STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Court of Common Pleas
Appeal from Richland County
Honorable Jean Hoefer Toal, Retired Chief Justice
Appellate Case No. 2023-001835

ERICK E. WELLS,

Respondent,

vs.

THE STATE,

Petitioner.

BRIEF OF PETITIONER

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other Federal Cases:

Other Authorities:

STATEMENT OF ISSUE ON CERTIORARI

Did the post-conviction relief judge reversibly err by concluding—in a legally-erroneous manner and without factual support—plea counsel was constitutionally ineffective and Wells's guilty plea was involuntarily entered when the record conclusively demonstrated Wells knowingly, intelligently, and voluntarily entered a constitutionally-valid guilty plea with the assistance of constitutionally-effective plea counsel and with an adequate understanding of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights being waived?

STATEMENT OF THE CASE

Combined Procedural and Factual History

In August of 2013, Respondent Erick E. Wells—a seasoned criminal with numerous prior convictions for drug crimes and other offenses that spanned roughly two full decades—was arrested after he was found inside a residence with illegal narcotics. (App'x pp. 6-7; p. 9). Specifically, during that incident, deputies from the Richland County Sheriff's Office executed a search warrant at a particular residence, and, upon entering it, they found Wells standing in front of a kitchen stove that he was in the process of using to manufacture crack cocaine. (App'x p. 7). Upon seeing the officers, Wells tossed a bag containing crack cocaine and attempted to flee. (App'x p. 7). However, his flight attempt was unsuccessful, and, during an ensuing search of the residence, deputies discovered a total of approximately twenty-three grams of crack cocaine and four grams of cocaine along with items associated with drug dealing. (App'x p. 7). Following that, the deputies spoke with Wells, and he admitted responsibility for all the drugs recovered during the search. (App'x p. 16). Wells was then transported to a detention center, and, from that location, he was recorded placing an incriminating call in which he openly discussed "cooking" crack cocaine. (App'x p. 7; p. 16).

Subsequent to that, Wells was released on bond. (App'x pp. 6-7). In December of 2013, Wells—while out on bond—was again arrested. (App'x pp. 7-8). That arrest occurred at the conclusion of a high-speed vehicle chase. (App'x pp. 7-8). Regarding that incident, a deputy on patrol observed Wells speeding while driving and attempted to initiate a traffic stop in response. (App'x pp. 7-8). Instead of stopping, Wells fled, and he proceeded to lead deputies on an extended chase during which he nearly caused several collisions. (App'x p. 8). Eventually

though, Wells finally stopped and surrendered. (App'x p. 8). When he did, deputies took him into custody and located crack cocaine inside his vehicle. (App'x p. 8).

Following that arrest, Wells was once again released on bond. (App'x p. 12; p. 90). Thereafter, in February of 2014, Wells was yet again arrested for several more drug-related charges. (App'x p. 3; p. 12; p. 90).

Just a few days later, the Richland County Grand Jury indicted Wells for third-offense trafficking in crack cocaine along with other charges in connection to the first of his three sequential arrests. (App'x p. 3; pp. 28-29). Thereafter, on April 2, 2014, Wells appeared in the Richland County Court of General Sessions to plead guilty before the Honorable R. Ferrell Cothran, Jr., circuit court judge, in order to resolve *all* his pending charges stemming from the various arrests. (App'x pp. 3-4; p. 12).

During the course of that guilty plea hearing, Wells—with the assistance of plea counsel—waived presentment on several of his charges and pled guilty to the lesser offense of second-offense trafficking in crack cocaine in connection to the first of his most-recent arrests along with failure to stop for a blue light and third-offense possession of crack cocaine in connection to the second of those arrests.[1] (App'x pp. 3-6). Meanwhile, in exchange for Wells's entry of the "global" guilty plea, the solicitor agreed to a negotiated sentencing range of between ten and twenty years. (App'x p. 3). Furthermore, he agreed to dismiss all Wells's other charges, including three related to the third most-recent arrest.[2] (App'x p. 3; p. 12).

---

[1] Despite that, the Richland County Grand Jury still issued indictments on April 7, 2014, for two of the charges to which Wells had already pled guilty. (App'x pp. 20-21; pp. 26-27).

[2] More specifically, the solicitor dismissed charges including possession of crack cocaine with intent to distribute, possession of cocaine with intent to distribute, and possession of marijuana. Records for Erick Wells, Richland County Fifth Judicial Circuit Public Index, https://publicindex.sccourts.org/richland/publicindex.

In entering his guilty plea, Wells confirmed he was aware of the potential sentencing ranges for his various offenses and acknowledged he understood he would be waiving his constitutional rights—including his right to remain silent, right to a jury trial, right to require the State to prove his guilt beyond a reasonable doubt, right to cross-examine witnesses, and right to present evidence and testimony in his defense—by pleading guilty. (App'x pp. 4-6). Likewise, Wells personally verified it was his desire to enter the guilty plea, confirmed he was doing so without being subjected to any threats or promises, acknowledged he had been afforded an opportunity to review his discovery with plea counsel before entering his plea, and identified no issues with the manner in which the solicitor had handled his cases. (App'x pp. 3-6).

Following that, the solicitor recounted the details of the first two incidents that gave rise to the charges to which Wells was entering his guilty plea. (App'x pp. 6-8). Likewise, the solicitor advised the plea judge of the details of Wells's lengthy criminal record, which included convictions for numerous prior cocaine and crack cocaine offenses along with several convictions for failure to stop for a blue light. (App'x p. 9). At the conclusion of the solicitor's presentation, Wells confirmed the "basic facts" recounted by the solicitor were correct, and he directly admitted he was in possession of cocaine and crack cocaine during the first incident, had crack cocaine inside his vehicle during the second incident, and had also failed to stop for a blue light during that incident. (App'x pp. 9-10).

Once all that had been presented and confirmed, the plea judge concluded a factual basis existed for Wells's charges and plea. (App'x p. 10). Accordingly, Wells's guilty plea was accepted. (App'x p. 10).

Following that, plea counsel conceded Wells "obviously" had a "bad record" that included at least six earlier drug convictions, but he disputed some of Wells's other convictions.

(App'x pp. 10-11). Beyond that, plea counsel—demonstrating his existing familiarity with the event—noted a "negligent discharge" of one of the deputies' firearms had occurred when they were entering the residence to execute the search warrant during the first incident, and he contended that discharge was the true reason why Wells attempted to flee at that time. (App'x pp. 13-14). Plea counsel then requested a ten-year sentence, which was the minimum possible pursuant to the negotiated sentencing range agreed to by the parties. (App'x p. 3; p. 14).

In rebuttal, the solicitor requested the maximum sentence permissible based on the negotiations. (App'x p. 16). As support for that request, the solicitor noted Wells had continuously engaged in criminal behavior resulting in multiple arrests and had already received a substantial benefit as a result of the plea bargain reached by avoiding a conviction for the indicted offense of third-offense trafficking in crack cocaine, which carried a mandatory minimum sentence of twenty-five years up to a maximum sentence of thirty years. (App'x pp. 15-16). In addition to that, the solicitor acknowledged the "accidental discharge" of a firearm had occurred, and he indicated that occurrence had already been taken into account during the plea negotiations. (App'x pp. 15-16).

Ultimately, after considering the matter, the plea judge—consistent with the negotiated sentencing range agreed to by the parties—sentenced Wells to concurrent terms of imprisonment of fifteen years for second-offense trafficking in cocaine, ten years for third-offense possession of crack cocaine, and three years for failure to stop for a blue light. (App'x p. 18). And, in imposing that sentence, the plea judge indicated "[t]hat's the best [he] c[ould] do for [Wells] with [Wells's] prior record." (App'x p. 18).

Wells then initiated an appeal. (App'x p. 41; p. 45). However, on appeal, this Court dismissed Wells's appeal after finding he had failed to provide a sufficient explanation as

required by the South Carolina Appellate Court Rules.[3] [4] (App'x p. 41). Thereafter, on July 14, 2014, the remittitur was issued. (App'x pp. 42-43).

Within just days of the issuance of the remittitur, Wells timely filed an application for post-conviction relief ("PCR"). (App'x pp. 44-60). Amongst the claims raised through that application, Wells alleged plea counsel was constitutionally ineffective for failing to "fully" review discovery with him and his guilty plea had purportedly not been voluntarily entered. (App'x pp. 53-54).

In response, the State filed a return requesting an evidentiary hearing. (App'x pp. 61-66). On December 7, 2015, an evidentiary hearing was conducted in the Richland County Court of Common Pleas with the Honorable Jean Hoefer Toal, Retired Chief Justice, presiding. (App'x p. 67; pp. 69-70).

During the course of that hearing, Wells testified on his own behalf. (App'x pp. 70-71). Through his testimony, Wells claimed he never saw any discovery prior to entering his guilty plea but nonetheless did so because plea counsel believed the plea judge was a good judge and

---

[3] In her order granting relief, the PCR judge inaccurately stated Wells's case was affirmed on appeal after a brief was filed pursuant to Anders v. California, 386 U.S. 738 (1967). (App'x p. 121). The same misstatement was also made in the State's return to Wells's PCR application. (App'x p. 62).

[4] While the appellate records presented to the PCR judge have been included in the appendix, the complete records associated with Wells's appeal following his guilty plea are currently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. Erick Wells, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=56519. Notably, in his pro se notice of appeal filed shortly after he entered his guilty pleas, Wells alleged his rights were violated because he "never saw [his] motion for discovery." Id. Similarly, in the guilty plea explanation submitted by Wells's plea counsel, plea counsel stated: "The defendant believes that his plea was involuntary and illegal because he received ineffective assistance of counsel. He further believes that the State, by and through its representatives within the Richland County Sheriff's Department and Fifth Circuit Solicitor's Office, violated his rights by unfairly targeting him and *by withholding evidence from him*." Id. (emphasis added).

they would be able to argue for a ten-year sentence, which Wells believed he was "probably" going to get. (App'x pp. 71-75; p. 87). Wells alleged he then saw his discovery for the first time after plea counsel sent it to him while he was in prison. (App'x pp. 76-77; p. 82). Wells further claimed he would not have pled guilty if he had known what was in the discovery because he saw a lot of unspecified issues that were not "researched or addressed." (App'x p. 77). Beyond that, Wells explained his focus had been solely on getting a plea offer and he had futilely wanted plea counsel to get the trafficking charge "dropped" even though plea counsel assured him that could not be done. (App'x p. 85). Furthermore, despite his substantial preexisting experience with the criminal justice system, Wells claimed he had not truly understood the rights he was surrendering by entering his guilty plea. (App'x p. 9; p. 85).

In addition to Wells's testimony, plea counsel recounted the details of his representation of Wells. (App'x pp. 88-89). In doing so, plea counsel, who had over twenty years of practicing experience, indicated he was appointed to Wells's case due to a conflict with the public defender's office, moved for discovery after being appointed in October of 2013, and "almost immediately" received partial discovery related to the first of Wells's arrests. (App'x p. 89). Following that, plea counsel stated he met with Wells and Wells provided him with information about the negligent discharge of the firearm, which had not been referenced in the provided discovery materials. (App'x pp. 89-90). Based on that, plea counsel indicated he immediately began "pressing" the solicitor about that matter and, while he was working on that, Wells was arrested for a second time. (App'x p. 90). Plea counsel confirmed he then obtained "initial discovery" about the second case and was attempting to get more when Wells was arrested for a third time. (App'x p. 90). Following that, plea counsel explained he filed a motion to compel discovery with a copy of a memorandum drafted by Chief Justice Toal attached to it. (App'x pp.

91-92; p. 101; pp. 115-117). Plea counsel indicated he then received a supplemental report about the shooting incident two days later and he followed up by making fourteen separate requests of the solicitor. (App'x pp. 93-94; p. 101; p. 118). After that, plea counsel explained he received some information in response to those requests while other requests went unmet, such as one seeking the identity of anyone "pushing" for a higher sentence for Wells. (App'x pp. 101-103; p. 118). Importantly though, plea counsel conceded he believed some of the requests were not met because the requested information did not actually exist, one of his requests had simply been a "rhetorical question," and he knew from the outset his request for the solicitor to perform broad non-case-specific statistical research for him was not going to occur. (App'x pp. 101-103; p. 118). Furthermore, plea counsel confirmed he reviewed all the discovery he received with Wells and the two went over both what they had *and* what they were still missing, which—significantly—solely related to the accidental discharge event. (App'x pp. 92-94; pp. 96-97; pp. 104-105; p. 107). Plea counsel further confirmed he had all the discovery concerning the facts, which were "pretty well solidified," and had everything he needed in connection to the trafficking charge. (App'x pp. 106-108). Beyond that, plea counsel indicated the decision to enter the guilty plea was Wells's, and that decision was made after he had advised Wells about the risks of a trial in which Wells was facing a minimum sentence of twenty-five years in comparison to the benefits of a plea through which Wells potentially—but not necessarily—would be able to receive a sentence as low as ten years. (App'x p. 95; pp. 97-98; pp. 106-108).

After all that testimony was presented, the PCR judge indicated she believed the conduct of law enforcement in Wells's case had been "troubling" and Wells not receiving the discovery requested raised "real questions as to the voluntariness of the plea." (App'x p. 108). The PCR judge then orally ruled Wells's plea had not been voluntary based on law enforcement's failure

to provide the requested discovery concerning the accidental discharge of the firearm, which she opined—without having viewed any additional discovery—"might" have led to the plea judge having a different view of Wells's evasion attempt and might have influenced the solicitor's plea offer. (App'x pp. 109-110). Finally, the PCR judge indicated she was also granting relief based on a finding of ineffective assistance of counsel that resulted from "ineffective conduct that was induced by the failure of the [S]tate to provide the information that was on multiple occasions requested, legitimately so." (App'x p. 111).

Thereafter, through an order dated August 28, 2019, the PCR judge confirmed her grant of relief. (App'x pp. 120-128). Specifically, in granting relief, the PCR judge ruled:

> The Court finds Counsel was ineffective, and this ineffectiveness was induced by law enforcement's failure to answer Counsel's legitimate requests for information – particularly regarding the discharge of one of the officers' firearm during the service of the search warrant. This Court finds [Wells]'s plea was not voluntarily given because said failure deprived [Wells] of the benefit of full discovery prior to entering his plea. Therefore, this Court finds [Wells]'s request for relief due to an involuntary guilty plea should be granted.

(App'x p. 127). Accordingly, the PCR judge awarded Wells a new trial. (App'x pp. 127-128).

Following that, the State timely filed a motion to reconsider, alter, or amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (App'x pp. 129-139). However, through an order filed just over four years later, the PCR judge denied the State's motion without a hearing. (App'x pp. 140-141). The State then timely filed a notice of appeal.

After initiating the appeal, the State filed a petition for a writ of certiorari in the Supreme Court, and the Supreme Court transferred the matter to the Court of Appeals. Subsequently, on September 18, 2025, this Court granted the State's petition.

ARGUMENT

The post-conviction relief judge reversibly erred by concluding—in a legally-erroneous manner and without factual support—plea counsel was constitutionally ineffective and Wells's guilty plea was involuntarily entered because the record conclusively demonstrated Wells knowingly, intelligently, and voluntarily entered a constitutionally-valid guilty plea with the assistance of constitutionally-effective plea counsel and with an adequate understanding of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights being waived.

Standard of Review

In PCR cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge's factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) ("Under the proper standard of review, the appellate court's 'view' must be limited to whether there is probative evidence to support the PCR court's factual findings."). Meanwhile, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge's rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014). Moreover, when conducting such an analysis in the context of a PCR appeal involving a guilty plea issue, the appellate court will consider the entire record, including the transcript from the guilty plea hearing and the evidence presented at the PCR hearing, because the voluntariness of a guilty plea must be determined from an examination of the record as a whole. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420-421 (2000); see State v. Tucker, 376 S.C. 412, 419, 656 S.E.2d 403, 407 (Ct. App. 2008) ("An appellate court will review the totality of the circumstances to discern if a plea was entered into knowingly and intelligently."). Ultimately, if

the PCR judge's decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

Law Regarding the Voluntariness of a Guilty Plea

As has long been recognized, guilty pleas and plea bargains are important components of our nation's—and state's—criminal justice system. Blackledge v. Allison, 431 U.S. 63, 71 (1977). Such pleas provide significant benefits to all involved, including by allowing defendants to obtain speedy disposition of their cases and by allowing both courts and prosecutors to conserve limited resources. Id. Critically though, the benefits of a guilty plea can only truly be secured "if dispositions by guilty plea are accorded a great measure of finality." Id. In light of that, "[f]ew principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Sims, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (Ct. App. 2018) (citation and internal quotations omitted).

For a guilty plea to be knowing, voluntary, and intelligent, all that is required is: (1) the defendant must have a sufficient understanding of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights being waived; and (2) the record must reflect a factual basis for the plea. Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001); see Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) ("[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." (emphasis removed)); Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) ("To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of the plea and the charges against him.").

Significantly though, "the Constitution, in respect to a defendant's awareness of relevant circumstances, does *not* require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor." United States v. Ruiz, 536 U.S. 622, 630 (2002) (emphasis added); see Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) ("[A] defendant may choose to forgo a legal challenge and opt for what he considers a favorable plea arrangement, especially where other charges will be dismissed or sentences are run concurrently. This 'give and take' lies at the heart of virtually every guilty plea, as plea agreements allow our overly burdened criminal courts to function."). In the end, "[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." McMillian v. State, 383 S.C. 480, 485, 680 S.E.2d 905, 907 (2009) (citation and internal quotations omitted).

Law Applicable to Ineffective Assistance of Plea Counsel Claims

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). Pursuant to that right, the defendant is entitled to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970). However, that does not mean entitlement to perfect or mistake-free representation. Burt v. Titlow, 571 U.S. 12, 24 (2013). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 687-688 (1984). Meanwhile, counsel's assistance is considered constitutionally ineffective only when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686.

When faced with a claim of ineffective assistance of counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant must establish: (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the heavy burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001).

Regarding the deficiency prong of the analysis, the proper measure of performance is whether counsel provided representation within the objectively reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). To establish deficiency, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. Thus, counsel's performance will be considered deficient only when it objectively amounted to incompetence under prevailing professional norms and not when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. For that burden to be met, counsel's deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the proceeding would have been different but

for counsel's unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). Moreover, "[t]he likelihood of a different result must be substantial, not just conceivable." Richter, 562 U.S. at 112; see Strickland, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

Furthermore, when an applicant is raising a challenge to a guilty plea predicated upon an ineffective assistance of counsel claim, the same two-pronged analysis remains applicable. Hill v. Lockhart, 474 U.S. 52, 58 (1985). "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, 745 S.E.2d 97, 102 (2013). Meanwhile, to establish prejudice in the context of a guilty plea, the applicant must demonstrate there was a reasonable probability the applicant would not have pled guilty and, instead, would have insisted on going to trial but for plea counsel's errors. Hill, 474 U.S. at 59; see Jones v. State, 333 S.C. 6, 8, 507 S.E.2d 324, 325 (1998) ("A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty."). Significantly, due to the finality interests at stake, caution must be exercised before a guilty plea is set aside in a case in which a proper plea colloquy was conducted. Jamison, 410 S.C. at 468-469, 765 S.E.2d at 129.

Application of the Pertinent Law to Wells's Case

In the case sub judice, the PCR judge granted relief to Wells upon concluding: (1) Wells's guilty plea was involuntarily entered; and (2) Wells's plea counsel was constitutionally ineffective. Notably, in reaching those dual conclusions, the PCR judge did *not* find a Brady[5] violation had occurred in Wells's case or find plea counsel had failed to take some action—such

[5] Brady v. Maryland, 373 U.S. 83 (1963).

as conducting additional investigation—that needed to be undertaken in order for Wells to be adequately represented. See, e.g., Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (instructing a defendant "may challenge the voluntary nature of his guilty plea in a PCR action by asserting an alleged Brady violation"). Instead, the PCR judge simply determined both Wells's guilty plea was not a voluntary one *and* plea counsel's performance was not constitutionally adequate because Wells had not received all the information that had been requested by plea counsel by the time Wells elected to accept the State's plea offer and enter his guilty plea. And, significantly, the PCR judge reached such a determination *without* having reviewed any discovery materials or other information that had been requested prior to the plea and without even determining whether that requested matter *even existed at all*. Contrary to the PCR judge's ruling, Wells was not entitled to relief as his guilty plea was knowingly, intelligently, and voluntarily entered and his plea counsel's performance was not constitutionally ineffective.

Demonstrating that fact, Wells was aware of everything he needed to be aware of in order to be able to enter a valid guilty plea prior to his entry of one in the case at bar. Specifically, as reflected in the record, he knew and understood the nature of the charges to which he was pleading guilty, including the potential penalties that could be imposed for those offenses. Likewise, Wells—who had *substantial* preexisting familiarity with the criminal justice system that began decades before he entered his guilty plea—confirmed he understood all the critical constitutional rights he was waiving by pleading guilty. Furthermore, there was unquestionably a factual basis for the offense to which Wells pled guilty, and Wells personally affirmed he possessed crack cocaine and cocaine during the first incident, possessed more drugs during the second incident, and also failed to stop for a blue light. Meanwhile, based on the discussion that

occurred at the guilty plea hearing concerning the accidental discharge of a firearm during the first incident, Wells was fully aware of that occurrence as were the plea judge, plea counsel, and the solicitor.

Under such circumstances, Wells knew of and confirmed all that was necessary for him to be able to validly plead guilty. See Rollison, 346 S.C. at 511, 552 S.E.2d at 292 ("All 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."). As a result, Wells's guilty plea was a voluntary and valid one, and that remained true regardless of whether Wells—who had been advised by plea counsel of what they did and did not possess as far as discovery was concerned *before* making his plea decision—had or had not yet received all the information that had been requested by plea counsel. See Hyman v. State, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012) (rejecting—through an opinion authored by Chief Justice Toal—the suggestion "a criminal defendant may never enter a plea voluntarily without the State first disclosing all of the evidence in its possession"); see also Ruiz, 536 U.S. at 629 ("[T]he Constitution does not require the prosecutor to share all useful information with the defendant."); United States v. Graf, 827 F.3d 581, 584 (7th Cir. 2016) ("[W]e have often held that a defendant can offer a knowing and voluntary plea *without having received full discovery* from the government." (emphasis added)); United States v. Underwood, 174 F.3d 850, 854 (7th Cir. 1999) ("[A] guilty plea entered by a defendant who does not see the prosecution's hand in advance will still be voluntary if, as was true in this case, the plea follows disclosure of an adequate factual basis."). Moreover, because Wells's guilty plea was a voluntary and valid one, plea counsel's performance was in no way constitutionally ineffective. Cf. Rollison, 346 S.C. at 511-512, 552 S.E.2d at 292-293 ("A

review of both the plea record and respondent's PCR testimony indicates he was well aware that he was pleading guilty both to first offense possession and to second offense PWID, and of the potential sentences he faced as a result. Further, there was a sufficient factual basis presented for both the PWID charge and the separate possession charge in the recitation made by the solicitor at the plea. This is all that is required, and the plea was proper. Respondent received the benefit of the agreement for which he bargained and cannot now complain. There is no evidence in the record to support the PCR judge's finding that trial counsel was ineffective in allowing respondent to accept this plea bargain. A finding that is without evidentiary support must be reversed.").

For all those reasons, the PCR judge erred by granting relief to Wells. See Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996) ("[T]his Court will not uphold the findings of a PCR court if no probative evidence supports those findings."); see also Premo v. Moore, 562 U.S. 115, 124-125 (2011) ("Acknowledging guilt and accepting responsibility by an early plea respond to certain basic premises in the law and its function. Those principles are eroded if a guilty plea is too easily set aside based on facts and circumstances not apparent to a competent attorney when actions and advice leading to the plea took place. Plea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks. The opportunities, of course, include pleading to a lesser charge and obtaining a lesser sentence, as compared with what might be the outcome not only at trial but also from a later plea offer if the case grows stronger and prosecutors find stiffened resolve. A risk, in addition to the obvious one of losing the chance for a defense verdict, is that an early plea bargain might come before the prosecution finds its case is getting weaker, not stronger. The State's case can begin to fall apart as stories change, witnesses

become unavailable, and new suspects are identified. These considerations make strict adherence to the Strickland standard all the more essential when reviewing the choices an attorney made at the plea bargain stage."). And, that is particularly true due to the fact the PCR judge granted that relief without requiring Wells to produce any additional information that had not been previously disclosed and without verifying any such information even existed at all. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (reversing—through an opinion authored by Justice Toal—a PCR judge's finding defense counsel was constitutionally ineffective for failing to obtain all necessary discovery documents before trial and explaining: "Since the contents of these documents were never revealed at the PCR hearing, Defendant has failed to present any evidence of probative value demonstrating how the failure to obtain the unproduced statements or acquire the other documents in a more timely fashion prejudiced the defense."); cf. Rollison, 346 S.C. at 510, 552 S.E.2d at 292 ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Here, we are left to speculate whether, in fact, the search was unconstitutional. The PCR judge's finding that without further investigation by Defense Counsel it would be impossible to decide on the legality of the search is an insufficient basis upon which to order PCR." (citation and internal quotations omitted)). Accordingly, the PCR judge's ruling granting relief must be reversed as it was legally and factually erroneous. See Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (recognizing a PCR judge's decision will be reversed when it is controlled by an error of law).

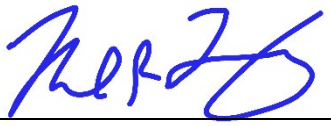
CONCLUSION

For all the foregoing reasons, it is respectfully the PCR judge's grant of relief should be reversed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

BY: 
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR PETITIONER

September 19, 2025

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Court of Common Pleas
Appeal from Richland County
Honorable Jean Hoefer Toal, Retired Chief Justice
Appellate Case No. 2023-001835

ERICK E. WELLS,

Respondent,

vs.

THE STATE,

Petitioner.

PROOF OF SERVICE

I, Grace Sommer, certify I have served the within Brief of Petitioner on Respondent by sending an electronic copy via email to the address listed in AIS for the following individual:

Sarah E. Shipe, Esquire
S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 19th day of September, 2025.

GRACE SOMMER
Legal Assistant
Office of the Attorney General