RECEIVED
Oct 15 2025
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2024-002181
Lower Case No. 2020–CP–23–0736

Braxton Hare #373172,

Petitioner,

v.

State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI

Dayne Phillips, Esq.
SC Bar No. 77712

Price Benowitz LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234

Attorney for Petitioner

INDEX

QUESTIONS PRESENTED

I. Did the PCR Court erred in finding plea counsel provided effective assistance when counsel failed to conduct a reasonable investigation by not obtaining petitioner's school, DJJ, and medical records to present mitigation evidence and rebut aggravating evidence introduced by the state?

II. Did the PCR Court erred in finding Plea Counsel provided effective assistance when Counsel failed to present any mitigation evidence when compelling mitigation existed

III. Did the PCR court err in finding Petitioner knowingly, intelligently, and voluntarily pled guilty?

STATEMENT OF THE CASE

Indictment

On May 24, 2016, the Greenville County Grand Jury indicted Petitioner, Braxton Hare, for Carjacking without bodily harm. (App. 239 – 240).

Plea Hearing

On October 2, 2017, Petitioner appeared before the Honorable Edward W. Miller for trial but ultimately pled guilty to carjacking. (App. 1 – 12). Plea Counsel Ernest Hamilton represented Petitioner, and Assistant Solicitor L. Mark Moyer prosecuted the case on behalf of the State. Plea Counsel informed Judge Miller,

> [Petitioner] understands that he's been offered a -- a situation where if he pleads guilty that the Court -- the State will take into consideration other pending charges. And *I'm just not sure that he understands the severity of the consequences of not taking the concurrent time and how that would affect his decision to plead guilty.*

(App. 3, lines 8-14) (emphasis added). Plea Counsel maintained to Judge Miller that Petitioner wanted ten to fifteen years and stated, "But I don't know if that matters. I don't understand if he understands what - - the difference in it." (App. 4, lines 8-10).

The State presented the following plea offer: Recommendation for a twenty-year sentence, concurrent to Petitioner's unrelated active sentence,[1] and dismissal of unrelated armed robbery and attempted murder charges. (App. 4, lines 20-25; App. 242 – 247). After the State explained the

[1] On July 12-13, 2017, Petitioner proceeded to trial before the Honorable Edward W. Miller and jury. Ernest Hamilton represented Petitioner, and Mark Moyer represented the State. The jury convicted Petitioner of the lesser-included offense of Assault and Battery of a High and Aggravated Nature (ABHAN) and Failure to Stop for a Blue Light. Judge Miller sentenced Petitioner to twenty years imprisonment for the ABHAN conviction and three years imprisonment for the Failure to Stop conviction. Notably, the PCR Court granted Petitioner's separate PCR application based on ineffective assistance of trial counsel for those convictions. (2020-CP-23-0737).

plea offer, Judge Miller addressed Petitioner:

> Well, it's a one-time deal. And I'll do it. If not, that ain't going to happen. Do you understand what I'm saying to you?
>
> . . . I - - at this point right now, I will accept the offer that they have laid on the table. That's your choice. I'm not going to make it for you. . . .
>
> . . . do you [his mother] need to talk to him right now? *Because we're about to pull a jury and we're going to get this done.* . . .
>
> . . . Do you want to talk to your mother about this decision.
>
> (WHEREUPON, *there was no verbal response.*)
>
> (*Pause.*)

(App. 5, lines 1-7; lines 17-19; lines 23-25) (emphasis added). Petitioner eventually responded, "I'll take it." (App. 6, line 2).

Judge Miller subsequently accepted the plea, and Plea Counsel provided the following response during sentencing: "Your Honor, he - - he stands before the Court. I think he's made a conscious decision to plead. We appreciate - - on his behalf, I'd like to appreciate the Court accepting his plea and the recommendation. And any and all cases pending will be dismissed." (App. 10, line 23 – 11, line 1). Judge Miller sentenced Petitioner to twenty years imprisonment, concurrent to the sentences he received on July 13, 2017. (App. 11, lines 14-16; App. 249 – 250).

PCR Application and Return

On February 5, 2020, Petitioner filed an application requesting Post-Conviction Relief (PCR), alleging ineffective assistance of counsel and requesting a hearing to present evidence in support of equitable tolling of the statute of limitations.[2] (App. 13 – 19). Specifically, Petitioner

[2] Petitioner cited the following cases in support of equitable tolling: *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

raised the following allegations in the initial PCR application:

1. Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. *See* S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. *See Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

2. Plea Counsel failed to file a Notice of Appeal as requested by Applicant of his guilty plea and sentence, thereby denying Applicant belated review of direct appeal issues. Specifically, Applicant did not knowingly, intelligently, and voluntarily waive his right to file an appeal of his guilty plea and sentence. *See White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974); *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002); *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).

3. Applicant did not voluntarily, knowingly, or intelligently plead guilty based on Plea Counsel's erroneous advice. *See Boykin v. Alabama*, 395 U.S. 238 (1969).

4. Plea Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial. *See Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992).

5. Plea Counsel failed to move for a *Blair* hearing prior to the plea hearing to determine Applicant's competency to stand trial. *See State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.

6. Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence.

7. Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. *See Wiggins v.*

Smith, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

(App. 14 – 16).

Petitioner sought the following relief in his initial PCR application: "Applicant seeks a belated appeal of his guilty plea and sentence; and Applicant also seeks Post-Conviction Relief by vacating his conviction and sentence and remanding the indictment for a new trial based on ineffective assistance of plea counsel." (App. 17).

On May 27, 2020, the State filed a Return and partial motion to dismiss.3 (App. 20 – 26). Petitioner filed a Reply and Motion to Deny Respondent's Partial Motion to Dismiss on June 12, 2020. (App. 27 – 31).

On March 15, 2023, Petitioner filed an amended PCR application, alleging:

1. Plea Counsel failed to file a Notice of Appeal as requested by Applicant of his guilty plea and sentence, thereby denying Applicant belated review of direct appeal issues. Specifically, Applicant did not knowingly, intelligently, and voluntarily waive his right to file an appeal of his guilty plea and sentence. *See White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974); *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002); *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).

2. Applicant did not voluntarily, knowingly, or intelligently plead guilty based on Plea Counsel's erroneous advice. *See Boykin v. Alabama*, 395 U.S. 238 (1969).

3. Plea Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial. *See Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992).

4. Plea Counsel failed to move for a *Blair* hearing prior to the

[3] At the PCR hearing, AAG Battenfield confirmed that Respondent withdrew the motion to dismiss. (App. 128, lines 6-24).

plea hearing to determine Applicant's competency to stand trial. *See State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.

5. Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence.

6. Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's reports.

7. Plea Counsel provided erroneous advice to Applicant to accept this guilty plea based on his conviction after the guilty verdict in a separate trial.

8. Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. *See Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

(App. 32 – 38).

PCR Evidentiary Hearing

On May 13, 2024, Petitioner appeared before the Honorable B. Alex Hyman for an evidentiary hearing on the PCR applications.[4] (App. 39 – 190). Dayne Phillips represented the Petitioner, and Assistant Attorney General (AAG) Julianna Battenfield appeared on behalf of the State. The following witnesses testified at the hearing: Dr. Donna Schwartz Maddox, Petitioner Braxton Hare, Plea Counsel Ernest Hamilton, former Assistant Solicitor L. Mark Moyer, and former Assistant Appellate Defender Taylor Gilliam. Notably, the following exhibits were admitted on

[4] The PCR Court addressed the PCR applications for Petitioner's trial (2020-CP-23-0737) and subsequent guilty plea (2020-CP-23-0736).

behalf of the Petitioner during the hearing without objection: (1) Psychological Evaluation Addendum, (2) Psychological Evaluation, and (3) Flash Drive with Documents Under Seal. (App. 48 – 50; App. 191 – 200).

At the beginning of the hearing, AAG Battenfield provided a brief procedural overview for the PCR Court:

> Judge, this morning we have two separate cases for [Petitioner]. I believe Mr. Phillips has indicated we're gonna start with the trial, and that's 2020-CP-23-00737. And Mr. Hare proceeded to trial on an amended murder indictment, Indictment Number 2015-GS-23-9117, and he was found guilty of the lesser included ABHAN or assault and battery high and aggravated, as well as failure to stop for a blue light, and that indictment number is 2016-GS-23-9118, and he was given twenty years by Judge Miller on July 19th of 2017. After that, Mr. Hamilton, who's here today, Judge, the original defense attorney, he appealed. The direct appeal ended in an unpublished opinion in February 2019. The PCR was filed February 5, 2020. We did our return five months later. Mr. Phillips filed an amended PCR application on March 15, 2020.

(App. 42, line 19 – 43, line 10).

Dr. Donna Schwartz Maddox

At the hearing, Dr. Donna Maddox testified regarding her education, training, and experience. (App. 45 – 46). Dr. Maddox also testified that she had been qualified as an expert in forensic psychiatry "[o]ver eight hundred and fifty times" in various courts. (App. 46, lines 5-14). Based on Petitioner's motion, the PCR Court qualified Dr. Maddox as an expert in forensic psychiatry without objection. (App. 46).

Dr. Maddox testified that she reviewed Petitioner's records and met with Petitioner twice in preparation for her evaluation and reports. (App. 46, line 22 – 47, line 4). Specifically, Dr. Maddox testified,

> The first time that I evaluated him I had mainly his legal proceedings, his school records, and also the trial transcripts, so I

> read through those. I interviewed Mr. Hare on July 21, 2020. That was during COVID, so we had to do the evaluation virtually. After I evaluated him, I had learned that he had had a closed-head injury 45 9 and so I requested some more records and Mr. Phillips very kindly got -- he had an MRI of his brain and he had medical records where he was treated in Seneca, in Oconee, so I got those records, and then I evaluated him again because I needed to perform a cognitive exam on him since he had had a history of closed-head injury, and I saw him the second time on November 4, 2022.

(App. 45, lines 6-18). Dr. Maddox then identified her report (Exhibit No. 2) and addendum (Exhibit No. 1) that she prepared based on her review of the records and meetings with Petitioner. (App. 47 – 48). The records reviewed by Dr. Maddox were uploaded to a flash drive (Exhibit No. 3). Based on Petitioner' motion, the PCR Court admitted Petitioner's Exhibit Nos. 1–3 without objection. (App. 48 – 50; App. 191 – 200). The attorneys stipulated having Exhibit No. 3 admitted under seal due to the confidential information contained in those records. (App. 49 – 50).

Dr. Maddox provided the following testimony regarding her evaluation:

> What happened in this case, Your Honor, he was seventeen when these crimes occurred and, as you know, there's extensive medical literature, young men and women, their brains don't finish developing until they're twenty-four. So the typical seventeen-year-old is beginning to get judgment. The frontal part of their brain is developing, so they start to get good judgment. In this case, I don't think it's fair to compare Mr. Hare to other seventeen-year-olds at the time because he had a history of a significant closed-head injury that I will explain. He also had intellectual disability. He was diagnosed with borderline intellectual functioning, so his IQ was lower than the typical seventeen-year-old as well. So he had two very unique factors about him.
>
> His closed-[head] injury, he was on a moped and got hit by a van when he was younger, and he woke up in a ditch. He was unconscious. He was taken to Oconee Hospital. He had a contusion of the face. He -- they had an MRI ordered. Anyway, he did have some cognitive deficits. His family had noted that he had problems with his memory after the 14 concussion. So those are just things that you have to take into account when you're comparing him to other young men.

> First of all, his brain was very immature and more immature than other seventeen-year-olds at the time of his offense. Secondly, he ran into some issues in his trial. What happened is there was a period of time where he was uncertain whether he would testify or not. He finally decided to testify in his trial in chief and then I believe in the guilty plea during sentencing Judge Miller was asking him some questions and one of the questions he asked him was where did he get the gun and Mr. Hare told him he could not remember, and it appears -- it looked like his inability to remember could have been volitional and oppositional to the Court, and in my opinion it was not, and I think had Judge Miller had known the history of him, that he had intellectual deficits and a closed-head injury, and when persons with those kinds of brains are under stress, their brain, when they're anxious, they don't think very clearly, and I don't think that Mr. Hare was intentionally trying to be oppositional or not answer a question to Judge Miller, and I think it affected the sentencing. He got the maximum sentence.

(App. 51, line 17 – 53, line 8).

Dr. Maddox also testified about whether she would have recommended counsel to request a *Blair*[5] hearing:

> I would have -- had you retained me or a defense attorney, I would have recommended -- and I may have even recommended we have a Blair hearing just to have it on record to protect the record and then that's also a place where you can introduce that testimony. Some judges don't like to have separate sentencing hearings, so even in a Blair hearing that information could have come out to be used later.
>
> . . . but, yes, had you retained me, I would have and we had -- *I would have recommended a Blair hearing just because given his deficits and low IQ, the closed-head injury, sometimes before trial people's functioning, their cognitive impairment, can get worse if they're anxious.* That's why they do neuro psych testing. The reason they do testing is they put somebody under a time limit and they make them anxious on purpose, but sometimes our brain deficits don't show up until you're 18 stressed or until your brain's under anxiety. So sometimes court is similar to that for people. Some people are so anxious that they have more trouble maybe getting the right -- finding the right words, being able to follow

[5] *State vs. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981).

> questions. But based on looking at the transcript, he -- in my opinion, he was competent and he was competent to testify.

(App. 54, line 23 – 56, line 10) (emphasis added).

Dr. Maddox then testified as to what she would have done if hired as an expert witness prior to the plea hearing:

> Yes, I would have done two separate things. First of all, if he had -- say he had pled and we were in front of the judge, I would have examined him the morning of the hearing to make sure that he was still competent. I would have instructed or informed Judge Miller that -- that we probably would need to speak a little slower during the proceedings, make sure -- take breaks to make sure that he understood what was going on because of his deficits.
>
> Number two, I would have outlined exactly what his diagnoses were, and it's borderline intellectual functioning, which means that his IQ is less than 80, but higher than 69, in that he doesn't function as intellectually disabled, but he has borderline functioning. I would have diagnosed him with what's called an unspecified neurocognitive disorder. That means that I know he had some brain damage from the closed-head injury. He also has a history of ADHD as a child. He was on Ritalin and medications for that, so I would have at length talked about those illnesses and that they would further impair, number one, his judgment. They would make him more susceptible to being outsmarted by other people who are higher functioning than him.
>
> And then, thirdly, I had also diagnosed him with a bit of trauma disorder, and all of those things I would have taken into account and recommended that he have mental health treatment when he was detained at the Department of Corrections and then I would have contacted the Department of Corrections and provided his records to make sure that he had a continuity of care.

(App. 56, line 24 – 58, line 2).

On cross-examination, Dr. Maddox testified that, although Petitioner was competent to stand trial, "[h]is capacity's impaired, but he had enough capacity and it's clear in looking at the record that he understood the things being asked, but I think where his deficit showed up during the plea and the trial[.]" (App. 58, line 21 – 59, line 6). In response to AAG Battenfield's

questions regarding Petitioner's grades in school, Dr. Maddox noted that he was also in special education classes and had attended school at DJJ where the classes are easier. (App. 63 – 64).

On re-direct examination, Dr. Maddox testified that Petitioner had one IQ test score of 72 and the other scores were "consistently been in the borderline range of intellectual functioning." (App. 69, lines 6-8). Notably, Dr. Maddox testified that this mitigation should have been presented to Judge Miller based on her prior experience, and the timing of Petitioner's injury and criminal history further supports the need to present expert testimony in mitigation:

> Yes, and based on my experience with Judge Miller, he's very open and he always -- he listens to those things and he takes them into account. What sentences, I can't tell you, but I know that he listens and I know that he takes those things into account.
>
> . . . And I think what -- the other issue I would have brought up, if you look at his legal history, he didn't get into trouble until after these -- until this closed-head injury. He had not had that history before.

(App. 70, line 8 – 71, line 2).

Petitioner Braxton Hare

Relevant to this appeal, Petitioner testified that Plea Counsel discussed the plea offers with him but never discussed obtaining his school and medical records or seeking a mental health evaluation. (App. 75 – 77; App. 83, line 6-15).

Plea Counsel Ernest Hamilton

Relevant to this appeal, Plea Counsel testified that the Dr. Maddox's testimony could have potentially impacted Judge Miller's sentence, and "it was to [Petitioner's] advantage if that would be a mitigating factor in the sentencing portion." (App. 98, lines 8-25). Plea Counsel admitted that he failed to obtain the DJJ records and would have seen that Petitioner had a low IQ and intellectual deficit. (App. 99). Plea Counsel also admitted that, if he had obtained those records, he would have

retained an expert to present that mitigation evidence. (App. 99 – 100; App. 123, lines 17-24; App. 143, lines 16-17). However, Plea Counsel claimed, "there was nothing to indicate that I needed to present that [information]" despite referencing Petitioner's DJJ history during the previous, unrelated jury trial. (App. 100).

On cross-examination, Plea Counsel had the following exchange with AAG Battenfield:

AAG Battenfield: The last question, which I know is dangerous to say, but if you could pick one thing that Dr. Maddox talked about that you would have presented at mitigation that would in your opinion asked -- have actually affected the judge's final sentence, what would it be? To say this is the key piece of evidence that the judge would have given the lesser sentence.

Plea Counsel: I think what she was saying, that his ability to -- to condense situations factually in reality form and maturity, that the immaturity of his mental status and his ability to think as, you know, the brain hadn't developed to comprehend. He was comprehending, but he wasn't opining normal comprehensions and ability to do that.

(App. 144, lines 8-20).

Former Prosecutor Mark Moyer

Relevant to this appeal, former Assistant Solicitor Mark Moyer testified that he did not know about Petitioner's IQ, intellectual deficit, and medical records. (App. 158 –159).

Former Appellate Counsel Taylor Gilliam

Relevant to this appeal, former Assistant Appellate Defender Taylor Gilliam testified about his experience as an appellate attorney and explained the law and procedure for preserving issues for appellate review. (App. 162 – 170).

Under Advisement

At the close of evidence and hearing arguments from the attorneys, the PCR Court noted

that he would send an email if any post-hearing briefs were needed for his ruling. (App. 189, lines 11-15).

Email Communications

On June 4, 2024, the PCR Court, via email, denied the PCR application for Petitioner's guilty plea (736) and granted the PCR application for Petitioner's trial (737). (App. 201 – 204). The PCR Court also requested that the attorneys draft proposed orders. (App. 201).

On June 10, 2024, PCR Counsel responded via email and requested specific rulings for each of the PCR applications prior to drafting the proposed orders, citing *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007) (holding, "Pursuant to S.C. Code Ann. § 17-27-80 . . . , the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented."). (App. 205 – 206).

On July 29, 2024, the PCR Court replied via email and identified the specific allegations for granting the PCR application for the trial (737): "I apologize for the delay, but with regard to your request for specific findings of error in the PCR application of Braxton Hare for his trial-2020-CP-23-0737—Judge Hyman has identified the following grounds in Mr. Hare's Amended PCR Application that warrant the granting of his application: 13, 24, and 41." (App. 207).

On July 31, 2024, PCR Counsel responded again and requested reconsideration of the PCR Court's denial of the PCR application for the guilty plea (736):

> I am respectfully requesting reconsideration of Judge Hyman's denial of PCR application (2020-CP-23-0736), based on allegation #6 mirroring allegation #41 in (2020-CP-23-0737) and allegation #5 (Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence). Specifically, Trial Counsel failed to present that critical mitigation evidence during the sentencing hearing, and therefore, provided ineffective assistance of counsel during the sentencing phase.

> Allegations #6 and 41 in the PCR applications: (Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report).

(App. 208).

On September 12, 2024, the PCR Court responded to the email and provided the following response to Petitioner's request for reconsideration: "Judge Hyman is granting PCR application 2020CP230737 as to the following allegations: 13, 23, 24, 28, 29, 31, 32, 33, 34, and 37. *Allegation 41 is denied. PCR application 2020CP230736 is denied.*" (App. 209) (emphasis added).

Motion to Alter or Amend

On October 1, 2024, based on the PCR Court's email denying the PCR application, PCR Counsel filed a motion to alter or amend judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (App. 210 – 214). Specifically, PCR Counsel argued that the PCR "Court failed to properly address the inconsistent rulings because of the Court's original decision to grant Applicant's other PCR action (2020-CP-23-0737):"

> [I]n that PCR action (737 - Allegation #41), this Court found that Trial Counsel provided ineffective assistance of counsel by failing to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report.
>
> . . . In this PCR action (736 - Allegation #6), mirrors the above allegation. . . .
>
> . . . The [PCR] Court failed to properly address Plea Counsel's failure to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence. (Allegation #5). . . .
>
> . . . The Court failed to properly address Plea Counsel's failure to provide the Plea Court with evidence regarding Applicant's

> intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report and Dr. Maddox's testimony at the evidentiary hearing. . . .
>
> . . . The Court failed to properly address Plea Counsel's failure to present that critical mitigation evidence during sentencing, and therefore, provided ineffective assistance of counsel. . . .

(App. 212). The PCR Court denied the Motion to Alter or Amend via email on December 19, 2024, and subsequently issued a form order denying this motion on January 8, 2025. (App. 234 – 235).

Order of Dismissal

On December 27, 2024, the PCR Court filed an Order of Dismissal, finding "[Petitioner] failed to carry his burden of proof to show either deficiency in representation or that any purported deficiency supported a reasonable probability of a different result." (App. 215 – 231; App. 216).

Allegation 1: Failure to File Notice of Appeal

As to the allegation that Plea Counsel failed to file a notice of appeal, the PCR Court found that Petitioner "has failed to provide testimony alleging that he asked counsel to file an appeal, nor is there testimony from plea counsel conceding that he did not file an appeal despite Applicant's request." (App. 222). The PCR Court also found that Petitioner did not establish deficient performance or prejudice. (App. 222 – 223). The PCR Court further noted that Petitioner did not present a direct appeal issue to review. (App. 223).

Allegations 2 and 7: Involuntary Guilty Plea

As to the allegation that Petitioner involuntarily pleaded guilty, the PCR Court acknowledged that Petitioner alleged "that his plea was involuntary due to counsel's erroneous advice to accept the guilty plea based on his conviction in a separate trial." (App. 223). The PCR Court claimed that "there is no evidence in the record or testimony presented at the PCR

hearing, that Applicant wanted or considered proceeding to trial on the carjacking indictment" despite Judge Miller's acknowledgment that he could proceed and select a jury. (App. 224). The PCR Court found, "even if Applicant did not fully understand the consequences of his plea - though the record suggests otherwise - he suffered no prejudice. If Applicant had declined the State's plea offer and proceeded to trial on the carjacking charge, he would have faced a 20-year sentence to potentially run consecutively with his trial charges and could have faced time for the unrelated armed robbery, carrying a maximum sentence of 20 years, and the attempted murder, carrying a maximum sentence of 30 years imprisonment." (App. 224). The PCR Court also found, "There is no evidence in the record to support the allegation that plea counsel erroneously advised Applicant to accept the State's plea offer." (App. 225). The PCR Court further found, "Considering [Petitioner] received the benefit of the bargain, [Petitioner] has failed to show plea counsel acted deficiently, and that he was prejudiced from plea counsel's advice." (App. 225).

Allegations 3 and 4: Failure to Request Competency Evaluation

As to the allegation that Plea Counsel failed to request a competency evaluation, the PCR Court found, "[Petitioner] has not presented supporting evidence to show that he was incompetent at the time of the plea, in fact, the evidence presented shows that [Petitioner] was competent." (App. 227). The PCR Court also found, "[Petitioner] has failed to show plea counsel acted deficiently by failing to move for a *Blair* hearing to have [Petitioner] evaluated for competency to stand trial and criminal responsibility" and "cannot prove resulting prejudice." (App. 227).

Allegations 5 and 6: Failure to Present Mitigating Evidence

As to the allegation that Plea Counsel failed to present mitigation evidence, the PCR Court found, "plea counsel was not deficient for failing to acquire and present evidence to the plea court regarding [Petitioner's] intellectual deficits." (App. 227). The PCR Court noted, "At any rate, Dr.

Maddox's testimony appears to suggest that Applicant may be immature or impulsive, but her assessment does not assist [Petitioner] in meeting his burden of proof in accordance with Strickland." (App. 228). The PCR Court also found, "plea counsel did not act deficiently in failing to present mitigation evidence as exemplified by Dr. Maddox's testimony, and that [Petitioner] cannot prove resulting prejudice for his failure to do so." (App. 228).

Allegation 8: Failure to Investigate

As to the allegation that Plea Counsel failed to conduct a reasonable investigation, the PCR Court found, "There is no evidence to suggest plea counsel was concerned or notified of [Petitioner's] intellectual deficits prior to Dr. Maddox's testimony." (App. 230). Despite its previous findings, the PCR Court provided the following contradiction, "*Considering counsel advocated for Applicant to accept the negotiated plea deal*, and the court explicitly confirmed that it would accept the State's recommendation, any mitigation efforts would be futile and are now judged under the Strickland lense of reasonableness." (App. 230). The PCR Court found, "[Petitioner] has failed to show counsel acted deficiently and that he suffered resulting prejudice." (App. 230).

Relief Sought

On, Petitioner filed a Notice of Appeal. (App. 232 – 233). Petitioner now seeks a writ of certiorari for this Court to review the denial of his PCR application.

STANDARD OF REVIEW

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *See Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel and finding ineffective assistance of counsel from a guilty plea where: (1) counsel's advice was not within the range of competence demanded of attorneys in criminal cases; and (2) "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial")); *see also Missouri v. Frye*, 566 U.S. ____, 132 S.Ct. 1399 (2012) (finding the Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected, and reaffirming *Hill v. Lockhart*); *see generally Jamison v. State*, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014) (finding "we must reject the State's claim that the waiver of trial and admission of guilt encompassed in a guilty plea necessarily preclude post-conviction relief in *all* cases", and holding "a PCR Petitioner may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.") (emphasis in original).

To establish ineffective assistance of counsel, a Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims). "First, a [Petitioner] must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Cherry v. State,* 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). "The second prong of the *Strickland* test

requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 118, 386 S.E.2d at 625 (internal citations omitted).

In a PCR action, "[t]he burden of proof is on the Petitioner to prove his allegations by a preponderance of the evidence." *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Strategic "[d]ecisions made [by counsel] in ignorance of relevant, available information cannot be characterized as strategic." *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014). "Ordinarily, the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." *Smalls v. State*, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Notably, "for the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of 'a reasonable probability . . . the factfinder would have had a reasonable doubt' cannot possibly be met." *Id.* 422 S.C. at 191, 810 S.E.2d at 845.

As to appellate review, "this Court will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them." *Thompson v. State*, 423 S.C. 235, 239, 814 S.E.2d 487, 489 (2018), reh'g denied, (June 12, 2018). This Court also reviews questions of law de novo and will reverse if the PCR court's decision is controlled by an error of law. *Smalls*, 422 S.C. at 180–81, 810 S.E.2d at 839, reh'g denied, (March 29, 2018).

ARGUMENT

I. THE PCR COURT ERRED IN FINDING PLEA COUNSEL PROVIDED EFFECTIVE ASSISTANCE WHEN COUNSEL FAILED TO CONDUCT A REASONABLE INVESTIGATION BY NOT OBTAINING PETITIONER'S SCHOOL, DJJ, AND MEDICAL RECORDS TO PRESENT MITIGATION EVIDENCE AND REBUT AGGRAVATING EVIDENCE INTRODUCED BY THE STATE.

The United States Supreme Court has held "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691; *See Wiggins v. Smith*, 539 U.S. 510, 527 (2003). "In assessing the reasonableness of an attorney's investigation, . . . a court must not only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." *Wiggins*, 539 U.S. at 527. Notably, this Court has held, "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

Furthermore, "while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Lounds v. State*, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (quoting *Ard*, 372 S.C. at 331-32, 642 S.E.2d at 597). The duty to conduct a reasonable investigation extends to consulting and possibly presenting expert witnesses. *See McKnight*, 378 S.C. at 46, 661 S.E.2d at 360-61; *Lounds*, 380 S.C. at 462, 670 S.E.2d at 650 (finding it "was not objectively reasonable given the defense theory of the case" for trial counsel not to call witnesses who would have "added significantly to the credibility of petitioner's case").

While counsel in a capital case is not required to investigate or submit every conceivable line of mitigating evidence, a decision not to investigate must be reasonable, and any strategic choices made after less than complete investigation is only reasonable if reasonable professional judgment supports the limits on the investigation. *Cf. Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2009) (holding counsel's investigation as to mitigation evidence was inadequate and incomplete); *see also Rompilla v. Beard*, 545 U.S. 374, 125 S.Ct. 2456 (2005) (holding that counsel's failure to review the case file from defendant's previous conviction - that contained significant mitigating evidence - after the prosecution stated the conviction would be used as an aggravating circumstance, did not meet standards of reasonable professional norms and was not a reasonable strategic decision).

Deficient Performance

In this case, Plea Counsel's performance was deficient, as it fell below an objective standard of reasonableness "under prevailing professional norms." *See Hill*, 474 U.S. at 57-59. Specifically, Plea Counsel failed to conduct a reasonable investigation by not obtaining Petitioner's school, DJJ, and medical records to present mitigation evidence and rebut aggravating evidence introduced by the state. Although this is not a capital case, Plea Counsel's failure to investigate is unreasonable based on Plea Counsel informing the Plea Court that Petitioner did not understand the sentencing consequences of the plea offer, and Counsel's knowledge of Petitioner's previous incarceration at DJJ and failure to obtain those records. *Cf. Von Dohlen*, 360 S.C. 598, 602 S.E.2d 738 (2004); *Council*, 380 S.C. 159, 670 S.E.2d 356; *Rompilla v. Beard*, 545 U.S. 374.

The PCR Court's Order of Dismissal erroneously found that "any mitigation effects would be futile" and failed to provide any basis for finding Plea Counsel's failure to investigate

reasonable. *See generally Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (holding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"). Notably, Dr. Maddox testified that, based on her prior experience, Judge Miller would have considered the mitigation evidence.

Prejudice

Plea Counsel's unreasonably deficient performance prejudiced Petitioner because there is a reasonable probability that, but for Plea Counsel's errors, the sentence imposed by the Court at Petitioner's trial and subsequent guilty plea would have been different. *See Hill*, 474 U.S. 52. Specifically, Plea Counsel's deficient performance adversely affected Petitioner's right to effective assistance of counsel because Counsel failed to present *any* mitigation during sentencing and failed to retain an expert to present compelling mitigation during sentencing. Therefore, the PCR Court erred in finding Plea Counsel provided effective assistance by failing to conduct a reasonable investigation. *See generally Wiggins*, 539 U.S. at 527; *McKnight*, 378 S.C. at 46, 661 S.E.2d at 360-61; *Lounds*, 380 S.C. at 462, 670 S.E.2d at 650.

II. THE PCR COURT ERRED IN FINDING PLEA COUNSEL PROVIDED EFFECTIVE ASSISTANCE WHEN COUNSEL FAILED TO PRESENT ANY MITIGATION EVIDENCE WHEN COMPELLING MITIGATION EXISTED.

In a capital case, counsel provided ineffective assistance for failing to adequately prepare and present evidence during the penalty phase of the trial that petitioner suffered from a major mental illness at the time of the murder. *Cf. Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004); *Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009) (holding the PCR judge erred in denying relief based on trial counsel's complete failure to present mitigation evidence in the sentencing phase).

Deficient Performance

In this case, Plea Counsel's performance was deficient, as it fell below an objective standard of reasonableness "under prevailing professional norms." *See Hill*, 474 U.S. at 57-59. Specifically, although this is not a capital case, Plea Counsel failed to present *any* mitigation evidence when compelling mitigation existed. *Cf. Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738; *Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5.

Prejudice

Plea Counsel's unreasonably deficient performance prejudiced Petitioner because there is a reasonable probability that, but for Plea Counsel's errors, Petitioner would not have pled guilty and went to trial. *See Hill*, 474 U.S. 52. Specifically, Plea Counsel's deficient performance adversely affected Petitioner because Counsel failed to present *any* mitigation during sentencing and failed to retain an expert to present compelling mitigation during sentencing. Therefore, the PCR Court erred in finding Plea Counsel provided effective assistance by failing to conduct a reasonable investigation. *Cf. Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738; *Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5.

III. THE PCR COURT ERRED IN FINDING PETITIONER KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY PLED GUILTY.

The United States Supreme Court has held, "Guilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results." *Brady v. United States*, 397 U.S. 742, 758 (1970). An "unsound result" occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin v. Alabama*, 395 U.S. 238 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him); *see also Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding a defendant must understand the

sentencing consequences of his plea for it to be considered voluntarily given).

"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." *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011). Notably, this Court found a defendant who pleads guilty upon advice of counsel may only attack the voluntary and intelligent character of the plea by showing that advice he received from counsel was not within range of competence demanded of attorneys in criminal cases. *See Richardson v. State*, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993).

Deficient Performance

In this case, Plea Counsel's performance was deficient, as it fell below an objective standard of reasonableness "under prevailing professional norms." *See Hill*, 474 U.S. at 57-59. Specifically, Plea Counsel failed to ensure that Petitioner understood the sentencing consequences of the plea as supported by the plea hearing transcript.

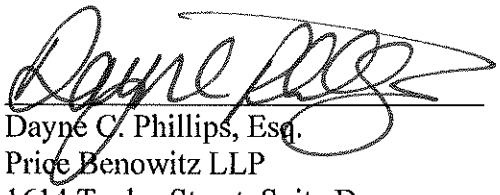
Prejudice

Plea Counsel's unreasonably deficient performance prejudiced Petitioner because there is a reasonable probability that, but for Plea Counsel's errors, Petitioner would not have pled guilty and went to trial. *See Hill*, 474 U.S. 52. Therefore, the PCR Court erred in finding Petitioner knowingly, intelligently, and voluntarily pled guilty. *See Boykin v. Alabama*, 395 U.S. 238.

CONCLUSION

Based on the foregoing reasons, Petitioner Braxton Hare respectfully requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,



Dayne C. Phillips, Esq.
Price Benowitz LLP
1614 Taylor Street, Suite D
Columbia, SC 29201
(803) 807-0234
dayne@pricebenowitz.com

ATTORNEY FOR PETITIONER

October 14, 2025