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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Grace Gilchrist Knie, Circuit Court Judge

CHARLES SPENCER ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001011

PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
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ISSUE PRESENTED

Whether the PCR court erred in denying relief where the record reflects Petitioner's *pro se* guilty plea was not voluntarily, knowingly, and intelligently entered?

STATEMENT OF THE CASE

On April 20, 2018, at around 10:45 in the evening, officers responded to the Citgo on South Guinyard Drive in the city of Sumter. An employee – Mr. Patel – was working the register when a man wearing red pants, a black t-shirt, white shoes, and a black bandana covering his face came into the store. The man pointed a red shirt, which appeared to be wrapped around a handgun, at Patel and demanded the money from the register. Patel threw money at the man who grabbed some of it before fleeing the store. Patel recognized the man as a customer who frequently came into the store. He identified Petitioner from a six-person photo lineup as the individual who robbed him at what he believed was gun point. Petitioner was charged with armed robbery and possession of a weapon during the commission of a violent crime (PWDCVC). The state asserted that Petitioner confessed to the robbery after being given his Miranda[1] rights. App. 69, l. 18-70, l. 19.

While out on bond for the 2018 incident, Petitioner was arrested for another armed robbery that occurred on May 3, 2019. The state alleged Petitioner entered the AutoZone on McCalla Road with a silver handgun, no face covering, wearing a black hat, black pants, and a red shirt. Two employees of the store – Mr. Rivera and Ms. Jones – where in the store at the time of the incident, and both were familiar with Petitioner, as he was a former employee. Petitioner was alleged to have directed Rivera to first zip tie Jones in the back hallway before having Rivera empty the register drawers and the safe. Once Petitioner had the money from the registers and safe, he was alleged to have forced Rivera back to where Jones was where he then placed the handgun against Rivera's head and pulled the trigger twice. The gun did not fire, but

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1 Miranda v. Arizona, 384 U.S. 436 (1966)

it clicked. As he was leaving the scene, he purportedly told Rivera and Jones[2] that he knew where they lived and that he would kill them. Petitioner was arrested a few days after the incident for armed robbery, kidnapping, attempted murder, and PWDCVC. App. 70, l. 20-71, l. 23.

Petitioner was indicted during the September 2018 term of the Sumter County grand jury for the 2018 incident. App. 298-299. Petitioner was purportedly indicted during the August 2019 term of the Sumter County grand jury for the 2019 incident.[3,4] On September 28, 2020, the state, represented by Bronwyn K. McElveen, called the 2019 case to trial before the Honorable R. Ferrel Cothran, Jr. App. 1. At that time the 2018 incident was still pending.

Upon his arrest for the 2018 incident, Petitioner was appointed Timothy Murphy, the Chief Public Defender for Sumter at the time. Counsel Murphy left the public defender's office in December 2019 which caused Petitioner's case to be reassigned in October 2019 to public defender Jason Bridges. App. 180, ll. 8-19; App. 193, l. 22 – 194, l. 3. In January of 2020, Counsel Bridges moved to be relieved after a meeting with Petitioner ended abruptly when Petitioner purportedly left the room saying, "I have to leave this room or I'm going to hit you in the face." App. 199, ll. 11-16. At the motion to be relieved, Petitioner did not oppose Counsel Briggs' removal from his case. App. 199, l. 22 – 200, l. 3. Upon Counsel Bridges being

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2 It was alleged that he had also told Jones he would kill her children and that he had been outside of Jones' home the week prior to the incident. App. 71, l. 24 – 72, l. 2.

3 The only evidence that Petitioner was true billed for the 2019 incident is the public index which shows a True Bill Date of 8/1/2019.
See https://publicindex.sccourts.org/Sumter/PublicIndex/PISearch.aspx
Case Numbers: 2019A4310100291-294

4 Curiously, the attempted murder charge reads that Petitioner did, on or about May 3, 2019, "with intent to kill, attempt to kill another person, Luis R. Solis *and/or* Ferris Jones, with malice aforethought..." App. 301.

relieved, Petitioner was appointed Justin Kata, a member of the private bar. App. 206, ll. 1-10. During a meeting where Counsel Kata was discussing Petitioner's plea and trial options, Petitioner purportedly told Counsel Kata he did not want Kata to represent him. After that meeting, Counsel Kata filed a motion to determine status of counsel. That motion was heard before Judge Cothran on September 16, 2020, and Counsel Kata was ultimately relieved. App. 8, ll. 5-10; App. 208, ll. 9-16. Petitioner ultimately represented himself *pro se* when the case was called for trial on September 28, 2020 – twelve days after counsel had been relieved. App. 1.

During the pre-trial motions hearing, Petitioner moved the court for a continuance because he had neither received all the discovery in the case nor had he been able to review all the discovery he had received. App. 3, l. 16 – 4, l. 14. The state claimed it had provided all discovery to Counsel Murphy, which was then transferred to Counsels Bridges and Kata, and all three had stated on the motions to be relieved that they had reviewed the discovery with Petitioner. App. 7, ll. 9-16. The court denied Petitioner's continuance motion. App. 28, ll. 4-5. However, to facilitate the case moving, the court and state set up a space in the courthouse for Petitioner to finish reviewing the video evidence in his case prior to selecting a jury. App. 45, l. 16 – 46, l. 7; App. 49, ll. 20-25. Petitioner also moved to continue the case for a few days to allow him to hire private counsel that his family had been speaking with about the case. App. 36, l. 24-39, l. 21.

Petitioner challenged the validity of his indictment. First, he challenged the indictment on the grounds that the state only had circumstantial evidence and no proof of an injury to support the attempted murder charge. He argued that for the state to secure an indictment without physical evidence of a crime required some form of deception of the grand jury. He also argued the indictment was facially invalid because it was neither signed by the grand jury

foreman nor true billed. App. 51, l. 13 – 52, l. 12; App. 53, l. 22 – 54, l. 17. The court did not have the original indictment, but the solicitor claimed the original indictment was in the drawer with the clerk's office. The court informed Petitioner that if the state could not produce a true billed indictment, then it did not have jurisdiction over the case, and the case would not go forward. The court withheld ruling on the challenge to the indictment until the original indictment could be produced. App. 53, ll. 14 – 54, l. 25.

Petitioner also moved to have the solicitor recused from his case because he had filed a federal civil lawsuit against her and believed that created a conflict of interest. He also believed the solicitor was personally biased against him. While arguing that motion, the parties discussed the amount of time Petitioner was facing. The state asserted Petitioner was facing 150 years on all his charges, which the court repeated, before the state corrected itself to say Petitioner was facing 130 years on all his charges. The parties then recessed so that Petitioner could review the video evidence and speak with private counsel. App. 55, l. 1 – 60, l. 12.

When the case reconvened after lunch, Petitioner entered a guilty plea to the 2018 incident and the 2019 incident, with the kidnapping charge being dismissed as part of the plea deal. The state recommended twenty (20) years' incarceration. Notably, the case that the state had called for trial – the 2019 incident – required Petitioner to waive presentment to the grand jury on all the charges. App. 60, l. 13 – 61, l. 22. The court did not inform Petitioner of his right to have the grand jury review the case but asked if Petitioner had any problems with the grand jury or the indictment. App. 64, ll. 12-17. During the plea colloquy, the court reviewed the maximum exposure for each charge and Petitioner's constitutional rights. App. 63, l. 21 – 69, l. 12. After pleading guilty, Petitioner was sentenced in accordance with the plea deal. App. 78, ll. 4-22.

Petitioner did not file a direct appeal. A *pro se* application for post-conviction relief was filed on September 23, 2021. Petitioner's primary complaint was that his guilty plea was involuntary. App. 80-104. The state filed a return and partial motion to dismiss on July 19, 2022. App. 105-120. An evidentiary hearing was convened on July 24, 2024, before the Honorable Grace Gilchrist Knie. The state was represented by T. Cruise Mitchell. Petitioner was represented by PCR Counsel Timothy Griffith. App. 121.

Petitioner testified that he was forced to plead guilty without the assistance of counsel and without ever reviewing all the discovery in his case. App. 128, l. 17-131, l. 4. He strongly contested the state's assertions that he fired his attorneys and stated the only attorney he had relieved was Counsel Kata. App. 129, ll. 5-16. He alleged that Solicitor Finney came to him during the break and told him "Okay. Here's your chance right here. You can do 15 years. You go 60 seconds to sign, or you can do the 150." App. 135, ll. 21-23. Petitioner testified that he had sixty seconds to decide whether to plead and be sure he would get home to his family or risk what he believed was 150-year sentence if he went to trial. He stated if he was aware of the proper sentence exposure and had adequate representation, he would have taken the case to trial because he felt there was no evidence he committed the crimes. App. 136, l.14 – 138, l. 12.

Petitioner testified that there was no evidence against him in the cases, as there was no forensic evidence in the cases. He further testified there was no evidence a gun was discharged or used during the incident, and that not one was injured, so he did not understand how he could have a weapon and an attempted murder charge. He also stated that the judge threw out the witness statements because they were inconsistent.[5] App. 138, ll.13 – 139, l. 19; App. 151, l. 13

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[5] The pre-trial ruling by the judge was that the written statements of the witnesses could not be entered into evidence unless it was inconsistent with their trial testimony. He would not allow the state to enter the consistent written statement along with the testimony. App. 43, ll. 1-16.

– 152, l. 2; App. 153, ll. 17 – 154, l. 1; App. 161, ll. 13-21. Petitioner testified that he "really do wish I would have really went to trial with effective assistance of counsel. You know, because I actually how have beat it. It's just, I just got scared with 150 years." App. 166, ll. 2-5.

Counsel Murphy testified that during his meetings with Petitioner they discussed working out a plea deal to the 2019 charges. Petitioner maintained he was not involved in the 2018 incident. However, Counsel Murphy had not received all the discovery on either case and advised Petitioner he would not try to work anything out without the discovery. App. 181, l. 10 – 182, l. 7; App. 184, l. 16-18. He purported that Petitioner stated he was on drugs during the 2019 incident and that he had been diagnosed as schizophrenic. He and the state agreed to have Petitioner evaluated for competency and capacity to conform his behavior to the law. App. 182, ll. 8-24.

Counsel Bridges testified that he had received the full 2018 discovery and that he had received some of the 2019 incident discovery but could not confirm if he received everything in that case. App. 194, ll. 10-22. Petitioner had expressed some interest in a plea offer, however he wanted nonviolent, parole-eligible time with drug treatment. He confirmed the state never provided him with a written plea offer, but in discussions about potential pleas, the state wanted Petitioner to plead to at least the 2019 armed robbery charge. App. 197, ll.17-25. Counsel Kata testified that he received full discovery for both cases and reviewed it with Petitioner. App. 206, l. 23 – 207, l. 3.

The parties reconvened on April 2, 2025, to take additional testimony from solicitor Bronwyn McElveen and from Petitioner. Solicitor McElveen outlined the plea negotiations in the case with the lowest offer being eighteen years. She was willing to reduce the 2018 incident to strong arm robbery, reduce the 2019 attempted murder to assault and battery of a high and

aggravated nature, and dismissing the kidnapping. App. 229, l. 22 – 232, l. 7. She testified that discovery was delivered to prior counsel. App. 236, ll. 3-22.

On May 8, 2025, Judge Knie signed an order denying and dismissing Petitioner's claims. The order found that Petitioner's plea was voluntarily and knowingly entered. App. 282-297.

ARGUMENT

The PCR court erred in denying relief where the record reflects Petitioner's guilty plea was not voluntarily, knowingly, and intelligently entered.

The record reflects that Petitioner's guilty plea was not voluntarily, knowingly, and intelligently entered because he was never advised 1) of the crucial elements of the offenses that he was charged with, 2) that he had a right under due process to have the indictment for which he was on trial, but subsequently pled to, presented to a valid grand jury and 3) that he only faced a maximum of 95 years on the 2019 charges that were called for trial.

The entry of a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights they are waiving. Id. Our Supreme Court has held that, in addition to the requirements of Boykin, 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. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624–25 (1999) citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

There is no testimony in the record that any of Petitioner's prior counsels reviewed the elements of armed robbery, attempted murder, kidnapping, or PWDCVC with him during their respective representations. Petitioner's motions at the pre-trial hearing, along with his testimony

at the PCR hearing, evince that he did not understand the elements of the charges that the state had to prove. Petitioner repeatedly stated during the PCR hearing that he did not know how he could be charged with attempted murder when no one was injured nor a weapon fired. He also did not understand how he could be charged with armed robbery and PWDCVC when no weapon was recovered. Critically, the plea court did not cure this deficiency during the plea colloquy, as the court did not ever review the elements of the offenses prior to accepting Petitioner's plea. There is nothing in the record to reflect that Petitioner understood the nature and the crucial elements of the charges against, thus his plea was unknowingly, involuntarily, and unintelligently entered. See Pittman, *supra*.

Petitioner was on the trial docket for the 2019 charges. He challenged the indictment as insufficient because it was neither true billed nor signed by the grand jury foreman. The court did not rule on this motion but stated the case would *not go forward if there was not a true billed indictment*. When the parties reconvened, the state informed the court that Petitioner would be pleading guilty and waiving presentment on the 2019 charges. As Petitioner's challenge to the indictment was still pending, the court should have then ruled that the case could not go forward. At a minimum, the court should have informed Petitioner of his due process right to have the indictment presented to a grand jury prior to accepting the guilty plea. See State v. Smalls, 364 S.C. 343, 613 S.E.2d 754 (2005) (Although an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment.) Simply asking if Petitioner had any issues with the indictment or the grand jury, when Petitioner did not have advice of counsel, did not cure the deficiency. There is nothing in the record to reflect that Petitioner was informed of his due process right to have a valid

indictment, and without such advice, his waiver cannot be valid. Thus, his guilty plea was not knowingly, voluntarily, or intelligently entered.

Finally, Petitioner was misadvised about the amount of time he faced on the charges called to trial. The record reflects that Petitioner was told he faced 130-to-150 years' imprisonment. While Petitioner faced 130 years' imprisonment on all pending charges (the 2018 and 2019 incidents), he only faced a maximum of 95 years' imprisonment on the 2019 charges. There is also nothing in the record to reflect that Petitioner was informed that armed robbery carried a mandatory minimum of ten years' incarceration. While the plea court did explain during the plea that Petitioner was facing 65 years on the indictment, once the kidnapping had been dropped, he did inform Petitioner of the minimum sentence of armed robbery. Petitioner entered his guilty plea, believing that if he went to trial and lost, he would receive 130-150 years' imprisonment. This misunderstanding of his sentencing exposure was not corrected during the plea colloquy at any point. While Petitioner could have received 95 years had he gone to trial, he could also have received as little as fifteen (15) years.[6] See Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991) (The reality of Ray's situation is, if convicted, he *may* face a sentence of seventy-five years without parole but could face a sentence as short as ten years.) Therefore, his guilty plea was not knowingly, voluntarily, and intelligently entered.

Petitioner has shown prejudice in this matter. He testified that he would have gone to trial had he understood the sentencing range and if he had competent counsel because he believed could have won at trial due to the lack of physical evidence against him. Petitioner's case was called for trial the day he entered the plea, and he made pre-trial motions further

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6 If given the mandatory minimum sentences on armed robbery and PWDCVC and not given a term of years sentences on the kidnapping and attempted murder – as both carry a sentence of zero-to-thirty years and a sentence of zero years was theoretically possible.

evincing his desire for a trial. He even requested the case be continued a few days so that he could hire private counsel to represent him at trial – a not unreasonable request considering that Petitioner's first two lawyers removed themselves from his case. The record reflects that Petitioner wanted to proceed to trial, especially on the 2018 incident, but instead pled guilty without a full understanding of the nature and crucial elements of the offense, the maximum and mandatory minimum penalties he faced, and the fact that he was waiving a right guaranteed by due process when he waived presentment to the grand jury. For these reasons, this court should find Petitioner's plea was unknowingly, involuntarily, and unintelligently entered and reversed and remand Petitioner's convictions and sentences for a new trial. See, Boykin v. Alabama, *supra*; see also Pittman, *supra.*

CONCLUSION

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

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of November, 2025.

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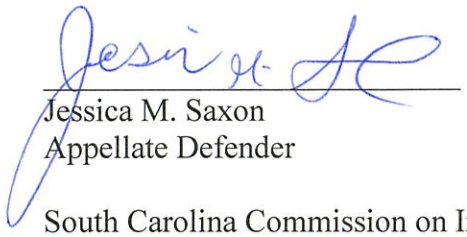
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and Appendix in the above-referenced case has been served upon T. Cruise Mitchell, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 3rd day of Novmber, 2025.



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