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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Eugene C. Griffith, Jr. Circuit Court Judge

Opinion No. 2025-UP-323 (S.C. Ct. App. Filed September 24, 2025)

ANGELO H. TAYLOR,

RESPONDENT,

V.

THE STATE.

PETITIONER.

APPELLATE CASE NO. 2022-001571

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INDEX

INDEX i

PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI 1

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES 2

STATEMENT OF THE CASE 3

STANDARD OF REVIEW 5

ARGUMENT

This Court should deny the petition for writ of certiorari because the Court of Appeals correctly affirmed the findings of the PCR court that Respondent met his burden of proof in showing deficient performance in plea counsel's erroneous advice as to sentencing and met his burden of proof in showing the resulting prejudice rendering the plea involuntary and requiring the grant of post-conviction relief. 6

Deficient Performance 12

Prejudice 14

CONCLUSION 18

PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI

Is certiorari warranted to review the Court of Appeals' erroneous decision to affirm the post-conviction relief court's grant of a new trial to Respondent Angelo Horace Taylor on the basis that this Court has overlooked the relevant facts for evaluating prejudice and failed to apply the comprehensive consideration of the record as mandated by Strickland v. Washington, 466 U.S. 668 (1984)?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES

Should this Court deny the petition for writ of certiorari because the Court of Appeals correctly affirmed the findings of the PCR court that Respondent met his burden of proof in showing deficient performance in plea counsel's erroneous advice as to sentencing and met his burden of proof in showing the resulting prejudice rendering the plea involuntary and requiring the grant of post-conviction relief?

STATEMENT OF THE CASE

According to the indictments,[1] on February 13, 2018, the Greenville County Grand Jury indicted Respondent, Angelo Horace Taylor, for murder, possession of a weapon during the commission of a violent crime, and attempted armed robbery, indictments #2016-GS-23-2378, 2379. (App. pp. 392-393; 396-397). On September 18, 2018, Respondent proceeded to jury trial before the Honorable Edward W. Miller. Carlyle Steele represented Respondent at trial. Elizabeth Major prosecuted the case. Jury deliberations began at 12:06 PM on September 19, 2018. (App. p. 354, line 1). At 2:29 PM the jury sent out a note that said, "The jury is unable to reach a consensus." (App. p. 354, lines 3-4). The judge asked the jury to continue to deliberate. (App. p. 354, lines 20-21). At 3:52 PM the jury sent a second note indicating deadlock. (App. p. 355, lines 5-6). The judge announced that he was going to give an Allen charge. (App. p. 355, lines 16-18). Counsel for Respondent objected to the Allen charge but failed to move for a mistrial pursuant to S.C. Code §14-7-1330.[2] The judge gave the Allen charge. (App. pp. 356-358). While the jury was deliberating, Respondent entered Alford[3] pleas to involuntary manslaughter and attempted armed robbery. Judge Miller sentenced Respondent to twenty (20) years for attempted armed robbery and five (5) years consecutive to involuntary manslaughter. Respondent did not appeal his sentence or conviction. (App.p. 390, 395).

On August 9, 2019, Respondent filed a *pro se* application for post-conviction relief [PCR]. (App. pp. 404-412). On January 7, 2020, the State filed a return and motion for more definite statement. (App. pp. 413-426). On March 10, 2020, PCR counsel filed an amended

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[1] The date listed below the witness name is December 5, 2015. The indictments are stamped as filed in the clerk's office on March 28, 2016. The 2016 term listed on one side of the indictment is scratched out and replaced with 2018. The indictment numbers start with 2016.

[2] This issue was not raised in post-conviction relief.

[3] North Carolina v. Alford, 400 U.S.25 (1970).

application. (App. pp. 427-428). On March 21, 2022, an evidentiary hearing was held, via WebEx, before the Honorable Eugene C. Griffith, Jr. Susannah Ross represented Respondent at the PCR hearing. Taylor Zane Smith represented the State. In a written order signed August 17, 2022, Judge Griffith granted relief and remanded for a new trial. (App. pp. 429-434). The order granting relief was filed on September 14, 2022. The State served a motion to alter or amend on September 21, 2022. Judge Griffith denied the motion on October 11, 2022.

The notice of intent to appeal was served on November 7, 2022. The State filed a petition for writ of certiorari on March 22, 2023. (App. pp. 488-507). The return was filed on April 20, 2023. (App. pp. 508-520). On May 9, 2023, pursuant to Rule 243(1), SCACR, the South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals. On May 21, 2024, the South Carolina Court of Appeals granted the petition for writ of certiorari. On September 30, 2024, the State filed the brief of petitioner. (App. pp. 521-547). The brief of respondent was filed on October 23, 2024. (App. pp. 548-568). On September 24, 2025, the Court of Appeals affirmed the grant of relief by the PCR judge. Taylor v. State, Op. No. 2025-UP-323 (S.C.Ct.App. filed September 24, 2025). (App. pp. 569-575). Petitioner filed a petition for rehearing on October 9, 2025. (App. pp. 576-581). The Court of Appeals denied the petition for rehearing on November 21, 2025. (App. pp. 582-583). Petitioner filed a petition for writ of certiorari on December 18, 2025. This return follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue raised on appeal. Smalls v. State, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839–40 (2018). The reviewing court must 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)). However, the appellate court reviews questions of law de novo, with no deference to the PCR court. Id.

ARGUMENT

This Court should deny the petition for writ of certiorari because the Court of Appeals correctly affirmed the findings of the PCR court that Respondent met his burden of proof in showing deficient performance in plea counsel's erroneous advice as to sentencing and met his burden of proof in showing the resulting prejudice rendering the plea involuntary and requiring the grant of post-conviction relief.

Respondent's trial for murder, possession of a weapon during the commission of a violent crime and attempted armed robbery started on September 18, 2018. Deliberations started the next day at 12:06 PM. (App. p. 354, line 1). At 2:29 PM the jury sent out a note that said, "The jury is unable to reach a consensus." (App. p. 354, lines 3-4). The judge asked the jury to continue to deliberate. (App. p. 354, lines 20-21). At 3:52 PM the jury sent a second note indicating deadlock on two of the charges. (App. p. 355, lines 5-6). The judge announced that he was going to give an Allen charge. (App. p. 355, lines 16-18). Counsel for Respondent objected to the Allen charge but failed to move for a mistrial pursuant to S.C. Code §14-7-1330[4]. The trial judge erred in sending the jury back a second time. Counsel's failure to move for a mistrial after the jury deadlocked twice was not raised during the PCR hearing. The judge, over objection, gave the Allen charge. (App. pp. 356-358).

While the jury continued to deliberate, Respondent entered Alford[5] pleas to involuntary manslaughter and attempted armed robbery. (App. pp. 358-363). During the plea the judge told Respondent, "You understand that we can sit here. You've been through a jury trial. I'm not

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[4] Section 14–7–1330 provides:
"When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of law."

[5] North Carolina v. Alford, 400 U.S.25 (1970).

going through your rights. You know what they are. You can sit here and wait for this jury to come to a determination. You understand that?" (App. p. 359, lines 10-14). The judge failed to question Respondent about his understanding of the maximum and minimum penalties and the nature of the charges to which he was entering Alford pleas. The judge sentenced Respondent to twenty (20) years for attempted armed robbery and five (5) years consecutive to involuntary manslaughter.

In the amended PCR application Respondent alleged, "ineffective assistance of counsel for advising the applicant the attempted armed robbery was charge that maxed out at 65% when it is an 85% charge . . ." (App. p. 427). During the PCR hearing when PCR counsel asked Respondent if plea counsel discussed the fact that the sentence for attempted armed robbery required service of eighty-five percent of the sentence, Respondent testified, "Well, he – at first originally he told me that I could get probation or I could, you know, get a different – a lesser sentence than 20 years, that it would be carried at 65 percent." (App. p. 371, lines 11-16). Respondent testified that he thought that he would have to serve sixty-five percent of the sentence imposed and he did not think he would receive consecutive time, as he did. (App. p. 371, lines 8-10). Respondent testified that he would not have pled if he had known that attempted robbery was classified as a violent offense and required service of eighty-five percent of the sentence. (App. p. 371, line 20 – p. 372, lines 1-13). On cross-examination Respondent testified, "He [counsel] told me that the charge that I was pleading to, that my time would carry 65 percent, so I would do a lesser amount of time incarcerated." (App. p. 373, lines 15-17).

Plea counsel testified at the PCR hearing that, **prior to trial**, he did not believe he discussed with Respondent the percentage of time he would have to serve if convicted of attempted armed robbery because the State had not yet made any plea offers and Respondent

wanted a trial. (App. p. 376, lines 8-19). When asked if he ever told Respondent he would only have to serve sixty-five percent of the sentence imposed, counsel testified, "It's been three and a half years. It's been a while. I can't say we never had that discussion, but I can say I don't remember that discussion, and I don't believe we had that discussion." (App. p. 376, line 20 – p. 377, line 1). When asked if he believed that attempted robbery was categorized as a "no parole" offense, counsel testified, "Apparently it is." (App. p. 377, lines 8-10). On cross-examination counsel agreed that when Respondent heard the murder charge was being reduced to involuntary manslaughter, he may have thought he was looking at close to time served as he had been in jail for over 1,000 days awaiting trial. (App. p. 383, line 24 – p. 384, lines 1-3).

In the order granting relief the PCR court wrote, "It is the finding of this Court that the Applicant demonstrated a deficiency of Counsel in this matter which was not cured by the plea colloquy that gives rise to a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Therefore, he is entitled to post-conviction relief." (App. p. 433). As to deficiency, the PCR judge wrote, "As counsel's testimony did not contradict the Applicant, I find the Applicant's testimony that his guilty plea was based on inaccurate sentencing advise from counsel to be convincing." (App. p. 432). As to prejudice, the PCR court wrote, "As to the 'prejudice' requirement of the *Strickland* test, the Applicant's uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have plead guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea." (App. p. 433). The PCR court correctly granted relief.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations

of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.' " Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "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, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999), the South Carolina Supreme Court wrote:

> Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. Id. Specifically, a defendant must be aware of the privilege against self incrimination, the right to a jury trial, and the right to confront one's accusers. This Court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In addition to the requirements of Boykin, 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. Id.

In Dalton v. State, 376 S.C. 130, 138–39, 654 S.E.2d 870, 874 (Ct. App. 2007), the South Carolina Court of Appeals wrote:

> "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). "When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing." Roddy, 339 S.C. at 33, 528 S.E.2d at 420. In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997).

In the present case the records of the Alford plea and the PCR hearing reflect that Respondent was not aware that the attempted robbery was classified as a violent offense and

required service of eighty-five percent of the sentence. The misinformation about sentencing was not cured during the plea colloquy. The guilty plea was rendered involuntary. There is a reasonable probability that, but for the erroneous sentencing advice, Respondent would not have pled guilty and would have insisted on going to trial. The PCR court correctly granted relief

In correctly affirming the grant of relief the Court of Appeals wrote:

> Here, the PCR hearing transcript supports Taylor's contention that he did not have correct sentencing advice and therefore his plea was not knowing and voluntary. The record shows plea counsel did not properly discuss with Taylor the possible sentence he was facing and, therefore, Taylor did not know the maximum sentence he faced. Plea counsel stated he did not remember discussing the amount of time Taylor might have to serve for the attempted armed robbery charge. Taylor stated plea counsel told him that the charge he was pleading to carried a lesser amount of time incarcerated. We note the PCR court was in the best position to judge the credibility of Taylor's testimony that he did not have a full understanding of the consequences of his decision to plead guilty. Taylor has demonstrated that, in the "rushed" circumstances of this plea, plea counsel was deficient in his representation of Taylor by not fully informing him of the consequences of the plea. The PCR court's findings of fact on this matter are supported by the record.

Taylor v. State, No. 2022-001571, 2025 WL 2718999, at *3 (S.C. Ct. App. Sept. 24, 2025) (App. p. 574). The Court of Appeals noted, "Here, the plea colloquy was not sufficient to demonstrate that Taylor's plea was knowing and voluntary, and it did not cure the deficiency of plea counsel's representation. The circumstances of this plea were unnecessarily hurried, and the error could have been cured if the plea court had asked Taylor if he knew the sentence he faced. Id. (App. p. 375).

With regard to prejudice, the Court of Appeals wrote:

> 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 ...." Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). The Alexander court found the petitioner's testimony that if trial counsel had not misinformed him he would not have pled guilty fulfilled the prejudice requirement of Strickland. Id. at 543, 402 S.E.2d at 485. Here, the record supports the PCR court's finding that Taylor's testimony that he would not

> have pled guilty if he had been correctly informed about the sentencing range demonstrates prejudice to Taylor entitling him to post-conviction relief.

Taylor v. State, No. 2022-001571, 2025 WL 2718999, at *4 (S.C. Ct. App. Sept. 24, 2025). The Court of Appeals correctly found that Respondent met his burden in showing both deficient performance and prejudice.

Deficient Performance

The PCR court correctly found that the plea was based on inaccurate sentencing advice from counsel. The Respondent met his burden of proof in showing deficiency. The PCR court did not relieve Respondent of his burden of proving deficient performance. Instead, the PCR court made a factual finding that Respondent's testimony that his plea was based on inaccurate sentencing advice from counsel was convincing writing, "As counsel's testimony did not contradict the Applicant, I find the Applicant's testimony that his guilty plea was based on inaccurate sentencing advise from counsel to be convincing." (App. p. 432). Respondent unequivocally testified that counsel advised him that he would only have to serve sixty-five percent of his sentence. (App. p. 371, 373). Counsel's testimony about his advice to Respondent, on the other hand, was less certain. Counsel testified, "I can't say we never had that discussion, but I can say I don't remember that discussion, and I don't believe we had that discussion." (App. p. 376, line 20 – p. 377, line 1). Counsel also testified that attempted armed robbery was "apparently" a no parole offense. (App. p. 377, lines 8-10). The PCR court's factual finding that the plea was based on inaccurate sentencing advice from counsel is supported by the record.

In Smalls v. State, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839–40 (2018) (n. 2 omitted), the South Carolina Supreme Court wrote:

> Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525,

527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)).

The PCR judge made a finding of fact that Respondent's testimony that he received erroneous sentencing advice was convincing. Petitioner argues that by stating that counsel's testimony did not contradict the Applicant's testimony, the PCR court committed an error of law by relieving the burden of proof. The factual finding by the PCR court was not a burden shifting error of law. The PCR court did not require the State to disprove Respondent's testimony. Respondent met his burden of proof. The PCR court made a finding of fact, based on Respondent's convincing testimony, that the plea was based on the erroneous advice from counsel that attempted armed robbery[6] only requires the service of sixty-five percent of the sentence. There is evidence in the record to support the PCR court's factual finding that the plea was based on erroneous advice from counsel. The judge correctly made a finding of law that the erroneous advice constituted deficient performance.

In correctly affirming the grant of relief by the PCR judge, the Court of Appeals noted:

> Plea counsel testified Taylor always planned to stand trial, and before trial, he did not discuss the percentage of the sentence Taylor would have to serve if convicted of attempted armed robbery. He did not have any notes showing that he had discussed with Taylor that attempted armed robbery was a no-parole offense. Plea counsel stated he "must" have discussed the possible maximum sentences for murder and attempted armed robbery before trial but he did not have a specific memory of it. He said the State offered the plea and "it might have even been at the suggestion of [the trial court]." He stated "things moved really fast" after the plea was offered. Plea counsel explained it was his normal practice to discuss maximum potential sentences with clients before a plea but he had no specific recollection of such a discussion happening in this case. He recalled Taylor was

[6]S. C. Code §24-13-100 provides that a "no parole" offense means a class A, B, or C felony. Attempted armed robbery, S.C. Code §16-11-330(B), is a class C felony, S.C. Code §16-1-90(C), classified as a violent, most serious, no parole offense. S C. Code §24-13-150 provides that an inmate convicted of a no parole offense is required to serve at least eighty-five percent of the sentence.

> "very enthusiastic" about the plea, he discussed the plea with Taylor for "maybe 15 minutes at the most," and the plea was "rushed." Plea counsel testified it was possible that Taylor "heard involuntary" and thought he would receive close to time served.

Taylor v. State, No. 2022-001571, 2025 WL 2718999, at *2 (S.C. Ct. App. Sept. 24, 2025) (App. p. 572). The record supports that Respondent met his burden in showing deficient performance. The Court of Appeals correctly affirmed the grant of relief.

Prejudice

The PCR court addressed prejudice writing, "As to the 'prejudice' requirement of the *Strickland* test, the Applicant's uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have plead guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea. This is the only evidence in the record on this point, and I find that it demonstrates prejudice to the Applicant. See Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (S.C. 1991)." (App. p. 433). In Jackson v. State, 342 S.C. 95, 97–98, 535 S.E.2d 926, 927 (2000), the South Carolina Supreme Court wrote:

> Petitioner testified he would not have pled had he known the charge was a felony. The PCR judge found petitioner's testimony was not credible. However, there was no evidence contradicting or conflicting with petitioner's testimony that would support the PCR judge's finding that petitioner would not have pled. In Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991), the PCR judge denied a petitioner relief when trial counsel erroneously advised the petitioner about his potential sentence prior to his guilty plea. We reversed and held the petitioner had satisfied the prejudice prong when "the only evidence in the record on this point [was] petitioner's own testimony that had trial counsel not misinformed him that he would face a potential life sentence if he proceeded to trial, he would not have pled guilty." (citing Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (new trial granted where incorrect parole eligibility advice induced plea)).[2] Here, the only evidence was that petitioner would not have pled had he known the charge was a felony. Thus, petitioner was entitled to PCR.

There was no adverse credibility finding to overcome in the present case as there was in Jackson. Respondent testified that he would not have pled had he known that any sentence for attempted

armed robbery required service of eighty-five percent of that sentence. In footnote two the Court in Jackson wrote, "To the extent that Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), can be read to hold that a petitioner's statement is insufficient evidence to satisfy the prejudice prong, it is hereby overruled." 342 S.C. at 98, 535 S.E.2d at 927. Respondent only chose to enter Alford pleas when, at the conclusion of the trial and while the jury was still deliberating, the State agreed to reduce the murder charge to involuntary manslaughter. Plea counsel agreed that when Respondent heard the murder charge was being reduced to involuntary manslaughter, he may have thought he was looking at close to time served as he had been in jail for over 1,000 days awaiting trial. (App. p. 383, line 24 – p. 384, lines 1-3). There is evidence in the record to support the PCR judge's finding as to prejudice.

Petitioner's reliance on Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009), is misplaced as Stalk is factually distinct from the present case. In Stalk the allegation was that counsel was so unprepared that Stalk felt coerced into pleading guilty. The South Carolina Supreme Court wrote:

> The Court of Appeals followed Hill when it engaged in a prejudice analysis and found no evidence to support the PCR judge's finding that Stalk had met his burden. Stalk's prejudice claim rested on his assertion that his attorney was so unprepared that Stalk felt coerced into pleading guilty. We agree with the Court of Appeals that to meet his prejudice burden Stalk was required to prove more than the fact of counsel's inattentiveness, which is the " deficiency." For example, Stalk needed to present some evidence that had counsel done an investigation he would have found a witness or evidence that was helpful to Stalk, that is, something that would have affected counsel's advice to Stalk to accept the plea bargain offered or that would have caused Stalk to decline to accept it. Although appellate courts frequently "short-hand" the prejudice prong in a guilty plea ineffective assistance claim as "but for the deficient performance is there a reasonable probability that the defendant would not have pleaded guilty but would have insisted on going to trial," Hill makes clear that this prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's

> deficient performance he would not have pled but would have gone to trial. We find no error in this portion of the Court of Appeals decision.

Stalk v. State, 383 S.C. at 562–63, 681 S.E.2d at 594–95. Stalk stands for the proposition that when the deficiency prong involves an allegation that counsel was unprepared or failed to investigate, the prejudice prong requires more than an applicant's assertion.

The present case does not involve an allegation that counsel was deficient for being unprepared or failing to investigate. Instead, the deficiency prong in the present case involves erroneous sentencing advice. Jackson and Alexander stand for the proposition that when the deficiency involves erroneous sentencing advice, as in the present case, the prejudice prong is satisfied by applicant's assertion that, but for counsel's erroneous sentencing advice, the applicant would not have pled guilty and would have insisted on going to trial. The PCR judge correctly found that the prejudice prong was satisfied by Respondent's testimony that that had he known the attempted armed robbery was an eighty-five percent charge, he would not have pled guilty and instead waited on the verdict of the jury that was actively deliberating at the time of his plea.

The present case is also distinguished from Taylor v. State, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013), because in Taylor there was evidence in the record to support the PCR court's finding that Taylor failed to prove he would have gone to trial absent the erroneous legal advice. In Taylor the Court found that, "Despite Petitioner's assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial on the Georgetown County charges had counsel told him about the strike." Taylor, 404 S.C. at 362, 745 S.E.2d at 103.

In contrast, in the present case, Respondent chose to proceed to trial and only agreed to the Alford pleas when he believed he was close to receiving a time served sentence. There is

evidence in the record to support the PCR court's finding that if Respondent had known that attempted armed robbery required service of eighty-five percent of the sentence, he would have waited on a verdict or mistrial. There is evidence in the record to support the PCR court's finding of prejudice under the second prong of Strickland.

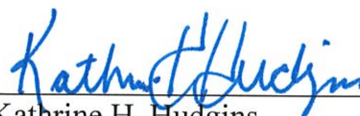
In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

> In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). 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. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), "[I]n order to satisfy the 'prejudice' requirement, the defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial."

Respondent showed a reasonable probability that, but for counsel's errors, he would not have pled guilty and instead would have waited for the verdict or perhaps a mistrial based on a hung jury as the jury had twice announced they were unable to reach a unanimous verdict. The PCR court correctly found that Respondent ". . . demonstrated a deficiency of Counsel in this matter which was not cured by the plea colloquy that gives rise to a reasonable probability that but for counsel's errors, the defendant would not have pled guilty. Therefore, he is entitled to post-conviction relief." (App. p. 433). The guilty plea was rendered involuntary by plea counsel's erroneous advice as to sentencing. Respondent is entitled to the relief granted. The Court of Appeals correctly affirmed the order of the PCR court.

CONCLUSION

Based on the above argument, this Court should deny the petition for writ of certiorari.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR RESPONDENT

This 20th day of January, 2026.