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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Daniel D. Hall, Circuit Court Judge

RICORIUS LEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000576

JOHNSON PETITION FOR WRIT OF CERTIORARI

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**The PCR judge erred in refusing to find plea counsel
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ISSUE PRESENTED

Did the PCR judge err in refusing to find plea counsel ineffective for failing to explain that Petitioner would have to serve eighty-five percent of the negotiated ten-year sentence for trafficking methamphetamine?

STATEMENT

In August of 2018, the Greenville County Grand Jury indicted Petitioner, Ricorius Shundre Lee, for trafficking methamphetamine over 100 grams but less than 200 grams, indictment #2018-GS-23-02036. (App. pp. 15-16). On April 11, 2019, Petitioner appeared before the Honorable Letitia H. Verdin and pled guilty to trafficking in methamphetamine 28-100 grams. Matthew Canady represented Petitioner. Wade McMaster and Walker Miller prosecuted the case. Pursuant to negotiations with the State, Judge Verdin sentenced Petitioner to ten (10) years in prison. (App. pp. 17-18). Petitioner did not appeal the sentence or conviction.

On January 14, 2020, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 18-27). The State filed a return, partial motion to dismiss and motion for more definite statement on April 11, 2020. (App. pp. 28-37). An evidentiary hearing was held on March 10, 2023, before the Honorable Daniel D. Hall. Susannah Ross represented Petitioner at the PCR hearing. Taylor Smith represented the State. In a written order signed March 10, 2025, Judge Hall denied relief and dismissed the application. (App. pp. 64-74). A timely notice of intent to appeal was filed on March 25, 2025. This appeal follows.

ARGUMENT

The PCR judge erred in refusing to find plea counsel ineffective for failing to explain that Petitioner would have to serve eighty-five percent of the negotiated ten-year sentence for trafficking methamphetamine.

Petitioner was originally indicted for trafficking methamphetamine over 100 grams but less than 200 grams. He pled guilty to the lesser charge of trafficking methamphetamine 28-100 grams. The plea judge advised, “All right. Mr. Lee, you are here today to plead trafficking in methamphetamine 28 to 100 grams. That carries seven to 25 years. That is classified as a violent and serious offense, and this is a negotiated sentence.” (App. p. 4, lines 12-15). The plea judge did not address parole.

During the PCR hearing, Petitioner testified he pled guilty because plea counsel advised he would be eligible for parole after serving sixty-five percent of the ten-year sentence. (App. p. 43, line 12 – p. 44, lines 1-5). Plea counsel denied advising Petitioner he would be parole eligible and denied discussing parole. (App. p. 55, lines 16 – 25). Plea counsel denied telling Petitioner anything about sixty-five percent. (App. p. 57, line 25 – p. 58, lines 1-11).

In the order of dismissal the PCR judge wrote, “As to Applicant’s assertion that plea counsel misadvised him by indicating that he would only serve sixty-five percent (65%) of the ten year (10) negotiated sentence, this Court gives credence to plea counsel’s testimony that he did not advise Applicant as to parole eligibility.” (App. p. 71). The PCR judge additionally wrote, “Applicant fails to show that plea counsel acted deficiently. Even so, Applicant has failed to show that the alleged erroneous advice concerning parole eligibility induced his guilty plea, and that he otherwise would have rejected the negotiated plea – which was a substantial reduction from the mandatory sentence of the original charge – or proceeded to trial.” (App. pp. 71-72). The PCR judge erred.

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 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). 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)).

In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

In order to establish prejudice when challenging a guilty plea, a defendant must prove “there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial.” Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The 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. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), “[I]n order to satisfy the ‘prejudice’ requirement, the defendant must show 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.”

Plea counsel was deficient for failing to explain that, because trafficking methamphetamine, 28-100 grams, carries a maximum sentence of twenty-five years, S.C. Code §44-53-375(C)(2)(a), pursuant to S.C.Code §§24-13-150, 100, Petitioner would be required to serve eighty-five percent of the negotiated ten year sentence. There is a reasonable probability that, but for counsel’s deficient performance, Petitioner would not have pled guilty and would have insisted on going to trial.

CONCLUSION

Based on the above argument this Court should grant the petition for writ of certiorari to allow further briefing on the issue.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of September, 2025.

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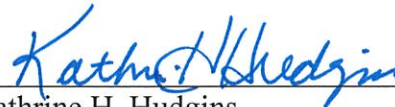
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ricorius Lee states:

1. She is Senior 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 Daniel D. Hall, which was held on March 10, 2023, 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 Ricorius Lee.

Respectfully Submitted,



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of September, 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 17th day of September, 2025.