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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Robert J. Bonds, Circuit Court Judge

App. Case No. 2023-001429

Tyrone D. Ellison,

Petitioner,

vs.

State of South Carolina,

Respondent.

PETITION FOR REHEARING
AND FOR REHEARING *EN BANC*

Tricia A. Blanchette
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Leesville, SC 29070
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Attorney for Petitioner

INDEX

INDEX2

STATEMENT OF THE CASE3

ARGUMENT5

CONCLUSION.....8

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Dorchester County Clerk of Court. Petitioner was indicted by the Dorchester County Grand Jury for failure to stop for a blue light (2013-GS-18-1267), entering a bank, depository, or building and loan association with intent to steal (2013-GS-18-1268), 2 counts of hit and run involving great bodily injury (2013-GS-18-1354, 1355), and armed robbery (2013-GS-18-1813). These indictments stemmed from a bank robbery at a Suntrust bank on July 1, 2013. Petitioner was also indicted by the Dorchester County Grand Jury for intimidation of court officials, jurors or witnesses (2015-GS-18-0024), obstructing justice (2015-GS-18-0025), and criminal conspiracy (2015-GS-18-0026).¹

On August 12, 2015, Petitioner entered a negotiated guilty plea in front of the Honorable Edgar W. Dickson at the Dorchester County Courthouse. Petitioner was represented by James K. Falk, Esquire. Assistant Solicitors Don Sorenson and Phil Giese represented the State. Petitioner was sentenced concurrently as follows: time served for failure to stop for a blue light (2013-GS-18-1267), 30 years for entering a bank, depository, or building and loan association with intent to steal (2013-GS-18-1268), 10 years for each count of hit and run involving great bodily injury (2013-GS-18-1354, 1355), 30 years for armed robbery (2013-GS-18-1813), time served for attempting to influence court officials, jurors or witnesses (2015-GS-18-0024), 10 years for obstructing

¹ These indictments stemmed from a trial on Indictment No. 2013-GS-18-1271, 2014-GS-18-325 in front of the Honorable D. Craig Brown on October 20-24, 2016, where he was represented by James K. Falk, Esquire, and are the subject of Appellate Case No. 2023-001432.

justice (2015-GS-18-0025), and 5 years for criminal conspiracy (2015-GS-18-0026).

Petitioner did not appeal his plea or sentences.

On January 7, 2016, an Application for Post Conviction Relief was filed. Respondent filed a Return on July 12, 2016. On May 8, 2018, Petitioner, through counsel, filed a Motion for Consolidation and Discovery, which also addressed Petitioner's Post Conviction Relief Application stemming from a trial.² On July 12, 2018, a motion hearing was conducted at the Dorchester County Courthouse in front of the Honorable Robin B. Stilwell. Petitioner was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Christian Saville, Assistant Attorney General. An Order for Consolidation and Discovery was issued on July 23, 2018.

On July 26, 2021, Petitioner, through counsel, filed an Amendment to his Application. On May 20, 2022, an evidentiary hearing was conducted at the Orangeburg County Courthouse in front of the Honorable Robert J. Bonds. Petitioner was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Samantha J. Weidauer, Assistant Attorney General. The matter of consolidation with his other pending Application was addressed, and the court proceeded with a consolidated hearing and took the records from both matters into consideration. At the conclusion, the court requested that the parties submit proposed orders. Both parties complied, and an Order of Dismissal was issued on September 19, 2022, filed on October 5, 2022 and entered on October 6, 2022. Petitioner, through counsel, filed a timely Motion Pursuant to Rule 59

² On January 11, 2018, Petitioner filed an Application for Post Conviction Relief in Dorchester County (Docket No. 2018-CP-18-0047) stemming from his trial in front of the Honorable D. Craig Brown. He was represented by James K. Falk, Esquire. As a result of the consolidated evidentiary hearing, the lower court had a copy of the records from the trial, appeal, and PCR Application. This is the underlying Application for Appellate Case No. 2023-001432.

(a) & (e), SCRCF. On December 8, 2022, a motion hearing was conducted via WebEx. An Order denying the motion was issued on December 8, 2022 and filed on August 4, 2023, from which this Petition follows.

On September 12, 2023, a Notice of Appeal was filed by Petitioner. On March 28, 2024, a Petition for Writ of Certiorari and Appendix were filed. The Return was filed on July 12, 2024, and the appeal was transferred to the South Carolina Court of Appeals on August 7, 2024. On September 30, 2025, the South Carolina Court of Appeals issued an Order denying certiorari, from which this Petition for Rehearing and Petition for Rehearing *En Banc* follows.

ARGUMENT

Pursuant to Rule 221, SCACR, Petitioner respectfully petitions this Court for rehearing and for rehearing *en banc*. Petitioner would respectfully request that the panel and entire Court review the Petition for Writ of Certiorari and the entirety of the arguments contained therein. Petitioner would further request that the panel and the entire Court review the record contained in the filed Appendix.

By way of the Petition, the following arguments were made:

1. The lower court erred by failing to properly address the matters raised in the Rule 59, SCRCF, Motion; therefore, a remand is necessary to ensure that specific findings of fact and conclusions of law were entered on each issue raised and that the record before the court and the testimony of each witness was properly addressed.
2. The lower court erred for failing to find that counsel did provide ineffective assistance that rendered Petitioner's guilty plea involuntary due to counsel's failure to properly prepare with and represent Petitioner prior to his trial, during his trial and prior to the entry of the guilty plea. The lower court also erred for failing to find prejudice when there was no benefit from the guilty plea and counsel's failures left Petitioner with no viable option of proceeding to trial.

3. The lower court erred for failing to find that relief is required under *Cronic* due to a complete breakdown in the adversarial process and a systematic failure whereby prejudice must be presumed.

Petitioner submits that this Court has overlooked and/or misapprehended the entirety of his arguments and cannot specify certain portions as the Court did not issue an Order making any form of analysis of the issues raised. Petitioner urges this Court to reconsider the denial of certiorari because the lower court's finding that trial counsel provided effective assistance is not supported by the record or the law; therefore, reversal is absolutely necessary. *See Webb v. State*, 281 S.C. 237, 314 S.E.2d 839 (1984), *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

As is addressed in the Petition, Petitioner took the stand and offered testimony in support of his allegations at the evidentiary hearing. Petitioner also called James K. Falk, Esquire, to the stand. As stated in the Petition: "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a 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 also from the record of the PCR hearing." *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). Petitioner would urge this Court to review the entire record and find that it supports a granting of relief due to counsel's ineffective assistance.

Petitioner asks this Court to not overlook that the record supports a finding of ineffective assistance as the representation offered by Attorney Falk did not meet prevailing professional norms that make the adversarial process work. *See Ard v. Catoe*,

372 S.C. 318, 642 S.E.2d 590 (2007). Here, Attorney Falk failed to ensure any form of a meaningful adversarial process. As detailed in the Petition, counsel appeared as if he was advocating for Petitioner at the guilty plea with his answers to the court, but counsel failed to tell the court the truth regarding his failure to meet with Petitioner, review the evidence, conduct an investigation, or prepare for trial prior to the entry of the guilty plea. Counsel's inaction after appointment denied Petitioner the opportunity to have meaningful assistance from an attorney acting in the role of an advocate to ensure a fair adversarial process. Therefore, as argued in the Petition, Petitioner urges this Court to find that counsel's representation was ineffective under the analysis set forth in *Strickland v. Washington*, 466 U.S.668 (1984) and *Hill v. Lockhart*, 474 U.S. 52 (1985). Petitioner also urges this Court to find that counsel's representation violates the Constitutional guarantee of assistance of counsel as explained in *United States v. Cronin*, 466 U.S. 648, 656 (1984), as follows:

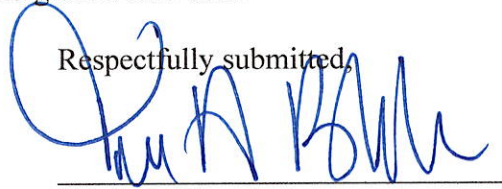
Thus, the adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate." *Anders v. California*, 386 U.S. 738, 743, 87 S.Ct. 1396 1399, 18 L.Ed.2d 493 (1967). The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.

Based upon the foregoing and the entirety of the filed Petition and Appendix, Petitioner would urge this Court rehear and/or reconsider the arguments raised in the Petition, which are supported by the record, and addressed herein. Petitioner would respectfully ask this Court to allow the arguments to be further addressed by granting certiorari or whatever step this Court deems proper.

CONCLUSION

In consideration of the arguments contained in the Petition and the above stated arguments, Petitioner respectfully requests that the Court conduct a full review of the previously submitted Petition for Writ of Certiorari and Appendix. Petitioner would further urge this Court to reverse the Order filed on September 30, 2025 and allow Petitioner to brief the arguments or reverse the lower court and grant a new trial.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 9 day of October 2025.

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CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that I served this 9th day of October 2025 a copy of a Petition for Rehearing and for Rehearing *En Banc* on Bryan T. Hall, Assistant Attorney General, by sending via email pursuant to Rule 262, SCACR, to his following registered email address: Bryanhall@scag.gov.



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October 9, 2025

TB
LAW OFFICE OF
TRICIA A. BLANCHETTE

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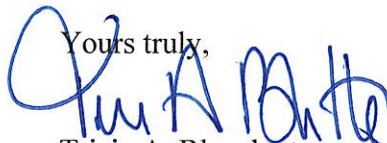
October 9, 2025
VIA E-FILING

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29211

RE: Tyrone D. Ellison v. State; App. Case No. 2023-001429

Dear Ms. Kitchings:

For filing, I have attached a Petition for Rehearing and for Rehearing *En Banc*, with Certificate of Service attached. I appreciate your assistance with this filing. Please let me know if anything further is needed.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Bryan T. Hall, Senior Assistant Deputy Attorney General (via email)
Tyrone D. Ellison