a weapon during a violent crime, possession with intent to distribute of marijuana, and failure to stop for a blue light. App. 7, ll. 8-25; 175-188.[1] Petitioner's case was called to trial on March 13, 2023, before the Honorable J. Derham Cole.[2] App. 6, ll. 2-5. Barry Joe Barnette represented the state, and E. Joshua Schultz represented petitioner. App. 1.

However, after petitioner's case was called to trial, he accepted the state's plea offer and pleaded guilty to all charges on March 13, 2024. App. 57, ll. 3-13. Judge Cole imposed a forty-three year total imprisonment sentence comprising of twenty-five years for voluntary manslaughter, fifteen years concurrent for four counts of armed robbery, five years concurrent for possession with intent to distribute marijuana, five years concurrent for two counts of possession of a weapon during a violent crime, and fifteen years consecutive for one count of armed robbery, and three years consecutive for failure to stop for a blue light. App. 85, l. 15 – 88, l. 14.

Plea counsel filed a notice of appeal, but the Court of Appeals dismissed the appeal for failure to state a sufficient reason pursuant to Rule 203(d)(1)(B)(iv), SCACR. App. 157, ll. 12-19.

Thereafter, on January 29, 2024, petitioner filed an application for post-conviction relief ("PCR"). App. 90-96. The state filed a return. App. 97-115. On August 20, 2024, Susannah

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[1] Petitioner was also indicted for assault and battery of a high and aggravated nature at the May 23, 2022, term of the Spartanburg County grand jury. App. 187-88. Petitioner was sentenced to ten years concurrent on this charge. App. 88, ll. 2-7.

[2] It should be noted that the Seventh Judicial Circuit has two sitting judges named J. Derham Cole, and thus, it is unclear from the record who presided over petitioner's trial.

Ross, on behalf of petitioner, filed an amended PCR application. App. 118. On September 5, 2024, an evidentiary hearing was held before the Honorable R. Lawton McIntosh. App. 120-60. Susannah Ross represented petitioner, and Bryan T. Hall represented the state. App. 120.

On November 20, 2024, Judge McIntosh signed an order denying PCR and dismissing petitioner's application with prejudice. App. 161-74.

This petition follows.

ARGUMENT

Petitioner's guilty plea was rendered involuntary because he did not understand the full consequences of his plea due to his plea counsel's inaccurate advice that pleading guilty to voluntary manslaughter would limit his sentencing exposure to 2-to-30 years.

Relevant facts

The guilty plea and sentencing

On March 13, 2024, petitioner's case was called for trial, and he initially rejected the state's offer, as follows: pleading to all charges as indicted and reducing the murder to voluntary manslaughter, which carried 2-to-30 years. App. 6, l. 2 – 7, l. 7. The state clarified that the assault and battery of a high and aggravated nature charge was not a part of the instant deal because petitioner was represented by different counsel, Michael Morin, for that charge. App. 7, ll. 22-25. During the plea colloquy, the court inquired whether petitioner discussed the sentence he could receive if convicted of each charge, and petitioner replied that he understood that armed robbery carried ten to thirty years. App. 11, ll. 9-14. The court clarified that he had been charged with five counts of armed robbery, and the court addressed the penalties for each of his remaining charges. App. 11, l. 15 – 13, l. 7.

The court then inquired whether petitioner had made a decision about the plea offer or if he needed more time to talk with plea counsel. App. 15, ll. 13-15. Petitioner rejected the offer. App. 15, l. 18. The court inquired again if he needed more time to talk to defense counsel Schutlz before he made a final rejection, and petitioner replied that he wanted more time. App. 16, ll. 6-16.

After a recess, the court resumed its colloquy with petitioner, and he confirmed that he had plenty of time to speak with plea counsel about what he wanted to do. App. 22, l. 20 – 23, l.

8. The court read the indictments, including the penalty each offense carried, and petitioner confirmed that he understood. App. 23, l. 9 – 28, l. 23. Petitioner confirmed that his plea counsel explained that murder and voluntary manslaughter were violent offenses and that he understood the significance of that classification, and the court provided that armed robbery was also a most serious and violent offense. App. 27, l. 25 – 28, l. 23. Upon questioning from the court, petitioner confirmed that plea counsel explained his constitutional rights he would waive, and he agreed to give up those rights to plead guilty. App. 33, l. 21 – 36, l. 23.

As to penalties, the court stated that voluntary manslaughter was the lesser included of murder. App. 36, l. 25 – 37, l. 1. Particularly, the court explained that:

> voluntary manslaughter carrie[d] up to 30 years in jail. *That's in the discretion of the Court.* And [he] agreed to plead guilty to that and to plead guilty to each of the armed robbery indictments, to the two possessions of weapons during the commission of a violent crime indictments and to the possession with intent to distribute marijuana indictment and to failing to stop for a blue light indictment.

App. 37, ll. 1-8 (emphasis added). Petitioner replied that the court's statement was what he agreed to. App. 37, ll. 10-11. The court also inquired whether the agreement provided that "the sentences will be left up to [the court], whatever that might be," and petitioner replied, "Yes, sir." App. 37, ll. 18-20. The court omitted any discussion of its ability or discretion to impose a consecutive or concurrent sentence. *See generally* App. 37.

Continuing the plea colloquy, the court confirmed that petitioner was not promised anything, forced, or threatened to make the decision to enter a guilty plea. App. 37, l. 21 – 38, l. 9. Petitioner confirmed that he was satisfied with his decision to plead guilty and made the decision freely and voluntarily. App. 38, ll. 10-12. Following a recitation of the facts related to each charge by the state, petitioner confirmed that he preferred to plead guilty to the lesser

included charge of voluntary manslaughter because he believed he could be convicted of murder. App. 54, l. 12 – 55, l. 5. The court accepted his guilty plea. App. 57, ll. 9-13.[3]

The next day, the court held a sentencing hearing for petitioner. App. 59. Plea counsel presented mitigation arguments to the court and asked for as much leniency as the court could give for the crimes as well as credit for accepting responsibility. App. 66, l. 20 – 70, l. 4. The family for the voluntary manslaughter charge addressed the court and requested the maximum penalty. App. 74, l. 6 – 75, l. 5. The court imposed a forty-three year total imprisonment sentence comprising of twenty-five years for voluntary manslaughter, fifteen years concurrent for four counts of armed robbery, five years concurrent for possession with intent to distribute marijuana, five years concurrent for two counts possession of a weapon during a violent crime, and fifteen years consecutive for one count of armed robbery, and three years consecutive for failure to stop for a blue light. App. 85, l. 15 – 88, l. 14.

The decision to plead guilty

At the PCR hearing, petitioner testified that counsel advised him that he was offered a 2-to-30 plea deal. App. 127, l. 23 – 28, l. 2. He explained that he accepted the plea offer based on counsel's advice and his understanding that he would not receive more than thirty years. App. 128, ll. 1-6. Particularly, he testified that if he thought he could receive more than thirty years he would have gone to trial. App. 128, ll. 7-11. Further, he explained that he would not have pled if he thought he would receive consecutive sentences. App. 128, ll. 12-21. Petitioner testified that he initially stated that he wanted to go to trial but changed his mind during a recess after speaking with his mother. App. 129, ll. 1-11. He explained that his lawyer had told his mother that the offer was 2-to-30 years and that he would not receive more than thirty years. App. 129,

[3] Petitioner also pled as indicted to assault and battery of a high and aggravated nature. App. 59, ll. 18-20; 66, ll. 14-17.

ll. 6-14. He reiterated that his mother thought the sentence he could receive was 2-to-30 years, but no more than thirty years. App. 135, ll. 10-17. Even further, plea counsel's testimony corroborated petitioner's testimony at the PCR hearing and confirmed that he discussed the minimum and maximum for voluntary manslaughter with petitioner and his mother. App. 152, l. 24 – 153, l. 6.

The PCR hearing and the PCR Court's Ruling

At the PCR hearing, petitioner confirmed that the court explained the penalties for each of the charges. App. 137, l. 11 – 138, l. 12. He testified that the court explained the plea offer, including that he would plead to voluntary manslaughter which carried 2-to-30 years, and confirmed that he told the court he understood. App. 138, l. 25 – 139, l. 12.

In addition, plea counsel testified that he reviewed the discovery with petitioner and explained all the charges and their elements to petitioner as well as the potential sentence for each charge. App. 144, ll. 20-22; 147, ll. 1-11. He made no mention, however, as to the concurrent or consecutive nature of the sentences to be imposed or if he explained how a consecutive sentence might impact petitioner's total sentence. *See generally* App. 147. Plea counsel then testified that he began engaging in plea negotiations with the state in April of 2021. App. 147, l. 24 – 148, l. 21. In June 2021, he received an offer for a negotiated forty-year sentence but felt that if the state reduced the murder to voluntary manslaughter petitioner's sentencing exposure would be up to thirty years on an eighty-five percent offense rather than day-for-day. App. 148, l. 21 – 149, l. 8. Concerning petitioner's understanding of his sentencing exposure, plea counsel merely testified that "when I talk to clients, I often say sometimes we are hoping for, you know, a 20 year sentence or we are hoping for a 30 year sentence. We are hoping for a, you know, whatever. But I think he was well aware he could get over 30." App.

153, ll. 10-14. Moreover, plea counsel conceded that while the court informed petitioner that the sentence was up to the court, it did "not say I could run these sentences consecutive." App. 153, l. 25 – 154, l. 1. Finally, while plea counsel testified that sentencing is generally within the court's discretion, as is running a sentence concurrently or consecutively, whether he informed petitioner of the court's ability to impose consecutive or concurrent sentences was absent from his testimony. App. 154, ll. 17-25.

In the order of dismissal, concerning plea counsel's misadvisement, the PCR court found that counsel was not deficient in advising petitioner and that he failed to prove prejudice. App. 170-71. The PCR court found:

> ***credible*** counsel's testimony that he believed and advised [petitioner] that pleading to voluntary manslaughter, [petitioner] *could* serve less time than the murder charge, which carrie[d] thirty (30) years to life . . . that he advised [petitioner] that voluntary manslaughter carrie[d] two (2) to thirty (3) years and [was] an eighty-five percent (85%) offense . . . [and] that he informed [petitioner] that he [was] pleading without negotiation or recommendation

such that the sentence would be in the judge's discretion. App. 170 (emphasis in original). The PCR court thus concluded that plea counsel was not deficient in advising petitioner. App. 170. The PCR court also determined that petitioner failed to prove prejudice because he failed to show a reasonable probability that but for counsel's advice, he would have rejected the offer and proceeded to trial, despite petitioner's testimony explicitly to the contrary. App. 170. The PCR court emphasized that the fact that petitioner "hoped" for a concurrent sentence was insufficient to collaterally attack his guilty plea. App. 170-71. However, the PCR court did not discuss petitioner's lack of understanding of the court's discretion to impose a consecutive sentence. *See generally* App. 170-71.

Next, the PCR court, in finding that petitioner failed to meet his burden and show that his plea was involuntary, credited counsel's testimony that he reviewed the discovery with petitioner, and that he explained the charges, elements of the offenses, and possible sentences with petitioner. App. 173. The PCR court determined that the record showed that the court discussed the charges, the possible sentences, and petitioner's constitutional rights and confirmed that petitioner had not been promised anything to plead guilty. App. 173. The PCR court thus concluded that the record established that petitioner entered a voluntary plea with an understanding of the consequences of pleading guilty, with no discussion of petitioner's testimony that neither the plea court nor plea counsel informed him of the ability of the court to impose consecutive sentences or how that might impact his total sentence. *See* App. 173.

Discussion

The PCR court erred in holding petitioner could not prove deficient performance or prejudice under the two-pronged approach of *Strickland v. Washington*, 466 U.S. 668 (1984). Petitioner's guilty plea was thus rendered involuntary because he relied on plea counsel's erroneous advice that his sentencing exposure would be limited to 2-to-30 years if he pled guilty to the lesser included voluntary manslaughter charge.

"Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." *Lafler v. Cooper*, 132 S. Ct. 1376, 1384 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010) (internal quotations omitted).

A guilty plea may be collaterally attacked by a showing that (1) counsel's performance was deficient; and (2) applicant was prejudiced by the deficiency. *Stalk v. State*, 383 S.C. 559, 593 (2009). "In the context of a guilty plea, the deficiency prong inquiry turns on whether the

plea was voluntarily, knowingly, and intelligently entered." *Taylor v. State*, 404 S.C. 350, 360 (2013); *see also Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (stating that "[t]he 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.") (internal quotations omitted). Specifically, the South Carolina Supreme Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In *Alexander v. State*, the Court determined that counsel's sentencing advice was "obviously defective" where counsel's advice was contrary to the possible sentencing ranges under the indictments and law. 303 S.C. 539, 542-43 (1991). In *Hinson v. State*, the defendant's trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. 297 S.C. 456 (1989). The *Hinson* court found such advice deficient and reversed the PCR court. *Id.* In addition, "the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel." *Burnett v. State*, 352 S.C. 589, 592 (2003).

First, the PCR court erred by determining that plea counsel was not deficient in his advisement of petitioner. App. 170. The deficiency prong turns on whether the plea was voluntarily, knowingly, and intelligently entered, and due to counsel's inaccurate advice as to petitioner's sentencing exposure and his complete lack of additional advice concerning the court's discretion to impose a consecutive sentence on any offense, petitioner did not fully understand the sentencing consequences. *Taylor*, 404 S.C. at 360; *see also Hill*, 474 U.S. at 56. Although plea counsel properly advised petitioner that voluntary manslaughter carried 2-to-30 years, the record demonstrates that counsel did not explain all possible sentencing consequences. Namely, he provided no advice on how petitioner's remaining charges and sentences might

increase his sentencing exposure beyond the thirty-year maximum associated with the voluntary manslaughter charge. *See generally* App. 143-154. Even further, plea counsel merely testified that he *thought* petitioner understood that he could get over thirty years. App. 153, ll. 10-14. Taken together, plea counsel provided inaccurate sentencing advice to petitioner. *See e.g.*, *Alexander*, 303 S.C. at 542-43; *Hinson,* 297 S.C. at 456.

Additionally, it cannot be said that the plea judge cured counsel's error, as both counsel and the plea judge were silent as to the court's discretion to impose consecutive or concurrent sentences. *Burnett*, 352 S.C. at 592; App. 37, ll. 1-20; 143-54. Although the court informed petitioner that the sentences would be left up to the court, petitioner was not informed that the court had the ability to impose a consecutive sentence as to any of his remaining charges, which could increase his sentence beyond the thirty-year statutory maximum for voluntary manslaughter. App. 37, ll. 1-8, 10-11, 18-20. Notably, the PCR court did not mention petitioner's lack of understanding of the court's discretion to impose a consecutive sentence and plea counsel's concession that the court never informed petitioner of its ability to impose a consecutive sentence. App. 170-71, 173. Therefore, because plea counsel failed to fully explain all possible sentencing consequences, he rendered inaccurate sentencing advice that was not cured by the court during the plea colloquy, and thus, his performance was deficient, and the PCR court erred by finding that counsel's advice was reasonable. *Stalk*, 383 S.C at 593; *Padilla*, 559 U.S. at 364.

Petitioner can also demonstrate that he was prejudiced by counsel's erroneous advice. To establish prejudice, it must be shown that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *Stalk*, 383 S.C. at 562. To satisfy the prejudice prong, "[t]he 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 (2018). Moreover, in *Alexander*, our Supreme Court determined that the prejudice prong of *Strickland* was sufficiently satisfied by petitioner's testimony that he would have proceeded to trial but for counsel's misadvisement, which was the only evidence in the record on that point. *See* 303 S.C. at 543; *Smith v. State*, 369 S.C. 135, 138 (2006) (stating that "[t]he defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsels' advice is sufficient to prove that defendant would not have pled guilty.").

It is evident from the record that counsel's inaccurate sentencing advice affected the outcome of the plea process. *Frierson*, 423 S.C. at 26. Petitioner testified that he initially rejected the state's plea offer, which indicates his desire to proceed with trial. App. 129, ll. 1-11. However, it was plea counsel's inaccurate advice that caused petitioner to enter a guilty plea. App. 127, l. 23 – 129, l. 14. Petitioner testified that, during a recess, he spoke with his mother who was informed by plea counsel that he would not receive more than thirty years with the 2-to-30 plea offer. App. 15, l. 18 – 16, l. 16; 129, ll. 6-14; 135, ll. 10-17. Likewise, plea counsel confirmed that he discussed the minimum and maximum penalties for voluntary manslaughter with petitioner's mother. App. 152, l. 22 – 153, l. 6. In combination with petitioner's hesitation to plead guilty prior to counsel's inaccurate sentencing advice, petitioner also testified he would not have pled and would have gone to trial if he thought he could receive a sentence over thirty years or that he could receive consecutive sentences. App. 128, ll. 1-21. As in *Alexander*, petitioner presented conclusive evidence that but for plea counsel's misadvisement he would not have pled guilty, and his testimony was the only evidence on that point. 303 S.C. at 543; App. 127, l. 23 – 129, l. 14; 135, ll. 10-17. Thus, petitioner's testimony alone that he would have gone

to trial but for counsel's misinformation is sufficient to satisfy the prejudice prong. *See e.g.*, *Smith*, 369 S.C. at 138.

Finally, petitioner's case is also distinguishable from *Wolfe v. State*, 326 S.C. 158, 165-66 (1997), as relied on by the PCR court. *See* App. 171-72. In *Wolfe*, our Supreme Court held that a guilty plea was not rendered involuntary by erroneous advice from counsel regarding the possibility of a reduction in sentence where the defendant acknowledged that he had not been made any promises as to the sentence he would receive. 326 S.C. at 165-66. There, Wolfe testified during his PCR hearing that his counsel represented to him that he would receive a reduced sentence if he pleaded guilty, but plea counsel testified that "he *hoped* the trial judge would give him a reduced sentence." *Id.* at 161 (emphasis in original). Further, during the plea hearing, counsel addressed the court and stated that:

> I did indicate to the defendant here, whether rightly or wrongly, but as counsel, trying to do my job, Your Honor, I did explain to the defendant that it would be my hope that by, as I say, standing up here like a man and admitting to the wrongful act that took place that perhaps that the Court may take that into consideration as some mitigation toward his sentence. But I told him there is no promise from the Court or anything like that; and there is no negotiations from the State at all.

Id. at 162. The South Carolina Supreme Court explained that any possible misconceptions that Wolfe had were cured by the colloquy because the judge asked Wolfe about the sentencing range and twice inquired whether Wolfe understood no promises were made. *Id.* at 164-65. In addition, the Court noted that a review of testimony from the PCR hearing revealed that Wolfe "*hoped* to get a reduced sentence and *expected* to get one." *Id.* at 165 (emphasis in original). The Court emphasized that Wolfe's own testimony revealed that it was never "crystal clear" that he was told he would get a reduced sentence. *Id.* The Court concluded that "[w]ishful thinking regarding sentence does not equal misapprehension concerning the possible range of sentences,

especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made," and thus, the record contained no probative evidence of ineffective assistance that prejudiced Wolfe or rendered his plea involuntary. *Id.* at 165-66.

The PCR's court reliance on *Wolfe* is misplaced. Unlike *Wolfe*, plea counsel made no comment or argument during the plea colloquy or sentencing that he hoped the court would impose concurrent sentences. 326 S.C. at 162; *see generally* App. 6-58. Rather, plea counsel was silent as to the concurrent or consecutive nature of the sentences and merely advocated for leniency and acceptance of responsibility. *See* App. 69-70. Further, in *Wolfe*, counsel testified that he hoped the trial judge would impose a reduced sentence, whereas, here, plea counsel merely testified that generally when he spoke to clients he sometimes would say that he was hoping for a certain sentence. *Compare Wolfe*, 326 S.C. at 161, *with* App. 153, ll. 10-14. Of note, plea counsel made no specific assertion that he expressed to petitioner that he hoped for a particular sentence in petitioner's case. *See* App. 153, ll. 10-14. Under these circumstances, it cannot be said that petitioner's "wishful thinking" created the misapprehension, as petitioner was wholly unaware of the court's discretion to impose concurrent or consecutive sentence due to plea counsel's faulty advice, much less that he *hoped* for concurrent sentences. *See Wolfe*, 326 S.C. at 165. The instant case is also distinguishable because petitioner's testimony consistently evinces that based on his plea counsel's advice, he understood that he would not receive more than thirty years, despite the court's discussion of the penalties for each charge. *See id.*; App. 127, l. 23 – 129, l. 14; 135, ll. 10-17. Thus, the PCR court's reliance on *Wolfe* to find that petitioner did not meet his burden is in error. App. 170-71.

As a result, petitioner's guilty plea was rendered involuntary by counsel's erroneous advice. Concerning guilty pleas, *Boykin v. Alabama* inquires whether the record establishes that

a guilty plea was voluntarily and understandingly made. 395 U.S. 238 (1969). For a plea to be knowingly and voluntarily made, a defendant must have a full understanding of the consequences of his plea. *Dover v. State*, 304 S.C. 433, 434 (1991) (citing *State v. Hazel*, 275 S.C. 392 (1980)). While the trial court is not required to direct attention to each right and obtain a separate waiver, the record must indicate that the defendant was fully aware of the consequences of his guilty plea and ensure that he understands the charges against him. *State v. Lambert*, 266 S.C. 574 (1976).

In *Hazel*, the South Carolina Supreme Court reversed and remanded to allow Hazel to withdraw her plea because her plea was entered without an understanding of the mandatory punishment for the offense she was pleading to and in ignorance of the direct consequence of her plea. 275 S.C. at 394. In *Dover*, the South Carolina Supreme Court determined that Dover's guilty plea was not knowingly and voluntarily made because Dover was never made aware that he could be sentenced to a prison term in excess of 200 years, and thus, was made in ignorance of its consequence. 304 S.C. at 435. There, the trial judge did not ask Dover any factual questions, did not question him about the possibility of a sever sentence, and did not establish that Dover understood the severity of the crimes or sentences they carried. *Id.*

In *Roddy v. State*, our Supreme Court reversed the PCR court's order granting a new trial. 339 S.C. 29 (2000). Roddy argued that his plea was involuntarily made because he was under the impression he would get concurrent time for all of his offenses, and he thought the plea negotiations were binding on the court. *Id.* at 32. However, the Court determined that the colloquy at Roddy's sentencing hearing did not support the PCR's court's finding of an involuntary guilty plea and testimony at the PCR hearing showed that Roddy was not induced by any promises from his attorney. *Id.* at 34. Specifically, Roddy testified at his PCR hearing that

he was not promised a 15-year sentence but rather that counsel said they would "try and get concurrent time because he didn't feel that Judge Eppes would want to run them concurrent." *Id.* He also testified that his counsel believed the sentences could be run consecutively. *Id.* at 34-35. The Court also noted that Roddy's counsel stated at the plea proceeding that he "hoped" the judge would accept the state's recommendation. *Id.* at 35. The Court determined that, although Roddy may have expected to receive concurrent sentences, he was never told he would absolutely receive concurrent time, and he admitted that no promises were made. *Id.* at 36. The Court held that where the plea judge satisfies *Boykin*, he is not further required to tell a defendant the court is not bound by a negotiated plea agreement. *Id.* The Court further stated that "in order to prevent situations similar to the instant case and ensure defendants are aware of the consequences of their guilty plea, attorneys should advise defendants of the possibility that the plea judge may deviate from the sentence recommendation." *Id.*

The PCR court further erred by finding that petitioner failed to meet his burden to show that his guilty plea was involuntary. App. 173. As discussed, petitioner did not fully understand the consequences of his plea, specifically that his sentencing exposure exceeded thirty years. Despite the fact that the court and plea counsel discussed the penalties associated with each charge with petitioner, neither informed nor confirmed that petitioner understood that the court's discretion in imposing his sentence included the ability to run any of his charges consecutively, thereby increasing his overall sentencing exposure. App. 23, l. 9 – 28, l. 23; 37, ll. 1-20; App. 144, ll. 20-22; 147, ll. 1-11; 153, l. 25 – 154, l. 1. Moreover, as in *Dover*, petitioner was not made aware that he could be sentenced to consecutive sentences on each charge which could greatly increase his total prison term, and thus, he was similarly unaware of the severity of the sentences his offenses carried. *See Dover*, 304 S.C. at 434-35; App. 37, ll. 1-20; 147, ll. 1-11;

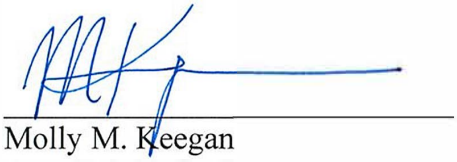
153, l. 25 – 154, l. 1. Therefore, the record establishes that petitioner's guilty plea was made in ignorance of the direct consequences of his plea. *See e.g.*, *Dover*, 304 S.C. at 434-35; *Hazel*, 275 S.C. at 394.

In addition, petitioner's case is distinguishable from *Roddy* in several ways. *See Roddy*, 339 S.C. at 29. First, unlike the testimony at the PCR hearing in *Roddy*, petitioner provided no testimony that he was aware that the judge had the option to run his sentences consecutively and plea counsel confirmed that the court did not address its discretion to do so with petitioner. *Compare id.* at 34-45, *with* App. 127-142; 153, l. 25 – 154, l. 1. Second, as discussed, plea counsel expressed no "hope" as to receiving concurrent sentences and the misapprehension concerning the possible range of sentences was not based on "wishful thinking." *Roddy*, 339 S.C. at 35. However, the Court's concluding directive in *Roddy* is instructive, and emphasizes the need for ensuring that defendants are aware of the full consequences of their guilty plea. *Id.* at 36.

In sum, petitioner's guilty plea was rendered involuntary by plea counsel's erroneous sentencing advice. The error was not cured during the guilty plea hearing because the plea judge was silent as to its ability to impose a consecutive sentence thereby increasing petitioner's sentencing exposure beyond thirty years and petitioner was prejudiced by the error. Therefore, the PCR judge erred by refusing to grant relief and petitioner is entitled to post-conviction relief.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests this Court grant the petition for writ of certiorari to review the PCR court's decision.



Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of August, 2025.