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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-001256

Robert Lamont Bryant, ...Appellant,

v.

State of South Carolina, ...Respondent.

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CASES

Cases

Statutes

Constitutional

Rules

QUESTIONS PRESENTED

Question I

Should this Court require post-conviction relief judges to draft the final orders in PCR cases in order to ensure the findings of fact and conclusions of law, required by S.C. Code Ann. § 17-27-80, are those of the court, rather than an advocate, and to preserve the separation of powers between the judicial branch and executive branch as required by S.C. Const. Art. I, § 8?

Question II

Is Robert Bryant entitled to belated review, pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), of his 1998 and 2004 uncounseled guilty pleas?

Question III

Was Robert Bryant denied his right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—because his trial counsel failed to object when the Solicitor changed the offense to a violent offense and for not moving to withdraw the plea.

Question IV

Was Robert Bryant denied his right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—because his trial counsel failed to meaningly advise Mr. Bryant of the State's initial plea offer that was more favorable than the sentence Mr. Bryant ultimately received.

STATEMENT OF CASE

For a February 16, 2018 incident, the State charged Robert Bryant with domestic violence of a high an aggravated nature. A. 40-42. On May 14, 2019, Mr. Bryant pled guilty to this charge. A. 1-27. Yates Brown represented the State, and Clark McCants and Walt Whitmire represented Mr. Bryant. Pursuant to a plea agreement, the Honorable Roger M. Young, Sr. sentenced Mr. Bryant to twenty years imprisonment. A. 25, 42. Mr. Bryant did not appeal.

On May 10, 2019, prior to his guilty plea and with the assistance of his plea counsel, Mr. Bryant filed two applications for post-conviction relief (PCR), challenging uncounseled guilty pleas in 1998 to distribution of crack cocaine and distribution of crack cocaine near a school (A. 43-51) and 2004 for participating in a riot, assaulting a police officer while resisting arrest, and possession with intent to distribute crack cocaine near a school (A. 56-64). Both PCR applications alleged the circuit court accepted these uncounseled guilty pleas without advising Mr. Bryant of his right to counsel or adequately warning him about the dangers of self-representation. Both PCR applications sought belated appellate review pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974).

On September 23, 2019, Mr. Bryant filed a PCR application challenging his May 2019 guilty plea. A. 69-82. On January 29, 2020, the State served its return. A. 84-90. On September 9, 2021, undersigned counsel entered an appearance in all three PCR cases, and Mr. Bryant moved to consolidate the three actions. A. 52-55, 65-68, 91-94. On November 28, 2022, Mr. Bryant amended his PCR application to allege ineffective assistance of counsel:

a. Trial counsel failed to object to the Solicitor changing Mr. Bryant's charge to a violent offense after Mr. Bryant pled guilty to a charge that he believed to be a nonviolent offense, thereby rendering the plea involuntary.

b. Trial counsel failed to move to withdraw Mr. Bryant's plea after the Solicitor changed Mr. Bryant's charge to a violent offense after Mr. Bryant pled guilty to a charge that he believed to be a non-violent offense, thereby rendering the plea involuntary.

c. Trial counsel failed to advise Mr. Bryant of the State's initial plea offer that was more favorable than the sentence Mr. Bryant ultimately received.

A. 95-99.

By written order dated January 18, 2023, the Honorable R. Scott Sprouse granted Mr. Bryant's motion to consolidate the three PCR actions. R. 135.

On August 21, 2024, the Honorable J. Derham Cole convened an evidentiary hearing. A. 100-34. Undersigned counsel represented Mr. Bryant, and Travis Cruise Mitchell represented the State. On August 23, 2024, Judge Cole issued a Form 4 order dismissing Mr. Bryant's PCR application and instructing the Attorney General's Office "to prepare and submit a proposed formal order." A. 138. On January 31, 2025, Judge Cole singed the State's proposed order without making any changes. A. 140-55. The order of dismissal dismissed the initial PCR application and did not acknowledge the amended PCR application. *See, e.g.,* A. 154, n. 3 ("This allegation was raised during the PCR hearing and was not raised in Applicant's original PCR application"). On February 28, 2025, Mr. Bryant served his Rule 59(e), SCRCP motion (A. 156-61), and the PCR court denied this motion on June 4, 2025 (A. 162), without seeking a response from the State.

STANDARD OF REVIEW

Under the first prong of *Strickland v. Washington*, a defendant "must show that counsel's representation fell below an objective standard of reasonableness," which must be judged under "prevailing professional norms." 466 U.S. 668, 688 (1984). "The first prong—constitutional deficiency—is necessarily linked to the practice and expectations of the legal community: The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010) (internal quotations omitted). "If the State contends the alleged deficiency resulted from a strategic decision made at trial, counsel must articulate a valid reason for

employing a certain strategy." *Freiburger v. State*, 413 S.C. 243, 247, 775 S.E.2d 391, 393 (Ct. App. 2015); *cf. Ingle v. State*, 348 S.C. 467, 560 S.E.2d 401 (2002).

The second prong of *Strickland* requires a defendant establish this deficiency prejudiced him. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland,* at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id. "*In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018)[1] (citing *Strickland*, 466 U.S. at 695-96 (explaining that the court must analyze how individual errors of counsel affect the important factual findings in a particular case)).

"It is well settled that the [Sixth Amendment] right to the effective assistance of counsel applies to certain steps before trial," *Missouri v. Frye*, 566 U.S. 134, 140 (2012), including "to the plea-bargaining process." *Lafler v. Cooper*, 566 U.S. 156 (2012). "[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." *Id.* at 162-63 (internal quotations omitted). This Court has observed:

> In *Hill v. Lockhart,* 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), the Supreme Court applied the two part standard adopted in *Strickland* to guilty plea challenges bottomed on ineffective assistance of counsel. The Court reiterated that the defendant must show first that counsel's representation fell below the standard of reasonableness; and, that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. 106 S.Ct. at 370. Specifically, the Court stated that the defendant must show that "there is a reasonable

[1] *See also Thompson v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (adhering to *Smalls*).

> probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 106 S.Ct. at 370.

Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). *See also Frierson v. State*, No. 2016-001940, 2018 WL 2325560, at *3 (S.C. May 23, 2018) (*"*reiterate[ing] the prejudice analysis is limited to the outcome of the plea process—whether but for counsel's deficiency, the defendant would have declined to plead and instead proceeded to trial"); *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000) ("A defendant who pleads guilty on advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases and there is a reasonable probability that, but for counsel's errors, defendant would not have pled guilty and would have insisted on going to trial.").

As the Supreme Court of the United States reminded, "The decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea." *Lee v. United States*, ___ U.S. ___, 137 S. Ct. 1958, 1961 (2017). The High Court cautioned, "Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Rather, they should look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.*

This Court's "standard of review in PCR cases depends on the specific issue before" it. *Mangal v. State*, 421 S.C. 85, 91-92, 805 S.E.2d 568, 571 (2017). The appellate court will "defer to a PCR court's findings of fact and will uphold them if there is any evidence in the record to support them." *Id*. This Court will "not defer to a PCR court's rulings on

questions of law." *Id*. "Questions of law are reviewed de novo, and [the appellate court] will reverse the PCR court's decision when it is controlled by an error of law." *Id*.

ARGUMENTS

Question I

Should this Court require post-conviction relief judges to draft the final orders in PCR cases in order to ensure the findings of fact and conclusions of law, required by S.C. Code Ann. § 17-27-80, are those of the court, rather than an advocate, and to preserve the separation of powers between the judicial branch and executive branch as required by S.C. Const. Art. I, § 8?

"S.C. Code Ann. §17-27-80 (1976), requires the PCR court to 'make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.'" *McCray v. State*, 305 S.C. 329, 330, 408 S.E.2d 241, 241 (1991). *See also Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992). The PCR court did not do that but rather delegated the responsibility of drafting the order to the Attorney General's Office. In his Rule 59(e), SCRCP motion, Mr. Bryant objected to the procedure followed in this case. A. 158. In this case, the prejudice to Mr. Bryant is amplified because the Attorney General Office's order of dismissal, regarding the 2019 conviction, was based on Mr. Bryant's initial PCR application and not his Amended PCR Application. *Compare* A. 77 (initial PCR application raising two grounds of ineffective assistance of counsel) *with* A. 145 (order of dismissal recounting same two grounds of ineffective assistance of counsel) *and* A. 96-97 (amended PCR application asserting three grounds of ineffective assistance of counsel). *See also* A. 158-60 (Rule 59(e) motion citing to amended PCR application).

In addition to deciding the matter based on the wrong pleading, the reasoning in the proposed order is entirely that of an advocate and not an independent judicial officer, which violates the separation of powers. S.C. Const. Art. I, § 8. In capital cases, this Court

"strongly encourage[s] PCR judges to draft their own findings of fact and conclusions of law." *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004). The admonition in *Hall* is consistent with the lower court's responsibility to "safeguard the rights of litigants." *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012).

This Court expressed its ongoing frustration with the validity of final orders in PCR cases during the oral argument in *Kevin S. Epting v. State*, Appellate Case No. 2017-000696, on November 21, 2019, at 11:17 – 13:05.[2] One Justice referred to the Attorney General's Office drafting the final PCR order as "the classic case of the fox guarding the henhouse," observed PCR applicants have the right to have their issues litigated, and called on the criminal defense bar "to fix this problem." Another Justice stated the entire Court shares these concerns.

In *Fishburne v. State*, this Court recognized the significant issues involved in drafting PCR orders:

> [B]ecause the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80.

427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019). *Fishburne* set a lofty goal for "[t]he preparation and finalization of a PCR order [to be] a collaborative effort." 427 S.C. at 516, 832 S.E.2d at 589 (2019). The final order in this case was not a "collaborative effort."

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[2] http://media.sccourts.org/videos/2017-000696.mp4 (last viewed Dec. 4, 2025). *Epting* involved the Attorney General's Office drafting the final order, the PCR judge signing the order that failed to address all the issues, and the applicant's attorney not filing a Rule 59(e), SCRCP motion. On December 4, 2019, this Court dismissed *certiorari* as improvidently granted in *Epting*.

Most recently, in *Lindsey v. State*, this Court reiterated these concerns about party-drafted PCR orders but held:

> This practice is proper, as long as: (1) the other parties are aware of the request for a proposed order and are allowed to respond to the proposed order; and (2) the PCR court carefully reviews the order before signing it.

No. 2019-001271, 2025 WL 3085693, at *14 (S.C. Nov. 5, 2025). Significantly, the PCR Court in *Lindsey* requested proposed orders from both parties and reviewed the final order a second time after this Court remanded for further consideration. This Court in *Lindsey* concluded, "[T]the record demonstrates the PCR court adopted the State's proposed order only after carefully reviewing the State's initial proposed order." *Id*. Here, the PCR court did not request a proposed order from Mr. Bryant (A. 138), and there is no indication regarding the amount of time the PCR court spent reviewing the order. The order denying Rule 59(e) motion fails to address Mr. Bryant's concern about the State drafting the order, does not state anything about the PCR court's consideration of the proposed order, and does not correct the order of dismissal's reliance on the initial PCR application rather than the amended PCR application. A. 162.

The bench and bar would benefit from his Court's additional guidance regarding the proper procedure for preparing final orders in PCR cases. Here, the final order is an advocacy position drafted by "the fox guarding the henhouse," rather than true judicial findings of fact and conclusions of law. Robert Bryant's PCR case illustrates exactly why a PCR court should not delegate the judicial function of drafting final PCR orders to an advocate. This Court, accordingly, should grant the writ and consider the issue. Alternatively, this Court should summarily reverse and remand to the circuit court to issue

an order that complies with section 17-27-80. *See, e.g., Inman v. State*, 439 S.C. 97, 886 S.E.2d 204 (2023).

Question II

Is Robert Bryant entitled to belated review, pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), of his 1998 and 2004 uncounseled guilty pleas?

As seen, the PCR actions filed by Mr. Bryant's trial counsel challenging the 1998 (A. 43-51) and 2024 (A. 56-64) uncounseled guilty pleas[3] were consolidated into the PCR action challenging the 2019 conviction and sentence (A. 135). Both PCR applications alleged the circuit court accepted these uncounseled guilty pleas without advising Mr. Bryant of his right to counsel or adequately warning him about the dangers of self-representation. Both PCR applications sought belated appellate review pursuant to *White v. State*.

Most of the order of dismissal (A. 147-530) discussed the 1998 and 2004 conviction. The order of dismissal does not address the plea judges' failures to advise Mr. Bryant of his right to counsel and adequately warning him about the dangers of self-representation. Nor does the order of dismissal address the relief requested under *White v. State*, which is not subject to the statute of limitations. Mr. Bryant's Rule 59(e) motion asked the PCR court to address these claims and issue an order that complies with S.C. Code Ann. § 17-27-80 ("The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.). A. 158-59. *See Simmons v. State*, 416 S.C. 584, 592–93, 788 S.E.2d 220, 225 (2016) (holding the PCR court erred in failing to make specific findings of fact and rulings of law on each issue raised by the petitioner

[3] *See* A. 126-27 (Mr. Bryant testifying he was not represented at the 1998 and 2004 guilty pleas and not warned about the potential of life without parole.

despite granting PCR on one issue); *see also Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019).

Mr. Bryant was not informed that these uncounseled convictions could be used as predicate offenses to seek life without parole, and he would not have pled guilty if he had known this information. A. 126-27. Without the two uncounseled pleas, the State would not have been able to leverage the 20-year sentence in 2019. This Court, accordingly, should grant the writ and consider the issue. Alternatively, this Court should summarily reverse and remand to the circuit court to issue an order that complies with section 17-27-80. *See, e.g., Inman, Supra.*

Question III

Was Robert Bryant denied his right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—because his trial counsel failed to object when the Solicitor changed the offense to a violent offense and for not moving to withdraw the plea.

On May 14, 2019, Robert Bryant pled guilty to domestic violence of a high and aggravated nature, and the State dismissed a companion weapons charge. The trial judge initially told Mr. Bryant the domestic violence charge "carries a sentence of up to ten years." The trial judge reviewed Mr. Bryant's right to a jury trial, the burden of proof, the requirement of a unanimous verdict, the right to remain silent, and the right to present a defense. A. 4-5. The trial judge later announced, "I understand that you guys have reached a negotiated plea for a 20-year sentence to the domestic violence of a high and aggravated nature" charge. A. 9.[4]

[4] At this point in the plea, the Solicitor announced, "[T]he 20 years will take the LWOP off notice." A. 9.

When the trial judge asked whether he was satisfied with his attorneys, Mr. Bryant complained about the lack of contact with his attorneys and their failure to provide "paperwork." Mr. Bryant was concerned about his lawyers pressing him to take a guilty plea of "12 to 15 years" without being fully informed about the evidence against him. A. 7-8.

Trial counsel explained his office requested Dr. James Evans, a neuropsychologist, evaluate Mr. Bryant. The evaluation revealed Mr. Bryant has memory issues, impulse control issues, "dis-regularities in his frontal lobe," and that he "function[s] on a below average intellectual level." A. 12-14.

The Solicitor provided the factual basis of the guilty plea and his prior criminal history. A. 14-18. Trial counsel explained he had gotten to know Mr. Bryant "since December of 2018" and "finally figured out how to communicate with" his client. He asked the trial judge to accept the negotiated sentence. A. 18-19. The trial judge imposed the 20-year sentence. A. 24. At no time during the guilty plea did the Solicitor, trial counsel, or the court place on the record that domestic violence of a high and aggravated nature is a violent offense.

On May 15, 2019, the State brought Mr. Bryant back before the trial court. The Solicitor acknowledged:

> I failed to check the boxes of this offense being a violent and serious offense. Just so everything is clear on the record and before SCDC gets the paperwork, I just wanted to make sure everybody was aware of this and we just got this correct. And that was -- that's my fault on not having the boxes checked, but I'm passing that to Mr. McCants now so he can show it to Mr. Bryant.

A. 31.

The trial court took a five-minute recess for trial counsel to confer with Mr. Bryant. After the recess, trial counsel informed the trial judge:

> Yesterday there was, I think, a box marked "nonviolent," when in reality the CDR code and the statute on that form is actually what really matters to avoid any confusion at SCDC, and we told Robert this yesterday, that we are also handling, you know, potential appeal and PCR. And that later on down the road, we will revisit issues in the representation, but that we got to get through this clerical error today, and that he understands this now and that is his –
>
> ****
>
> That is his signature on this form. We went through the CDR code and the statute that is on the sentence sheet. And he understood yesterday that that is what he was pleading to and understands today that it has been, you know, corrected.

A. 31-33.

Mr. Bryant protested, "How can you come back today and after I done got sentenced and everything and do this here now?" The trial judge acknowledged trial counsel had discussed with Mr. Bryant his eligibility for early release from prison and the "violent verses nonviolent affects [his] parole eligibility. A. 33-34.

Regarding the advice about the guilty plea, Mr. Bryant's amended PCR application alleged two grounds of ineffective assistance of counsel:

> a. Trial counsel failed to object to the Solicitor changing Mr. Bryant's charge to a violent offense after Mr. Bryant pled guilty to a charge that he believed to be a nonviolent offense, thereby rendering the plea involuntary.
>
> b. Trial counsel failed to move to withdraw Mr. Bryant's plea after the Solicitor changed Mr. Bryant's charge to a violent offense after Mr. Bryant pled guilty to a charge that he believed to be a non-violent offense, thereby rendering the plea involuntary.

A. 96.

At the PCR evidentiary hearing, Mr. Bryant testified that any public defender assigned to his case prior to Mr. McCants never met with him. December 4, 2018 was the

first time Mr. Bryant learned about any plea negotiations. He wanted to accept the plea offer but did not want to go in front of a judge with whom he had a prior negative experience. A. 124-26.

Trial counsel confirmed he did not meet with Mr. Bryant at the Abbeville County Detention Center because Mr. Bryant was transferred to Laurens County for pre-trial detention. Trial counsel first met with Mr. Bryant at the Abbeville County Courthouse on December 4, 2019, which is when he first discussed the 12-year plea offer. The plea offer expired or was revoked soon thereafter. Trial counsel confirmed that the 12-year plea offer was extended to Mr. Bryant's prior public defender on June 20, 2018. A. 108-12.

When he plead guilty, Mr. Bryant believed "the 20 years was going to be non-violent." The non-violent designation was important to him because he planned to seek parole and could max out the sentence in about 10 years. If Mr. Bryant had known the sentence would be classified and violent and required service of 85% of the sentence, then he would not have plead guilty. A. 127-29.

The order of dismissal (A. 153-54) relies solely on the transcript dated May 15, 2019. The plea, however, occurred on May 14, 2019. The May 14th transcript does not reflect that the trial judge advised Mr. Bryant that domestic violence of a high and aggravated nature is violent and an eight-five percent offense. Nor does the order consider Mr. Bryant's testimony on this matter.

For a plea to be voluntary, intelligent, and knowing, "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 (1999) (emphasis

added). Here, during the May 15, 2019 hearing, the trial judge acknowledged Mr. Bryant had been advised about the possibility of early release from prison. At that hearing Mr. Bryant protested the post-sentence change from non-violent to violent. At the PCR hearing, Mr. Bryant testified about the significance of the non-violent designation regarding his ability to seek parole or max out the sentence in about 10 years.

Counsel's advice that affirmatively misstates the law "falls below the level of competence reasonably expected of attorneys in criminal cases." *Hinson v. State*, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989) (counsel incorrect advice about parole eligibility warranted granting post-conviction relief). *And see Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991) (held that petitioner's testimony that he would not have pled guilty if trial counsel had not misinformed him that he would face a potential life sentence if he proceeded to trial satisfied "prejudice" requirement of ineffective assistance of counsel claim) and *Ray v. State*, 303 S.C. 374, 375, 401 S.E.2d 151, 152 (1991) (held defense counsel ineffective for erroneously advising client "he would be subject to a sentence of life without parole . . . if he went to trial and was convicted of the two armed robbery charges").

Trial counsel was ineffective for failing to withdraw the guilty plea. *See, e.g., Rolen v. State*, 384 S.C. 409, 683 S.E.2d 471 (2009) (defendant's trial counsel was ineffective for failing to move to withdraw his guilty plea). This Court, accordingly, should grant the writ and consider the issue. Alternatively, this Court should summarily reverse and remand to the circuit court to issue an order that complies with section 17-27-80. *See, e.g., Inman, Supra.*

Question IV

Was Robert Bryant denied his right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—because his trial counsel failed to meaningly advise Mr. Bryant of the State's initial plea offer that was more favorable than the sentence Mr. Bryant ultimately received.

As seen in Question III, prior to December 4, 2018, there was a breakdown in communication by the public defender's office, resulting in failure to communicate the plea offer to Mr. Bryant for six months. Mr. Bryant's Amended PCR Application, ¶¶ 10&11(c) alleged ineffective assistance of trial counsel because his

> Trial counsel failed to advise Mr. Bryant of the State's initial plea offer that was more favorable than the sentence Mr. Bryant ultimately received. *See Lafler v. Cooper*, 566 U.S. 156 (2012); *Missouri v. Frye*, 566 U.S. 134 (2012).

A. 96-97. The State did not file a return to the amended PCR Application.

The order of dismissal states, "To the extent Applicant raised the allegation Counsel was ineffective for failing to convey a plea offer, this Court finds this allegation is without merit." A. 154. In a footnote, this order also states, "This allegation was raised during the PCR hearing and was not raised in Applicant's original application." *Id*., n. 3.

Mr. Bryant's Rule 59(e) motion stated:

> The order of dismissal, p. 14, n.3, incorrectly states Mr. Bryant's PCR application did not raise the allegation that plea counsel did not convey the plea offer. Mr. Bryant's Amended Application for Post-Conviction Relief, dated November 28, 2022, paragraph 11(c), states, "Trial counsel failed to advise Mr. Bryant of the State's initial plea offer that was more favorable that the sentence Mr. Bryant ultimately received." Although trial counsel testified that the offer was conveyed to Mr. Bryant, the record also relevels the offer was not communicated to Mr. Bryant in a timely manner and that Mr. Bryant did not have a meaningful opportunity to consider the offer. The order failed to address Mr. Bryant's testimony on this matter. This Court should issue an order that complies with S.C. Code Ann. § 17-27-80.

A. 159-60. The order denying the Rule 59(e) motion, did not correct this oversight. A. 162.

The Rule 59(e) motion also argued:

> Although trial counsel testified that the offer was conveyed to Mr. Bryant, the record also [reveals] the offer was not communicated to Mr. Bryant in a timely manner and that Mr. Bryant did not have a meaningful opportunity to consider the offer. The order failed to address Mr. Bryant's testimony on this matter.

A. 160. Mr. Bryant and trial counsel testified consistently about the breakdown in communication between the public defender's office and their client.

The Supreme Court of South Carolina has long recognized trial counsel can be ineffective for failing to communicate a plea offer. *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Had the public defender office timely communicated the plea offer to Mr. Bryant, then he would have accepted it. This Court, accordingly, should grant the writ and consider the issue. Alternatively, this Court should summarily reverse and remand to the circuit court to issue an order that complies with section 17-27-80. *See, e.g., Inman, Supra.*

CONCLUSION

For the forgoing reasons, this Court should grant the writ and consider the issues. Alternatively, this Court should summarily reverse and remand to the circuit court to issue an order that complies with section 17-27-80.

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December 5, 2025
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
J. Derham Cole, Circuit Court Judge

Case No. 2019-CP-01-00323

Robert Lamont Bryant, ...Appellant,

v.

State of South Carolina, ...Respondent.

Appellate Case No. 2025-001256

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December 5, 2025
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