

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable David P. Caraker, Jr, Circuit Court Judge

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AMY WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001124

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

**RECEIVED**

**Dec 15 2025**

S.C. SUPREME COURT

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**ISSUE PRESENTED**

Whether the court erred in denying post-conviction relief where Petitioner would not have pleaded guilty had she known counsel would fail to present adequate mitigation at sentencing, since counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, voluntarily, and intelligently tendered?

## STATEMENT

### *Procedural history*

During the July term of 2021, a Lexington County Grand Jury indicted Amy Wright, Petitioner, for attempted murder. App. 75 – 76. On February 8, 2022, Petitioner appeared before the Honorable Kristi F. Curtis for a guilty plea hearing. Stephen Story represented Petitioner. Sutania Fuller prosecuted the case. App. 1. Petitioner pleaded guilty as indicted and the court accepted the plea. App. 4, l. 7 – 17, l. 3. Petitioner was sentenced to a twenty-five-year term of imprisonment. App. 26, ll. 25; App. 77 – 78.

No direct appeal was taken. On or about December 30, 2022, Petitioner filed an application for post-conviction relief (PCR). App. 29 – 37. On or about July 27, 2023, the State made its return and partial motion to dismiss. App. 38 – 81. On or about July 28, 2024, Petitioner filed an amended PCR application. App. 82 – 83. A hearing was held on the matter before the Honorable David Caraker on August 27, 2024. App. 84. Ashley McMahan represented Petitioner. Donald Zelenka represented the State. App. 85. On April 28, 2025, the PCR court issued an order of dismissal. App. 120 – 144.

### *Relevant facts*

The State alleged that on or about August 18, 2020, Petitioner repeatedly struck Florine Sutton (Complainant) with a hammer at a home they were sharing in Cayce. Petitioner had been staying at the home with her children, an adult relative, Sutton, and others, due to difficulty securing a residence. Petitioner told law enforcement Sutton had been “verbally abusive” to her children. Petitioner reported to a social worker she believed “people were going to kill her and her children.” Sutton survived but had serious injuries including bleeding of the brain and she was placed on life support for some time. App. 76; App. 9, l. 9 – 15, l. 3.

Petitioner pleaded guilty as indicted. App. 4, l. 7 – 17, l. 3. Defense counsel told the plea court that Petitioner was evaluated by the Department of Mental Health and by an independent expert. She was determined to have major depressive disorder, which can cause delusions and hallucinations, as well as manic and depressive periods. Defense counsel also told the court that Petitioner had a significant history of abuse—she was physically and sexually abused as a child. She had also been a victim of domestic violence. Defense counsel also explained Petitioner was severely mentally ill and had a delusion people were trying to kill her. App. 22, l. 8 – 25, l. 11.

In his remarks on Petitioner’s behalf, defense counsel told the court the offense was “very violent,” “brutal,” and “unjustified.” App. 22, ll. 4-7. Defense counsel presented no mitigation witnesses or exhibits. He simply spoke on her behalf in a plea for mercy, alleging the offense was related to Petitioner’s mental illness. The court read Petitioner’s competency evaluation report before returning a sentence. The court apparently found the competency evaluation was not mitigating, noting Petitioner had not undergone “overly significant” mental health treatment in the past. The court sentenced Petitioner to twenty-five years’ imprisonment. App. 26, ll. 14-26.

At the PCR hearing, counsel testified he thought it was best for Petitioner to plead guilty “straight up” if necessary, and “beg for mercy” by “put[ting] mitigation in front of the judge [] to try to get the best sentence possible. App. 108, l. 18 – 109, l. 2. Counsel claimed he thought Petitioner should plead guilty since there was a possibility the State could seek life without parole based on her prior record. However, counsel admitted the State never mentioned the possibility or served notice of intent to seek life without parole. App. 108, l. 1 – 109, l. 4.

Petitioner stated counsel advised her not to go to trial. App. 93, ll. 1-3. Petitioner testified she was “surprised” by the sentence she received. Petitioner knew the sentencing range she faced but she explained: “I was expecting to do some time because of what I did to the victim, but as far as doing 25 years away from my two children, I thought that wasn’t a right thing, being that I was protecting them.” App. 100, ll. 8-20. Petitioner stated Complainant wanted to do bodily harm to her two children and she acted to protect her children. App. 96, l. 19 – 6. Petitioner testified Complainant was “verbally aggressive” to her children. App. 98, ll. 4-6. Petitioner stated counsel should have presented more by way of mitigation. App. 104, l. 6.

In its order of dismissal, the PCR court found Petitioner did not prove counsel provided ineffective assistance with regard to his investigation and mitigation. App. 131 – 139. The order of dismissal noted counsel’s “personal plea for leniency to the sentencing court reflective of her attitude of remorse.” App. 134. The order concluded Petitioner failed to show “what additional investigation in the case would have led to,” and “failed to present any evidence of the victim’s propensity of violence[.]” App. 135. The order also stated Petitioner failed to show deficient performance with regard to the investigation of her mental health, or with regard to domestic abuse of Petitioner or her children. App. 135 – 136. Additionally, the order concluded there was no deficient performance with regard to Petitioner’s remorse. App. 138. The order further concluded “Applicant has wholly failed to show that counsel was deficient related to the presentation in mitigation of sentence.” App. 140. The order also concluded Petitioner failed to show prejudice, and found the record merely revealed speculation that mitigation could have been presented more persuasively. App. 141.

The order of dismissal reflected the PCR court found Petitioner “failed to show any omission on the part of counsel that to a reasonable probability would have caused her to go to

trial rather than plead guilty.” App. 139. “Applicant’s plea was entered freely and voluntarily upon her own choice to attempted murder, aware that she could receive a sentence of thirty years.” App. 139. “As reflected in counsel’s plea in mitigation, the areas presented that the Applicant took issue with were essentially presented to the sentencing court. The Applicant’s speculation that the information could have been presented more fully or differently to her that would have affected her decision to chose to go trial [sic] to a reasonable probability is not supported by any credible evidence to this Court.” App. 139.

This petition for writ of certiorari follows.

## ARGUMENT

The court erred in denying post-conviction relief where Petitioner would not have pleaded guilty had she known counsel would fail to present adequate mitigation at sentencing, since counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, voluntarily, and intelligently tendered.

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). “[S]entencing is a critical stage of the criminal proceeding at which [a defendant] is entitled to the effective assistance of counsel.” *Gardner v. Florida*, 430 U.S. 349, 358 (1977). The Sixth Amendment provides a right to counsel during sentencing in both noncapital and capital cases. *Lafler v. Cooper*, 566 U.S. 156, 165 (2012). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove “that counsel’s performance was deficient” and fell below reasonable professional norms, and the deficient performance prejudiced the petitioner. *Strickland*, 466 U.S. at 687.

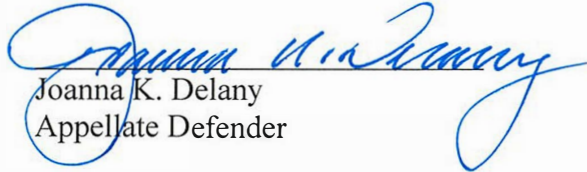
The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). A defendant is entitled to the effective assistance of competent counsel before deciding whether to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). “A defendant who enters a plea on the 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 and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d

471, 474 (2009) (citing *Hill v. Lockhart*, *supra*). “The crux of the inquiry is whether counsel’s ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial.” *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018).

Petitioner was surprised by the twenty-five-year sentence. Had Petitioner known counsel would not present a mitigation case, such as evidence that the complainant was aggressive towards her children, or records supporting the severity of Petitioner’s mental illnesses, or her history of being abused, to a level that would mitigate her conduct, she would have gone to trial. All counsel did was plead for mercy on her behalf. This provided the judge with no basis to sentence her on the lower end of the range. As Petitioner explained at the PCR hearing, counsel should have presented a substantial mitigation case at sentencing but he did not. Counsel’s deficient performance resulted in Petitioner’s entry of pleas that were not knowingly, intelligently, and voluntarily tendered. The PCR court erred by finding counsel’s performance was not deficient and by finding Petitioner’s plea was freely and voluntarily made. Petitioner has established error and prejudice. *Hill v. Lockhart*, 474 U.S. at 56; *Frierson v. State*, 423 S.C. at 262, 815 S.E.2d at 436.

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests that a writ of certiorari be granted to allow full briefing on the issue.



Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of December, 2025.

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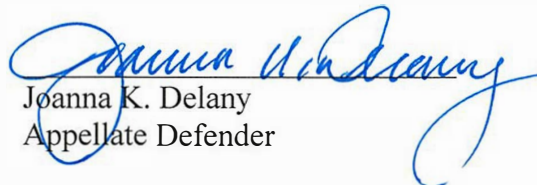
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Amy Wright states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge David P Caraker, Jr, which was held on , and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Amy Wright.

Respectfully Submitted,

  
Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of December, 2025.

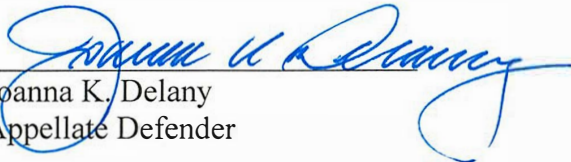
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

  
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This 15th day of December, 2025.