

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

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On Petition for Writ of Certiorari to Lexington County
Court of Common Pleas
The Honorable J. Cordell Maddox, Jr., PCR Judge
The Honorable Debra R. McCaslin, Plea Judge
2022-CP-32-03461

S.C. SUPREME COURT

Appellate Case No. 2025-000869

David F. Gates, SCDC #387073,

Petitioner,

v.

State Of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner's Question Presented

Did the Post Conviction Relief judge err in finding a conflict of interest did not exist as a matter of law when one defendant told the lawyer for himself and the applicant that the applicant was not guilty and the drugs in question belonged to him?

Respondent's Question Presented

Certiorari should be denied when supported credibility findings from the PCR Court show that at the time of the guilty plea the Petitioner and his jointly represented brother did not have antagonistic defenses and there was no actual conflict of interest that requires vacating the negotiated plea bargain.

STATEMENT OF THE CASE
PROCEDURAL HISTORY

The matter comes before this Court by a petition for writ of certiorari from a denial of post-conviction relief by the Honorable J. Cordell Maddox on August 16, 2024. App.p. 81-99. This case arises from an application for post-conviction relief by Petitioner, David Fredshun Gates, filed on October 11, 2022. App.p.67-72. He is represented by C. Rauch Wise of the South Carolina Bar. Gates challenges his conviction for trafficking in heroin and sentence of 10 years. He alleges a claim of ineffective assistance of counsel based upon a claim of a conflict of interest due to the fact that his counsel, the late Stanley L. Myers, jointly represented his brother Ladarien Gates at the plea. The Respondent State of South Carolina filed a Return on March 5, 2024 asserting that the allegations of ineffective assistance of counsel will likely require an evidentiary hearing to adequately resolve. App.p. 73-80.

On March 22, 2024 the matter was heard before the Honorable J. Cordell Maddox, Presiding Judge. App.p. 5-53. The Petitioner David F. Gates was present and represented by his retained counsel, C. Rauch Wise. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Petitioner, his brother Ladarien Gates, April Muller, and Assistant Solicitor Kyle Smith.

On August 16, 2024, Judge Maddox filed an Order of Dismissal denying all allegations. App.p. 81-99. On August 30, 2024, the Petitioner filed a motion to alter or amend styled as a Rule 59 (e) Motion. App.p. 100-101. On April 18, 20-25, Judge Maddox filed an order denying the Rule 59 motion. The Petitioner filed a timely notice of appeal.

During an October 2021 term, the Lexington County Grand Jury indicted Petitioner for trafficking in heroin 14 grams or more, but less than 28 grams. 2021GS3203137. Stanley L. Myers, Esq., represented Petitioner on the charges. On January 27, 2022, the Petitioner appeared with

counsel Myers before the Honorable Debra McCaslin, Presiding Judge. The prosecution was represented by Kyle Smith of the Eleventh Circuit Solicitors office.

The plea was a joint plea with his brother Ladarien Gates who was also represented by Mr. Myers. However, they were pleading to separate offenses:

THE COURT: This is for Ladarien; your indictment has been true billed. The date says **March 12, 2021**. You did have in your possession a quantity of heroin, which puts you at the trafficking offense level. You pleading guilty or not guilty?

MR. LADARIAN GATES: Guilty.

Tr.p. 6-7

THE COURT: All right. And David your indictment has been true billed date says on **March 22, 2021**. You did have in your possession 14 grams but less than 28 grams also of heroin. You pleading guilty or not guilty?

MR. DAVID GATES: Yes, ma'am, guilty.

THE COURT: This is a negotiated plea, 10 years. That means I have to give you 10 years, you understand that, Mr. Gates?

MR. DAVID GATES: Yes, ma'am.

Tr.p. 7, l. 11-21. App.p. 60.

The factual basis of the plea

At that time the Court was advised that the Petitioner was entering a negotiated plea to the lesser offense of trafficking in heroin, 4 grams or more, but less than 14 grams – 1st offense with a negotiated sentence of 10 years. Tr.p. 4, 7. After inquiry of the parties, Judge McCaslin accepted the negotiated plea and sentenced the Petitioner to 10 years. Petitioner did not appeal.

FACTUAL HISTORY

In the factual basis of the guilty plea, the following was set out:

MR. SMITH: The facts, the facts presentation is going to encompass Mr. Ladarien Gates and David Gates. Your Honor, these charges stem from investigation by

Agent Dustin Pollard of the Lexington County NET Team on March 11th, March 12th and March 12, 2021, three controlled buys with confidential agents law enforcement were conducted on a subject known as law enforcement as Coop, Mr. Ladarien Gates. Those addresses were [REDACTED] Fish Hatchery Road, [REDACTED] Wild Bird Lane, and [REDACTED] Wild Bird Lane, all of which are in the Gaston Area of Lexington County. And on all three of those instances Ladarien Gates did contribute, did distribute a quantity of narcotics to a confidential operative law enforcement. Those agents were outfitted with monitoring equipment during the transaction. They were searched before and after by negative results for any items that would compromise the search. Your Honor, on one of those buys the quantity of heroin which has been confirmed by drug analysis distributed to the informants was sufficient to fall within the threshold weight for trafficking of heroin.

Your Honor, as a result of these buys, Agent Pollard did obtain a search warrant for the address at [REDACTED] Wild Bird Lane and [REDACTED] Wild Bird Lane. [REDACTED] Wild Bird Lane is the registered address for David Gates. And [REDACTED] is the registered address for Ladarien. They arrived at [REDACTED] Wild Bird Lane [*the address registered to David Gates, not Ladarien Gates*] to serve that search warrant. They made entry, cleared the house, and did execute the search warrant.

During the course of that warrant they seized numerous items consistent with narcotic trafficking, scales, paraphernalia, glass jars with narcotics believed to be heroin, pill bottles, sandwich baggies, guns and ammunition.

Your Honor, one of, in one of the rooms during the course of the search warrant they did observe an open safe. Inside of that safe was Mr. David Gates' passport, and the safe is also located in the room that of Mr. Gates, David Gates stays in. Also inside the safe was \$17,650 of US currency total as well as in that money found - they could locate bills which they documented - had come from some of the control buys. Your Honor, those drugs found in that safe were tested. It was a field weight in two separate jars of what was believed to be 56 grams of heroin. However, one of the jars came back as approximately 24 grams of heroin. The other was solely fentanyl.

Your Honor, it is from the result -- from this investigation by law enforcement we do believe it is clear that the Gates brothers are working together in trafficking and distribution of heroin.

Tr.p. 8-10. App.p. 61-83. The record further shows that each of the Gates brothers indicated under oath that they agreed with those facts while under oath. Tr.p. 11, l. 16-21. App.p. 64.

SUMMARY OF PCR HEARING TESTIMONY

PCR TESTIMONY OF DAVID GATES

The Petitioner was called as the initial witness in the hearing. App. 9 He stated that this was his first drug charge, He testified that he was pulled over at traffic stop in 2019. He stated that he was arrested and charged with a distribution charge. At that time, he hired Stanley Myers. App.p. 9. The Petitioner stated he was charged again in 2021. App.p. 9-10. He claimed the warrant was for giving drugs which he claimed did not happen. He stated that his counsel Stanley Myers told him to turn himself in. When he did, he was facing a trafficking charge. App.p. 10. His brother retained Stanley Myers as well. Petitioner testified that his brother told Myers that the drugs were his stuff. Myers told them he had talked with the Solicitor who told him that they could not do that “because David Gates is too valuable to the State for us to take that.” App.p. 11, 13. He stated his brother stayed at a house in Wild Bird where this stuff was found. He claimed that Myers never mentioned anything about a conflict of interest. Petitioner claimed Myers told him that there was a video of him in 2017 making the transaction, but Petitioner never saw the video prior to the plea although he asked to see it. App.p. 12. He said that he looked at pictures, including one of the Petitioner looking back, a picture of the trailer, and scales with drugs, but claimed he was not shown any picture of him with the drugs. App.p. 12-13. He learned that they would take him to trial if he didn’t plead to 10 years. App.p. 12. He claimed that Myers never told him about the possibility of his brother pleading guilty and the Petitioner going to trial. App.p. 13. The Petitioner guessed that both of them had to plead guilty or neither of them could. App.p. 13. He claimed the Solicitor said he cannot let the brother take the charge because David was too valuable to the State. App.p. 13.

On cross-examination, he stated he wanted Stanley to represent him because he was told he was a good lawyer and was soon to be a judge. App.p. 14. He wanted him to be his lawyer at his plea, but claimed he was not aware he was representing his brother. App.p. 14-15. He claimed

that he did not know who was representing his brother before this. He stated he first learned he was representing his brother three (3) days before his plea. App.p.15. He stated that he then learned that his brother was to assert that all of David's drug charges were on him, not on the Petitioner. App.p. 15. However, Petitioner also learned that the Solicitor had told his counsel that he could not do that. App.p. 15.

The Petitioner claimed that three days before the plea was the first he had learned that his brother was going to assert that the drugs at Wild Bird that he was charged with were his. App.p. 16.

However, he pled guilty to drugs found at the Wild Bird address where he had personal possessions, including his passport and some money was in the safe in return to the 10 year sentence. App.p. 16. He claimed he had some shoes at Wild Bird also. However, he stated that there were no drugs in the safe. App.p. 17. He asserted that there was a warrant for him on a countertop and the warrant for his brother. App.p. 17. He claimed on the warrant it stated the drugs were in room one in a different room from the safe which was in room three. App.p. 17. He stated that a friend's mother was told there was a warrant for him and that is how he learned about the warrant for Wild Bird. App.p. 17. The Petitioner stated that when he heard that he called his lawyer who told him to turn himself in. App.p. 17.

The Petitioner reviewed the factual basis of the guilty plea from the State [Tr.p. 8-11; App.p. 61-64], the Petitioner stated he and his brother were working together to traffic and distribute, which he confirmed he read. App.p. 18, l. 11-16. He denied at the PCR that Wild Bird Lane was his registered address for him despite what the State said at the plea. App.p. 18. He confirmed that he had sworn to tell the truth at the plea and told the judge under oath that he agreed with the state's version of the facts. App.p. 19. The Petitioner admitted that he knew that he was

going to court that day and proceeding together and entering negotiated pleas. He knew that his brother was pleading to the one incident and that the Petitioner was pleading to having the drugs at Wild Bird. P. 19, l. 7-12. He confirmed that he told the plea court that he agreed with the facts presented by the solicitor under oath. App.p. 19.

He acknowledged that at the plea he was not having an antagonistic defense against his brother at the time. He stated he was in agreement at guilty plea that he and his brother worked together. App.p. 20. The Petitioner acknowledged that he was in agreement with that. App.p. 19.

He stated that Stanley never came to him about anything about him testifying against his brother and he never indicated that he would testify against his brother. App.p. 21. At the PCR, he claimed he was not involved in any drug activity at the time and was working at Snyder Electric. App.p. 22. . However, he told the plea court that he was involved in drug activity with his brother. App.p. 22. The Petitioner stated that he said this because if he didn't take the plea he would do 25 years and that he would get 10 years at the guilty plea. App.p. 22. He did not tell that to the plea court. At the joint plea with his brother Ladarien Gates, the Petitioner stated he knew he and his brother would get 10 years. App.p. 22-23. He had learned this from Stanley and Solicitor. App.p. 23.

PCR TESTIMONY OF LADARIAN GATES

His brother Ladarien Gates testified he was arrested in 2021 on drug trafficking charges. Stanley L. Myers represented him who was retained since 2020 for some other charges as well. App.p. 24. He testified that he told Stanley his brother had nothing to do with the Wild Bird drugs and that he wanted to take care of the charges his brother was arrested for. App.p. 24.

Stanley said let's go into the courthouse. He said he then went upstairs in the courthouse with his brother and they spoke with each other. App.p. 25. He claimed that Myers called the

solicitor and told him Ladarien was willing to take responsibility on the charges. However, he learned the Solicitor said they would not do it and that David would not get off that easy. He stated that David was going to take the same 10 years that Ladarian was offered or that he was going to trial and the State would seek the maximum. App.p. 25.

Ladarian claimed that the State was willing to permit an independent plea for him whether or not David pled guilty or went to trial. App.p. 25-26. He stated that Stanley never addressed a conflict of interest when it was asserted that Ladarian was taking responsibility for the Wild Bird drugs and David was asserting the drugs were not his. App.p. 28. However, Ladarien stated he was never going to trial on the incident because his guilt was a foregone conclusion. App.p. 26. He testified that he never spoke to anyone except Stanley himself, and he did not recall signing any documents related to a conflict of interest. App.p. 26.

On cross-examination, he confirmed that he pled same day as brother. He stated he spoke to Stanley with his brother about the plea before they went to the courthouse. App.p. 27. He stated he first time he told Myers his brother was innocent was after he got out of jail. App.p. 27-28. He claimed Stanley dismissed a lot of things Ladarien said. However, he knew Stanley represented his brother right after his arrest. App.p. 28. However, Ladarian indicated that David was not on all the cases that Ladarian had. After arrest, he also spoke with David about various unrelated matters. Ladarien said he did not talk about Stanley other than when David said it was time to meet him together. App.p. 28-29.

Ladarien never indicated to Stanley that he wanted to testify against his brother, but only to testify for him. App.p. 29. Similarly, there was never any indication that his brother wanted to testify against him. App.p. 29. Ladarian stated that far as he knew their theory of the case was in agreement that all the drugs were Ladarian's and that David had no involvement. App.p. 29.

Ladarian stated there was no conversation about his plans until the day they were standing outside of the courtroom. App.p. 29. He stated he was initially just going to ask about taking a plea. He stated that he had told Stanley that his brother had nothing to do with it earlier and that Stanley appeared to have dismissed the whole thing. Ladarian stated at this point he then brought it up again and Stanley mentioned to go talk with the Solicitor. App.p. 30. He claimed that the truth was that all the drugs at Wild Bird were his. He claimed his brother did not know the drugs at Wild Bird were Ladarian's. App.p. 30. Ladarian testified that he only stayed at Wild Bird when he was arguing with his girlfriend and put his stuff there. App.p 30. Ladarian stated he had meant to go back and get the drugs. App.p. 30. Ladarian claimed that he, his brother, and his cousins all stayed at Wild Bird. App.p. 31.

Ladarian testified that his brother stayed there, but claimed that most of the time David stayed elsewhere. App.p. 31. Ladarian claimed he did not know about the safe and it had nothing to do with him or whether his brother knew about it. App.p. 31.

Ladarian claimed it was a lie during the plea that both of them were involved in trafficking. App.p. 31. He admitted that under oath he told the judge he agreed with facts, but he claimed he did not remember this during the PCR hearing. App.p. 31-32. He stated he never said anything about them working together, however the plea record states he agrees with the facts. App.p 32. Ladarian felt he had no choice but to agree because their backs were against the wall. and Stanley told him to and were facing the seven to a max of 25 years. App.p. 32-33.

At the plea, both he and his brother agreed with the facts because they were advised to by Stanley. App.p. 33. Stanley told them both at the same time the plea offer was 10 years. App.p. 33. He claimed he was never going to go to trial because he was guilty with what he was charged for. App.p. 33. Ladarian confirmed he never asked to, nor would he have testified against his

brother, and it was never a part of a plea offer. App.p. 34. He stated it was his choice to plead to 10 years. App.p. 34.

PCR TESTIMONY OF APRIL MULLER

April Muller testified that she was the owner of the Wild Bird Lane house in Cayce. She stated that Ladarien and David both stayed there. App.p. 35. She stated she was a long haul truck driver and also worked at Alvin S. Glenn Detention Center. App.p. 35. She stated she befriended the Gates brothers in 2008 and became close friends. App.p. 36.

She testified that she was present when the brothers met with Myers. She said counsel had asked the court for more time to talk with them. App.p. 36. She said the judge granted more time to discuss things with solicitor. She stated that 4 or 5 days later Myers called them to his office in late December or early January just after Ladarian had just gotten out of jail and he told them it was going to be processed in April. App.p. 37. She said that that the Solicitor had some video they needed to see and that if they went to trial David would have to cut his hair because they got him on the video. Tr.p. 37. She was thinking that the brothers were thinking about going to trial. She heard that if he went to trial, he would get 25 to 30 years. App.p 37.

She recalled Ladarien saying at the courthouse the drugs were his by the window. App. 37. She recalled Stanley was going to go talk to the solicitor or someone about this but learned the State would not take that claiming that he wanted two people and that one of them could not take it due to the fact it was her house. App.p. 37-38.

On cross-examination, she stated a few sisters also stayed there, as well as April's kids sometimes stayed there. App.p. 39. She stated that they did not have full access to the house and had no key at the time of the incident. App.p. 39. She stated that she was at the meeting with counsel because she drove the brothers there and wanted to know everything that went on at that

residence. App.p. 39-40. She was told to come into the meeting. She stated she was sitting on the bench in the courthouse with the brothers. App.p. 40. She went to Stanley's office three days later, where they were told what the plea offer was. App.p. 41. She said everything happened in the month of January between January 5 and 26. App.p. 41. She stated there was a meeting in the meeting room with the brothers at the law office with her. She testified that they both were fine with pleading guilty at the time. However, Ladarian kept saying that it was his. She stated that Stanley said this is all they are offering but it had to be both brothers and that this was the best thing. She recalled Stanley saying that they could take it to trial, but if you plead guilty for the video you were on they are going to try to charge you for trafficking. She stated that they said that this was all they were offering and claimed it had to be both. App.p. 43.

PCR TESTIMONY OF ASSISTANT SOLICITOR KYLE SMITH

Assistant Solicitor Kyle Smith testified that assigned prosecutor for the brothers' cases. He reviewed the facts and circumstances of the arrest and the merits of the case. App.p. 44. The case had been initially assigned to former Assistant Solicitor Matt Edgerton. Smith stated that there were confidential informants on the brothers, which resulted in the controlled buys. App.p. 45. This led to a search warrant to enter Wild Bird Lane which was registered to David. He said that at the house they found a safe, a large amount of money and trafficking amounts of heroin, 14-28 grams, and the rest was fentanyl. The field weight had been around 50-some grams. App.p. 45. In that residence they also found a passport belonging to David and cash linked to buys by Ladarien Gates. App.p. 45.

Smith knew that Stanley Myers represented both brothers. His information was that David was represented first, then Ladarien hired Stanley after he had initially been represented by the Public Defender. App.p. 46.

He cannot recall any available defenses and was not aware of any antagonistic defenses, but he was aware at some point that Ladarien intended to claim all the drugs were his. App.p. 46. Smith stated upon his review of the evidence there was sufficient evidence to proceed against both on trafficking which is what he did. App.p. 46. Smith denied that there was any requirement that they both had to take the plea offer. App.p. 46. However, he stated the offer had to be accepted, and if not, David was to be the first tried. Smith stated that there was quite a bit of back and forth with Myers that began in October 2021. Smith stated his lowest plea offer was on January 14, 2022 with a January 10 deadline, which was extended. App.p. 47.

Smith stated that the confidential informant was not working off charges in an email to counsel on January 11, 2022. App.p. 47. Smith stated that he does not recall any suggestion that one brother was to testify against the other. App.p. 47. He stated that a plea date was determined by an instruction from his supervisor that David was going to be tried first. Smith stated that the Petitioner was given plenty of time to review the evidence with a January 27 plea date. He stated that Stanley reviewed the confidential informant videos. App.p. 48. Smith declared that the video did not show Petitioner engage in a drug transaction, but that there was a large amount of narcotics at the registered house of the Petitioner. App.p. 48. It was Smith's opinion and theory that the Petitioner at minimum was aware of drugs at Wild Bird. He believes Ladarien was identified as the nickname Coop and David's nickname was Slim. He stated that the facts are consistent with his version presented at the plea. App.p. 48-50.

On cross-examination, Smith acknowledged that initially Ladarien was represented by Public Defender's Office. Smith stated that he got involved in August 2021. App.p. 50. Smith confirmed that he did not discuss conflicts of interest with Stanley. App.p. 51. He confirmed that questions about a conflict were never asked in the plea transcript. App.p. 51.

On re-direct, Smith did have a recollection of Myers telling him that Ladarien wanted to claim everything. App.p. 51. However, it was Smith's position that he did not accept that theory. App.p. 52.

On re-cross, Smith stated that it would have been acceptable to him if Ladarin wanted to take the 10 year plea independent of David. App.p. 52,

STANDARD OF REVIEW

Generally, “[o]ur standard of review in PCR cases depends on the specific issue before us.” *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). “We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them.” *Id.* (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). “We review questions of law de novo, with no deference to trial courts.” *Id.* at 180-81, 810 S.E.2d at 839. Whether trial counsel was deficient and whether any deficiency prejudiced a PCR applicant are questions of law. *Lindsey v. State*, No. 2019-001271, 2025 WL 3085693, at *13 (S.C. Nov. 5, 2025).

ARGUMENT WHY CERTIORARI SHOULD BE DENIED

Certiorari should be denied when supported credibility findings from the PCR Court show that at the time of the guilty plea the Petitioner and his jointly represented brother did not have antagonistic defenses and there was no actual conflict of interest that requires vacating the negotiated plea bargain.

When David Gates entered his negotiated guilty plea to a ten year sentence and the dismissal of other pending drug charges, his lawyer, Stanley Myers, who jointly represented his co-defendant brother Ladarien Gates was not acting under an actual conflict of interest. This was because the brothers defenses were not antagonistic. At no time did either brother seek or agree to testify against the other if there was a trial. At no time did either try to assert the other brother was guilty. Instead, the record of the guilty plea and the representations made there under oath

were found to be credible that the brothers were jointly involved in the criminal drug enterprise. This is not, in this setting, based upon the finding by the PCR Court that David Gates was innocent and his brother solely culpable. The PCR Court wisely rejected that self-serving testimony at the hearing. Certiorari must be denied.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

“To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney’s performance.” *Thomas v. State*, 346

S.C. 140, 143, 551 S.E.2d 254, 256 (2001). “An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's.” *Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). This Court has further stated that an actual conflict of interest occurs:

when a defense attorney places himself in a situation inherently conducive to divided loyalties.... If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (quoting *Zuck v. State of Alabama*, 588 F.2d 436, 439 (5th Cir.1979)). *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008) (alteration in original) (citation omitted). *Dorsey v. State*, No. 2011-194547, 2015 WL 5248676, at *3 (S.C. Ct. App. Sept. 9, 2015).

“The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction.” *State v. Gregory*, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005). Additionally, the fact that counsel does not advise a defendant of the potential conflict of interest does not affect the constitutionality of the conviction. *Jackson v. State*, 329 S.C. 345, 355, 495 S.E.2d 768, 773 (1998). Moreover, the “Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction.” *Langford v. State*, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993).

“However, a defendant need not demonstrate prejudice if there is an actual conflict of interest.” *Gregory*, 364 S.C. at 153, 612 S.E.2d at 450. “ ‘But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.’ ” *Duncan*, 281 S.C. at 438, 315 S.E.2d at 811 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980)) *See Lomax*

v. State, 379 S.C. 93, 101–02, 665 S.E.2d 164, 168 (2008), *abrogated by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). *See Thomas v. State*, 346 S.C. 140, 143–45, 551 S.E.2d 254, 256 (2001) (holding Petitioner in PCR proceeding demonstrated actual conflict of interest that affected her counsel's performance given counsel jointly represented Petitioner and her husband in a case where solicitor offered a plea bargain that would allow the charge against one spouse to be dismissed if the other spouse would plead guilty to the entire amount of cocaine); *See also Staggs v. State*, 372 S.C. 549, 551–52, 643 S.E.2d 690, 691–92 (2007) (Petitioner in PCR proceeding demonstrated actual conflict of interest that adversely affected counsel's trial performance where his counsel, who represented him on the charge of murder, also simultaneously represented Petitioner's father, mother, and brother on related accessory after the fact of murder charges); *see generally Allan L. Schwartz, Circumstances Giving Rise to Conflict of Interest Between or Among Criminal Codefendants Precluding Representation by Same Counsel*, 34 A.L.R.3d 470 (1970 & Supp.2008) (outlining cases which consider what particular circumstances give rise to conflict of interest where single counsel represents multiple codefendants).

Respondent submits that at the time of the guilty plea, the Petitioner's assertions were not antagonistic to his brother's and counsel was not acting under a conflict of interest. The hearing judge's findings were correct. The record now reflects that the brothers' theories were consistent as related to Myers representation -they were not antagonistic with each other but consistent. The factual basis at the plea set out the following factual basis :

MR. SMITH: The facts, the facts presentation is going to encompass Mr. Ladarien Gates and David Gates. Your Honor, these charges stem from investigation by Agent Dustin Pollard of the Lexington County NET Team on March 11th, March 12th and March 12, 2021, three controlled buys with confidential agents law enforcement were conducted on a subject known to law enforcement as Coop, Mr. Ladarien Gates. Those addresses were [REDACTED] Fish Hatchery Road, [REDACTED] Wild Bird Lane, and [REDACTED] Wild Bird Lane, all of which are in the Gaston Area of Lexington County. And on all three of those instances Ladarien Gates did contribute, did

distribute a quantity of narcotics to a confidential operative law enforcement. Those agents were outfitted with monitoring equipment during the transaction. They were searched before and after by negative results for any items that would compromise the search. Your Honor, on one of those buys the quantity of heroin which has been confirmed by drug analysis distributed to the informants was sufficient to fall within the threshold weight for trafficking of heroin.

Your Honor, as a result of these buys, Agent Pollard did obtain a search warrant for the address at [REDACTED] Wild Bird Lane and [REDACTED] Wild Bird Lane. [REDACTED] Wild Bird Lane is the registered address for David Gates. And [REDACTED] is the registered address for Ladarien. They arrived at [REDACTED] Wild Bird Lane [*the address registered to David Gates, not Ladarien Gates*] to serve that search warrant. They made entry, cleared the house, and did execute the search warrant.

During the course of that warrant they seized numerous items consistent with narcotic trafficking, scales, paraphernalia, glass jars with narcotics believed to be heroin, pill bottles, sandwich baggies, guns and ammunition.

Your Honor, one of, in one of the rooms during the course of the search warrant they did observe an open safe. Inside of that safe was Mr. David Gates' passport, and the safe is also located in the room that of Mr. Gates, David Gates stays in. Also inside the safe was \$17,650 of US currency total as well as in that money found - they could locate bills which they documented - had come from some of the control buys. Your Honor, those drugs found in that safe were tested. It was a field weight in two separate jars of what was believed to be 56 grams of heroin. However, one of the jars came back as approximately 24 grams of heroin. The other was solely fentanyl.

Your Honor, it is from the result -- from this investigation by law enforcement we do believe it is clear that the Gates brothers are working together in trafficking and distribution of heroin.

Tr.p. 8-10. App.p. 61-64. The record further shows that each of the Gates brothers indicated under oath that they each agreed with those facts while under oath. Tr.p. 11, l. 16-21. App.p. 64.

The Petitioner's sworn statements at the plea were found by the Circuit Court to be correct statements of the Petitioner's joint involvement with his brother in the criminal enterprise. The factual basis made clear that Ladarien was the person identified in the controlled buys. The money connected to the controlled buys was located in the safe in the Petitioner's residence with Petitioner's personal items, as well as drugs that he had control over. The Petitioner confirmed

at the plea under oath that “the Gates brothers are working together in trafficking distribution of heroin.” App.p.63, l. 15. These findings are entitled to deference in this appeal.

The PCR Court properly found that the Petitioner failed in his burden of proof that there was an actual conflict of interest in the dual representation of David Gates and Ladarien Gates by the late Stanley Myers. [*This Court can take notice that Stanley Myers died on September 27, 2023 – after this PCR application had been filed.*]. “A guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); see *McMann v. Richardson*, 397 U.S. 759, 774 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained).

Indeed, admissions made during a guilty plea carry a presumption of verity and should be considered conclusive unless an applicant presents cogent and valid reasons why he should be allowed to depart from the truth of his statements. *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. 63. at 73–74(1977) (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”); *United States v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the

underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

The Petitioner contends that he cannot be bound by his representations under oath that he agreed with the prosecutor’s representations in the factual basis that he and his brother Ladarien were involved together in drug trafficking and that drugs were found in the safe with money in the safe that came from the controlled buys in the room that David Gates stayed in. The problem with the Petitioner’s position before the lower court and now before this Court is that the hearing judge rejected the testimony based upon his own assessment of the testimony of both of the Gates brothers, not just because of the earlier sworn statements. The Petitioner agreed under oath to these facts at the plea. The PCR Court did not find credible any of the reasons that Petitioner or his brother presented to be a “cogent or and valid reason” to support being allowed to depart from the truth at the guilty plea.

To the contrary, the evidence and admissions at the plea carry the finding of verity and support that at the time of the plea, the Petitioner as well as his brother had a consistent version – that they were both involved together in the drugs trafficking and that the drugs found in the Petitioner’s residence was part of the trafficking and the money located in the safe were proceeds from the trafficking. In this proceeding, Ladarien stated that he was always going to plead guilty – not surprisingly – because he was the person who was involved in the controlled buys.

The mere fact that his brother, through counsel Myers may have indicated in plea negotiations that Ladarien was willing to accept and assert that the drugs were his does not make the dual representation an actual conflict of interest. This was not an actual conflict of interest adversely affected his attorney's performance – particularly when the Petitioner admitted under oath to the State’s versions which reveals a consistent theory that both were engaged in the offense

that each pleaded guilty. Here, there was no decision by either represented party to testify against the other brother. The State was going to seek punishment for both, even if one pled. This additional distinguishing factor supports the denial of relief in this case.

This case is easily distinguished from the cases relied upon by the Petitioner. In *Thomas v. State*, 346 S.C. 140, 142, 144, 551 S.E.2d 254, 255–56 (2001), the supreme court determined an actual conflict of interest arose when an attorney represented Thomas and her husband on related drug charges. Before trial, the State offered the following plea bargain:

[Thomas] and [her husband] could each plead to trafficking in cocaine in an amount of more than one hundred grams and each receive an eight-year sentence [,] or either [Thomas or her husband] could plead to the entire amount and receive the mandatory minimum sentence of twenty-five years, while the other person would be allowed to go free.

346 S.C. at 142, 551 S.E.2d at 255. Thomas pled to the entire amount. 346 S.C. at 143, 551 S.E.2d at 255. The court determined an actual conflict arose the moment the State made the plea offer “because it was in each spouse's best interest for the other spouse to take the entire responsibility for the cocaine.” 346 S.C. at 144, 551 S.E.2d at 256. The court reasoned, “At the moment the [State] made the plea offer, [Thomas's and her h]usband's interests became adverse to one another and counsel should have advised them accordingly.” *Id.* “Further, counsel acted upon this conflicting loyalty by failing to advise [Thomas] she had nothing to lose by proceeding to trial.” *Id.* The court noted counsel could have continued to represent both parties if he had “acquired another waiver covering this specific conflict.” *Id.*

To the contrary, in David Gates case there was no similar offer to allow David Gates to go free if his brother pled guilty. To the contrary, if only Ladarien pled, David was still going to go on trial. In addition, Ladarien indicated that he would not testify against his brother. This is based upon the credible testimony of Kyle Smith.

Similarly, in *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 794–95 (1993), the supreme court examined whether an actual conflict of interest arose when an attorney represented codefendants at a guilty plea hearing. Langford and his codefendant, Howard, retained the same law firm to present an alibi defense. 310 S.C. at 358, 426 S.E.2d at 794. However, another codefendant, Todd, pled guilty and produced a recorded conversation wherein Langford implicated himself in the burglaries. 310 S.C. at 358–59, 426 S.E.2d at 794. When Howard learned about the recorded conversation, he decided to plead guilty. 310 S.C. at 359, 426 S.E.2d at 794. Langford also pled guilty, and “Langford and Howard entered their pleas simultaneously and received identical sentences.” *Id.*

Langford later applied for PCR, asserting plea counsel was ineffective for “continu[ing] to represent him after Howard decided to plead guilty without advising him of the dangers of dual representation.” 310 S.C. at 359, 426 S.E.2d at 794. The court determined “Langford’s attorney never actively represented competing interests,” 310 S.C. at 360, 426 S.E.2d at 795, reasoning,

The possible conflict that developed when Howard decided to plead guilty never ripened into an actual conflict, however, because Langford, fearing that Howard would testify against him, also decided to plead guilty. There is no evidence in the record from which it may be inferred that trial counsel advised either codefendant to plead guilty in order to obtain more favorable consideration for the other. The mere fact that Howard would be available to testify against Langford does not establish an actual conflict of interest.

310 S.C. at 359–60, 426 S.E.2d at 795.

Similarly distinguishable, in *Edgemon v. State*, 318 S.C. 3, 5, 455 S.E.2d 500, 501 (1995), the Court found an actual conflict of interest arose when evidence showed plea counsel advised Edgemon’s codefendant, Brogden, to plead guilty and testify against Edgemon. Citing *Langford*, the court noted “[t]he mere fact that Brogden would be available to testify against [Edgemon] does not establish an actual conflict of interest.” *Edgemon*, 318 S.C. at 5, 455 S.E.2d at 500. However,

the court found an actual conflict of interest arose because plea counsel advised Brogden to testify against Edgemon prior to Edgemon's guilty plea and failed to negotiate a pretrial intervention program on behalf of Edgemon even though the State promised the program to Brogden. 318 S.C. at 5, 455 S.E.2d at 501.

Unlike *Edgemon*, there is no credible evidence in the record that there was ever any suggestion of one brother to testify against the other. The evidence is to the contrary that neither would testify against the other.

Finally, in *Gonzales v. State*, 419 S.C. 2, 795 S.E.2d 835 (2017), defense counsel's simultaneous representation of juvenile defendant and defendant's mother's boyfriend for other drug-related charges created an actual conflict of interest prior to defendant's trial. In *Gonzales*, the mother's boyfriend paid part or all of defendant's attorney fees, after counsel discussed with mother ways to pay such fees and suggested possibility of using the funds recovered in boyfriend's previous forfeiture action. The juvenile defendant and mother's boyfriend were each arrested for trafficking in marijuana over one thousand pounds in a very short time frame in the same geographical area, and it was unlikely a juvenile would act independently when engaging in such trafficking. There, unlike in *Gates* case, counsel failed to advise defendant as to favorable options he may have otherwise exercised, and a law enforcement official testified that the conflict of interest hindered law enforcement's ability to secure cooperation from defendant in prosecution of mother's boyfriend, and an Assistant United States Attorney testified that had defendant been available for cooperation in prosecution of mother's boyfriend, their office would have advocated that defendant receive favorable treatment for his cooperation. Here, there was no similar showing made in this record.

Respondent submits that the PCR Court recognized the burden of proof was on the Petitioner in this setting. The Court is further constrained by the fact that the Petitioner's counsel is now deceased and the fact that there was no court inquiry about the joint representation at the time of the guilty plea. However, since the PCR Court has found that there was no actual conflict of interest based upon the probative evidence at the guilty plea, the failure of an on the record inquiry does not require relief based upon the resolution that there was no actual conflict of interest.¹

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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¹ In making this conclusion, the Respondent is mindful that the best practice is to have an on-the-record inquiry to determine the existence of a waiver and the existence or waiver of a conflict of interest. However, the PCR Court properly concluded that in light of the sworn statements and affirmations before the plea court, the failure to do so here, does not require post-conviction relief. The untimely death of counsel Stanley Myers reflects the need to have these inquiries on the record.