

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County  
Common Pleas

S.C. SUPREME COURT

The Honorable Patrick Cleburne Fant, III, Circuit Court Judge

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ADAM THOMAS BYRUM,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2025-000876

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**PETITIONER'S ISSUE PRESENTED**

Whether the PCR judge erred by refusing to find counsel ineffective for failing to move for reconsideration of Petitioner's sentence?

**RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE PRESENTED**

Whether the post-conviction relief judge properly concluded that plea counsel was not ineffective for foregoing a motion to reconsider Petitioner's sentence?

## STATEMENT OF THE CASE

During its July 2020 term, the Greenville County Grand Jury indicted Petitioner Adam Byrum for possession of methamphetamine with intent to distribute (2020-GS-23-003491), resisting arrest (2020-GS-23-003480), two counts of conspiracy (2020-GS-23-003489; -003490), murder (2020-GS-23-003494), two counts of attempted murder (2020-GS-23-003484; -003485), and three counts of possession of a weapon during the commission of a violent crime (2020-GS-23-003494; -003484; -003485). (App'x pp. 88-93).

On December 10, 2020, Applicant appeared before the Honorable Letitia H. Verdin and pled guilty to murder and two counts of attempted murder. (App'x pp. 1-24). John Christopher Shipman, Esquire, represented Petitioner. (App'x p. 1). Marcus Lynn Smith, Esquire of the Thirteenth Circuit Solicitor's Office, prosecuted the case. (App'x p. 1).

Applicant pled guilty without contesting or qualifying any of the factual summary presented. (App'x p. 11). Judge Verdin sentenced Petitioner to imprisonment for fifty (50) years for murder and thirty (30) years for each conviction for attempted murder, with all sentences running concurrently, and with credit for time served. (App'x p. 24). In accordance with the plea agreement, the solicitor dismissed the remaining charges, as identified above. (App'x pp. 10-11). Petitioner did not appeal his convictions or sentences.

Petitioner initiated a post-conviction relief action by filing a *pro se* application with the Greenville Clerk of Court on August 20, 2021. (App'x pp. 26-35). An evidentiary hearing was held on October 8, 2024, at the Greenville County Courthouse before the Honorable Patrick C. Fant, III. (App'x p. 49). Petitioner was present with his counsel, Susannah Ross, Esquire. Assistant Attorney General Tommy Evans, Jr. of the South Carolina Attorney General's Office represented

the State. (App'x p. 49). On May 2, 2025, Judge Fant filed the Order of Dismissal denying and dismissing the application with prejudice. (App'x pp. 77-87).

## SUMMARY OF FACTS

The facts are outlined as read into the record by the State at Petitioner's guilty plea hearing:

[O]n March 13, 2019, here in Greenville County, Jacori Ashley, age 21, and Kalo McCullough, age 27, drove up to the Dollar General off Locust Hill Road here in Traveler's Rest. Jacori was driving and Kalo was the passenger. Jacori had been contacted by the defendant, Adam Byrum, and requested a ride. Jacori worked with Byrum and his codefendants, Corino Castro's mother at a place called RimTyme. Jacori had given rides to Byrum in the past. This night Jacori asked his friend Kalo to ride with him.

They arrived at the Dollar General and waited for Byrum and Castro to arrive. They noticed two individuals wearing hoodies walking up to the car. They knew it was Byrum and Castro as they were on the phone talking with them.

When they got next to the car, the defendant, Mr. Byrum, stated something to Jacori and immediately pulled a gun and started shooting into the vehicle. Jacori was hit with one round and it went through his mouth and nasal area, as well as his shoulders.

Kalo was hit with a round and went through his lung and shattered a vertebra leaving him permanently paralyzed from the chest area down. Jacori was able to speed off from the site. And amazingly, Your Honor, having been shot in the face, drive to St. Francis hospital in downtown Greenville. At the time, Judge, he was trying to make a phone call, but he couldn't handle the phone because his hand was so full of blood that it was just slipping out of his hand.

The guns used to shoot the victims were 380 calibers. Four shell casings found were identified by ballistics tests as having been fired from one of the 380 handguns, which was found later belonging to the defendants.

Both victims have given statements that both defendant and co-defendant, Byrum and Castro, were the individuals there that night and that Byrum was the person that shot him.

Then, Your Honor, four days later on March 17, 2019 in Greenville County deputies arrived at 66 - excuse me -- 6077 Locust Hill Road, a short distance from where the first case happened, in Traveler's Rest and found a Ford F-150 partially in the roadway and partially in the entrance to a business. Inside the vehicle, a deceased white male sitting in the driver's seat was found slumped over the center console with blood on the left and right sides of his head. It was determined that he been shot in the head. Bullet holes were found on the car and two, 380 caliber shell casings were also found.

The male was later identified as Jamie Dale Smith, age 32. A handwritten note on a paper towel found in Smith's home was later given to investigators that stated (864)721-7109, Smokey G, Locust Hill Road. T.R., 29690, call 30 min, minutes, be I arrive.

Smokey G was later identified as this defendant, Adam Byrum, and the phone number was run and found to belong to Adam Byrum as well.

An attempt to arrest the defendant was carried out a day later, March 18, 2019. Investigators who connected the two, found that they were related incidents. And so a short distance later -- a short distance from where these two incidents occurred, that's where they were going to arrest the defendant and his co-defendant. Officers had to use a K-9 due to the defendant running to avoid and apprehension. When arrested, the defendant was found in possession of 1.41 grams of methamphetamines and admitted that he had just shot meth.

Both the defendant and his co-defendant girlfriend are members of the Gangster of Insane gang, which is part of the larger Folk Nation gang. And, Judge, I know I handed up to you previously, and I've shared that with Mr. Shipman, memes and things from where they had posted on Facebook, and I can talk about some of those, but some from Miss Castro and everything will show that they have the gangster symbols and signs and pictures and things of that nature.

Two females at the site of the arrest stated that the defendant was acting crazy last night, meaning the night before Jamie Smith was shot and killed, and that co-defendant Castro had been vomiting when they returned back to the house.

This defendant's sister stated that when Adam got home, I took the guns from him because he was acting crazy. Judge, several motives have been mentioned as to why these particular individuals were chosen such as robbing the targets of drugs, killing them -- and killing them to believing that Jamie Smith was a snitch, to Jacori Ashley flirting with co-defendant, Corino Castro, who was this defendant's girlfriend at the time.

That's where some of those come in. I mean, you've seen like -- the memes where it says some people won't respect you until you get disrespectful. Snitch prevention with a gun and a skeleton -- or skull's head.

It's -- Judge, I prefer to take Miss Castro's statement given to the police at face value where it said that she and Adam had planned to rob Jacori and Kalo -- excuse me. That she had planned to rob Jacori and that Kalo was an unintentional victim because they did not that he was going to be there.

She stated that they each had 380 caliber handguns, walked up to the car, and that this defendant, Adam Byrum, fired multiple rounds into the vehicle. She also stated that they knew Smith as well. As in the case before, they went to meet Smith, both

armed with the 380 handguns with the plan to kill and rob him. She stated that it had been her decision to handle Smith, meaning to kill him.

(App'x pp. 5-10).

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 180, 810 S.E.2d at 839. (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

### **The post-conviction relief court appropriately afforded deference to plea counsel's decisions not to move for a reconsideration of Petitioner's sentence.**

Petitioner asserts the post-conviction relief court erred in denying him relief because plea counsel was allegedly ineffective for failing to move the plea court for a reconsideration of Petitioner's sentence. However, the post-conviction relief court properly concluded that plea counsel did not provide ineffective assistance of counsel to Petitioner because the record shows that Petitioner failed to present evidence that would support the motion's success and that any such motion would have likely been unsuccessful. Despite Petitioner's contentions, the post-conviction relief court considered and reasonably concluded that plea counsel's testimony provided a valid reason for not moving to reconsider Petitioner's sentence. The post-conviction relief court properly considered the record in its entirety, listened to the evidence and arguments presented, and determined Petitioner did not meet his burden of establishing counsel was constitutionally ineffective. These findings are supported by probative evidence and not premised on an error of law, so this Court should deny certiorari.

To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. Strickland v. Washington, 466 U.S. 668, 694 (1984); Simpson v. Moore, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. Strickland, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. Id. “Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.” Strickland, at 700.

To conduct a fair review of counsel's performance, a reviewing court must "eliminate the distorting effects of hindsight" and attempt "to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. Further, it is presumed that counsel made all decisions in the exercise of reasonable judgment. Strickland, at 689. It is the applicant's burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRPC. See also Speaks v. State, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application").

In Hill v. Lockhart, the United States Supreme Court has held that the two-part Strickland test also applies in the guilty plea context. 474 U.S. 52, 106 S. Ct. 366(1985). The deficiency prong remains as an analysis of the "standard of attorney competence," however, the prejudice prong focuses on "whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Stalk v. State, 383 S.C. 559, 561-562, 681 S.E.2d 592, 594 (2009). "In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id., 383 S.C. at 562. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

#### *Discussion*

Petitioner argues that plea counsel was constitutionally ineffective because he failed to file an appeal *or* make a motion for reconsideration of his sentence. In summary, Petitioner testified at the evidentiary hearing that he wanted plea counsel to file an appeal and to move for resentencing because his co-defendant received a lesser sentence. (App'x pp. 57-58). However, testimony at the post-conviction relief evidentiary hearing shows that Petitioner never inquired about plea counsel

to appeal his conviction or sentence, or to move for reconsideration of his sentence. (App'x pp. 58, 70). Because Petitioner failed to meet his burden of proof as to either prejudice or deficiency, the post-conviction relief court correctly denied relief, and this Court should deny certiorari.

There is no dispute that the plea court informed Petitioner of his right to appeal and that he had ten days to file the notice of appeal in writing. (App'x p. 5). Further, the testimony presented at the post-conviction relief hearing shows that Petitioner did not inquire, or explicitly ask plea counsel, to appeal his conviction or to file a motion to reconsider at the time of sentencing. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (referencing Roe v. Flores-Ortega, 528 U.S. 470 (2008)), holding that there is no constitutional requirement that counsel must inform a defendant of the right to appeal from a guilty plea absent extraordinary circumstances, *i.e.*, where the defendant inquires, or when there is reason to think that a rational defendant would want to appeal).

Petitioner did not allege he had viable issues for appeal; he merely expressed dissatisfaction to the post-conviction relief court that his co-defendant received a lesser sentence. (App'x p. 58). Expectation or hope of a lesser sentence does not show any deficiency in plea counsel's representation nor the possibility of an involuntary plea. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (fact that defendant "hoped" to get reduced sentence does not render plea invalid); Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984) (fact that defendant "thought" judge would give a lighter sentence is not a basis for relief).

Petitioner argues that plea counsel "should have known" he wanted him to file a motion to reconsider his sentence. (PWC p. 7). This argument is irrelevant because, even assuming Petitioner asked plea counsel to file the motion, such a decision is not Petitioner's to make. See Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) ("*What motions to file and whether to*

put on evidence so as to preserve the final word in closing argument are... strategic and tactical decisions to be made by trial counsel.”) (internal citations omitted) (emphasis added). Additionally, plea counsel did not provide any testimony that Petitioner asked him to file the motion at the evidentiary hearing.

Further, the post-conviction relief court gave credence to plea counsel’s testimony that a motion to reconsider would not be successful. (App’x p. 86). Petitioner contends that the post-conviction relief court erred in finding plea counsel’s testimony credible that a motion to reconsider would not be successful; however, this can be implied by the line of questioning on direct examination.<sup>1</sup> Specifically, at the evidentiary hearing, the State asked plea counsel whether he believed Judge Verdin would reconsider the sentence if he requested it, and plea counsel answered in the negative. (App’x p. 70). One can interpret that plea counsel’s testimony inferred the motion to reconsider would therefore be, in his opinion, unsuccessful.

Petitioner’s argument is essentially that he asked plea counsel to file a motion to reconsider, and he did not, therefore Petitioner was prejudiced. However, the post-conviction relief court found no deficiency in plea counsel’s representation. (App’x p. 86). In addition, the post-conviction relief court specifically stated it had reviewed the record and found Petitioner presented “no evidence that would support the motion’s success, other than that his co-defendant received a lesser sentence,” therefore, Petitioner was also unable to satisfy his burden as to prejudice. (App’x p. 86).

Importantly, Petitioner’s co-defendant gave a statement to law enforcement implicating Petitioner as “firing multiple rounds into the vehicle.” (App’x p. 10). The colloquy at the plea

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<sup>1</sup> Moreover, Petitioner improperly addresses issues with the post-conviction relief court’s “Order of Dismissal” on appeal, alleging the post-conviction relief court “misstated counsel’s testimony.” (PWC p. 7). Petitioner had the option to pursue a Rule 59(e), SCRCF motion to alter or amend the post-conviction relief court’s order and opted not to do so within ten days of the filing of the order, which was filed on May 2, 2025.

hearing establishes that Petitioner had no misconceptions regarding sentencing. Judge Verdin informed Petitioner that each count of attempted murder carries up to thirty years, and murder carries a mandatory minimum of thirty years and a maximum sentence of life. (App'x p. 2). Petitioner received the benefit of no longer facing a *potential life sentence* when he decided to plead. See United States v. Blick, 408 F.3d 162, 173 (4<sup>th</sup> Cir. 2005) (“Plea bargains rest on contractual principles, and each party should receive the benefit of its bargain.”). Further, Petitioner did not contest the recitation of facts and opted to plead guilty. (App'x p. 11). Petitioner should be held to his assertions to the plea court. See generally Wolfe, 485 S.E.2d at 367 (“[Applicant’s] claim he understood from counsel that the trial judge’s questions at the guilty plea were only a ‘polite fiction’ was ‘not an invitation to answer untruthfully’”).

Petitioner argues that his “age, mitigating circumstances concerning his mental health, and his co-defendant’s lesser sentence may have served as a basis for reconsideration.” (PWC p. 8). Prior to sentencing, plea counsel gave an extensive presentation in support of mitigation of Petitioner’s sentence in regard to the aforementioned. (App'x pp. 18-24). In fact, the plea judge acknowledged “the outstanding presentation” on Petitioner’s behalf. (App'x p. 24). Further, plea counsel asked the court to consider a range of thirty-five to forty years immediately prior to Judge Verdin imposing sentence on Petitioner. (App'x p. 24). The plea judge ultimately sentenced Petitioner to fifty years for the murder, and thirty years for each of the two attempted murders, running all his sentences concurrently, though she could have sentenced him to *life*. (App'x p. 24).

These factual findings are supported by the record and are therefore entitled to deference on appellate review. Smalls, 422 S.C. at 180, 810 S.E.2d at 839 (explaining courts defer to a post-conviction relief court’s findings of fact and will uphold them if there is any evidence in the record to support them). Because the post-conviction relief court correctly found plea counsel was not

deficient in filing a motion to reconsider as Petitioner requested, nor was Petitioner prejudiced by plea counsel's actions, this Court should deny certiorari.

**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the post-conviction relief court's finding plea counsel was not constitutionally ineffective. Should this Court grant Certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

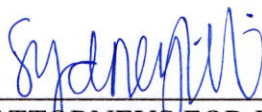
Respectfully submitted,

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