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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable George M. McFaddin, Circuit Court Judge

VALENTINO M. HAYWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001530

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Was trial counsel ineffective for failing to enter into plea negotiations because of his admitted failure to review jail calls provided by the State in discovery?

STATEMENT

Petitioner was indicted for murder and a weapons charge in Charleston County and on November 9, 2015, was tried before the Honorable Deadra Jefferson and a jury. App. 1. Chad Simpson and Lauren Mulkey represented the State. App. 1. Aaron Mayer represented petitioner. App. 1. The jury convicted petitioner of murder, but not on the weapons charge. App. 1046-47. Judge Jefferson sentenced petitioner to thirty-eight years' imprisonment for murder. App. 1063. Petitioner's conviction was affirmed on appeal. State v. Hayward, Op. No. 2019-UP-112 (Mar. 20, 2019).

On April 23, 2019, petitioner filed a PCR application. App. 1065. On February 10, 2023, the Honorable George M. McFaddin held a hearing. App. 1080. James K. Falk represented petitioner and Russell Barlow represented the State. App. 1081. On January 10, 2024, Judge McFaddin granted petitioner a new trial. App. 1122. The State filed a motion to reconsider and on July 28, 2025, Judge McFaddin granted the State's motion and denied relief. App. 1183. This petition follows.

ARGUMENT

Trial counsel was ineffective for failing to enter into plea negotiations because of his admitted failure to review jail calls provided by the State in discovery.

At the PCR hearing, petitioner's attorney admitted he did not review discovery provided to him by the State—evidence that he said was the "worst evidence" admitted against petitioner. App. 1086-88. The State introduced jail calls in which it contended petitioner conspired to influence and eliminate potential witness Liv Littman. App. 860-61. App. 1003-04. Trial counsel testified at the PCR hearing that the reactions and eye contact he got from jurors changed after the jail tapes were played. App. 1089.

Trial counsel admitted not reviewing the jail tapes. App. 1087. He was surprised by them at trial. App. 1087. Trial counsel said, "But I will say that when the jail tape thing came out for the trial, I probably hadn't listened to them all. I probably didn't know quite what was going to be said on the jail tape." App. 1087. Trial counsel expressed remorse, "And I felt really bad in that moment because I felt like I hadn't effectively counseled Mr. Hayward to not talk on the jail phones. So I felt like I'd failed him there." App. 1087. He explained he was a solo practitioner, the jail calls were voluminous, and he "had probably too many irons in the fire." App. 1087-88. Trial counsel said the tapes admission was "the turning point" of the trial. App. 1090.

Trial counsel could not recall any plea negotiations. App. 1090. He agreed that if he had damning information—like the jail tapes—he would have approached the solicitor and sought a plea deal. App. 1090-91. He said he could not remember any "appreciable effort to have both sides have a meeting of the minds and try and find some resolution without a trial." App. 1091.

Judge McFaddin initially granted relief because of trial counsel's admitted failure. App. 1129-30. The PCR court made a specific finding that trial counsel's testimony about his failure to review the calls was credible. App. 1129. The court found prejudice because no plea negotiations were attempted despite the "highly incriminating" jail calls that surprised trial counsel. App. 1130.

Judge McFaddin reversed course after the State's motion to reconsider. App. 1215-18. The court found no prejudice based on a statement made by the solicitor at the beginning of the trial concerning plea negotiations. App. 1217. Judge Jefferson asked whether the State extended any offers to petitioner. App. 73. The solicitor replied that, "No formal offers were made." App. 74. He continued, "We had some discussion and we made it clear that any sort of offer would include a plea to the charge of murder, and that was a nonstarter—". App. 74. The PCR court also found that no prejudice existed because petitioner did not testify at the PCR hearing and did not say he would have accepted a plea offer. App. 1218.

The PCR court erred in its analysis. "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 566 U.S. 156, 162 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 559 U.S. 356, 364 (2010) (internal quotations omitted). Plea counsel has a duty to conduct an independent investigation. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Trial counsel's admitted failure prevented him from fully advising petitioner about his choice to go to trial. Trial counsel admitted he was surprised by the jail tapes and that they were the turning point of the case. Had he known about the information contained on the tapes, he would have sought to enter plea negotiations. Petitioner

The PCR court's final prejudice analysis was incorrect. The solicitor's statement corroborates the deficiency and the prejudice instead of refuting it. The solicitor stated no serious negotiations were had because the solicitor was not going to offer anything less than murder.

The solicitor's characterization of the defense's reaction to the State's stance as a nonstarter proves prejudice. Trial counsel did not understand the strength of the State's case. Had he known about the tapes, he could have attempted to convince petitioner to plead guilty. Petitioner's decision not to enter into plea negotiations could not have been knowing and voluntary because he was unaware of the strength of the State's case.

Petitioner received a thirty-eight year sentence. This sentence is eight years above the mandatory minimum for murder. S.C. Code Ann. § 16-03-20. Even if the State refused to offer a lesser charge, petitioner could have received a lesser sentence by either obtaining a negotiated sentence or accepting responsibility and asking for mercy. The judge's low-end sentence after hearing the evidence in the case indicates that a lesser sentence was highly likely had petitioner pled guilty.

Bad advice that induces a defendant to plead guilty constitutes ineffective assistance of counsel that violates the Sixth Amendment. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant's trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. Hinson found such advice deficient and reversed the PCR court. Id.

The converse must also be true. A failure to investigate and review the State's discovery that led petitioner to abandon any effort to negotiate a lesser sentence is constitutionally ineffective. Even without petitioner's testimony at the PCR hearing, it is clear from this thirty-eight year sentence he received that a lesser sentence was extremely probable. "The longstanding test for

determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Petitioner's decision to not plead guilty or to even enter into negotiations was unknowing and involuntary. The PCR court got it right the first time. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant the petition and reverse petitioner's conviction.

s/David Alexander
David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 5th day of January, 2026.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Valentino M. Hayward states:

1. He is Deputy Chief Attorney for Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, which was held on Feb 10, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Valentino M. Hayward.

Respectfully Submitted,

s/David Alexander
David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 5th day of January, 2026.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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."

s/David Alexander
David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR PETITIONER

This 5th day of January, 2026.