

**RECEIVED**

**Jan 22 2026**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
SUPREME COURT

CERTIORARI - PCR - COMMON PLEAS

Lexington County

Hon. J. Cordell Maddox, Jr., PCR Judge

Hon. Debra R. McCaslin, Plea Judge

Appellate Case No. 2025-000869

Lower Case No. 2022-CP-32-03461

David Fredshun Gates..... Petitioner

vs.

State..... Respondent

REPLY TO RETURN

C. RAUCH WISE

Attorney at Law

305 Main Street

Greenwood, SC 29646

Bar No 06188

(864) 229-5010

Attorney for Petitioner

# INDEX

	<b>Page:</b>
Table of Authorities .....	ii
Argument:	
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? .....	1
Conclusion ..	6

**Table of Authorities**

<b>Cases:</b>	<b>Page:</b>
<i>Cuyler v. Sullivan</i> , 446 U.S. 335 (1980).....	5
<i>Edgemon v. State</i> , 318 S.C. 3, 455 S.E.2d 500 (1995).....	3
<i>Langford v. State</i> , 310 S.C. 357, 426 S.E.2d 793 (1993).....	3
<i>Lomax v. State</i> , 379 S.C. 93, 655 S.E.2d 164 (2008).....	3
<i>People v. Gomberg</i> , 38 N.Y.2d 307, 342 N.E.2d 550 (1975).....	5
<i>Staggs v. State</i> , 372 S.C. 549, 643 S.E.2d 690 (2007).....	4
<i>Thomas v. State</i> , 346 S.C. 140, 551 S.E.2d 254 (2001).....	2, 3
<i>Wiggins v. State</i> , 480 S.W.3d 379 (Mo. Ct. App. 2015).....	3
<b>Court Rules:</b>	
Rule 44 of Fed. R. Crim. P.....	5
<b>Constitutional Provisions:</b>	
Art. I, § 14 of the Constitution of the State of South Carolina.....	5
Sixth Amendment of the United States Constitution.....	5

## Argument

**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?**

When a lawyer stands before a judge with two clients entering their pleas knowing that one of his clients has a valid defense because his other client has exonerated him, obviously a conflict exists. When the State had been told one brother was claiming ownership of the drugs, the State was also aware of the conflict. App. at 46, ll 13-17. Whether the State believed they had a great case or average case does not impact that conflict. Whether the State presented to the court evidence clearly implicating both defendants does not resolve that conflict. In the Return of the State, they state nothing that diminishes the obvious conflict. Until that conflict is waived, the conflict infects all aspects of the plea.

Petitioner agrees with the Respondent's statement, "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.'" Ret. at 16. When the advice to plea guilty is based, even in part, upon the loyalty of counsel to a co-defendant, the advice to plea guilty was not within the competence demanded of attorneys in criminal cases.

The State has argued that the position of the two brothers was not antagonistic to each other. Ret. at 15. In a very real sense, the State is correct. Both brothers knew David Gates was not guilty. They both agreed on that. The conflict, however is not resolved by agreeing that both brothers were in agreement. The prejudice arises when counsel has a conflict and not when the co-defendants has a conflict. Both the Gates brothers agreed David Gates was not guilty.

The State properly cites *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001). The State apparently fails to recognize that *Thomas* is very supportive of the position of Mr. Gates. In *Thomas*, defense counsel represented a husband and wife who were both charged with a drug trafficking charge requiring a 25 year mandatory sentence. The state initially offered a plea where both plea guilty, and they would receive an eight year sentence. At the Post Conviction Relief hearing, “Counsel testified both confessed to the crime and waived the potential conflict of interest because they did not want separate attorneys.” *Id.* at 142, 551 S.E.2d at 255. As they both admitted guilt, obviously, as in this case, there was no conflict between the husband and wife. When they would not take that plea, the State offered to dismiss the charges against one if the other would plea to 25 years. Counsel for the husband and wife let them confer out of his presence. The wife decided to take the plea.

Notwithstanding that counsel discussed the conflict as to the eight year plea, this court found there was a conflict as to the 25 year plea offer. This court said, “The conflict arose because it was in each spouse's best interest for the other spouse to take the entire responsibility for the cocaine.” *Id.* at 144, 551 S.E.2d at 256. In this case, the offer was made to both Gates brothers. One had told counsel the other was not guilty. How could counsel objectively tell an innocent client to take the plea knowing his other client would exonerate him? It was in the best interest of David Gates to not take the plea and go to trial. This was apparently never discussed with David Gates. This is where the conflict arose. Obviously it was not in the best interest of Ladarian Gates to go to trial.

The State, and the Post Conviction Relief judge, placed great emphasis on the statements

at the time of the plea.<sup>1</sup> A guilty plea under oath does not end the inquiry. As the Missouri court stated, “The questions about counsel’s performance and the responses to them must be specific, and general inquiries about a movant’s satisfaction with counsel are not enough to conclusively refute a claim of ineffective assistance.” *Wiggins v. State*, 480 S.W.3d 379, 385 (Mo. Ct. App. 2015). Nor were the statements sufficient in this case because of the conflict.

In several cases that have been reversed on appeal because of a conflict, a defendant has admitted their guilt and the defendant has agreed with the facts as stated by the government. If this were not true, the trial judge would be required not to accept the plea. *See, Lomax v. State*, 379 S.C. 93, 655 S.E.2d 164 (2008); *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001); *Edgemon v. State*, 318 S.C. 3, 455 S.E.2d 500 (1995). These three cases involved guilty pleas where the defendants admitted their guilt. A response to an inquiry to a judge based given by a defendant who is represented conflicted counsel should never be taken at face value.

Granted in this case, trial counsel did not argue for leniency for one brother over the other. The reason for this is simple. He negotiated a plea of ten years. This negotiated plea was to the great benefit of Ladarian Gates as he had admitted to the trial counsel the drugs were his. The plea was to the disadvantage of David Gates as he had a defense.<sup>2</sup>

This case is not like *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993). In

---

<sup>1</sup> The Post Conviction Relief judge stated, “The Court must find that the Applicant has failed to show that he cannot be bound by his representation under oath that he agreed with the prosecutor’s representations in the factual basis that he and his brother Ladarian were involved together in drug trafficking and that drugs were found in the safe in the room David Gates stayed in with money in the safe that came from the controlled buys.” App. at 94.

<sup>2</sup> The facts establishing guilt in this case, do not compare to the overwhelming facts in *Lomax*. This court had no problem overturning the guilty plea of Ms. Lomax because of a conflict.

that case the court found no conflict. This court stated, “Trial counsel accepted the alibi given by Langford and Howard and viewed their defenses as interdependent and co-equal, thereby eliminating any concern that a conflict of interest would arise. 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.” In this case as one defendant was willing to testify for the other, a conflict existed.” In this case, the conflict did exist because one brother told his lawyer the other was not guilty. The conflict must exist in the representation by the lawyer and not a conflict between the positions of the two co-defendants. Had this case gone to trial, how would trial counsel have defendant either brother? Obviously there would have been a conflict.

The State correct acknowledges the burden to establish a conflict rests on Mr. Gates. Mr. Gates’ obligation is only to establish an actual conflict. Once this conflict is established, prejudice is presumed. “[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief.” *Staggs v. State*, 372 S.C. 549, 551–52, 643 S.E.2d 690, 692 (2007). While the State has simply argued there is no conflict, they have not explained how one brother telling his lawyer the other brother is not guilty does not create a conflict of interest.

The record in this case establishes that the trial judge did not raise the issue of a conflict of interest. As previously mentioned, the record suggests the State did know of the conflict. This court should grant the Petition for Writ of Certiorari to also address the question of should a trial judge be required to make an inquiry of a possible conflict of interest when a trial attorney represents more than one defendant in the same case. As Justice Brennen said in his concurring

opinion, “The trial judge, therefore, must play a positive role in ensuring that the choice was made intelligently. The court cannot delay until a defendant or an attorney raises a problem, for the Constitution also protects defendants whose attorneys fail to consider, or choose to ignore potential conflict problems.” *Cuyler v. Sullivan*, 446 U.S. 335, 351 (1980)(concurring opinion). The Federal Rules of Criminal Procedure require the trial judge to make such an inquiry. “The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.” Fed. R. Crim. P. 44. Requiring a trial judge to make such an inquiry places a very small burden on the trial court and provides a great benefit to the right to counsel and the appellate courts.

As the New York Court of Appeals said, “Since the right to effective assistance of counsel and the right to retain counsel of one's choice may clash when a retained attorney is involved in an apparent conflict of interest, a Trial Judge has a duty to protect the right of an accused to effective assistance of counsel.” *People v. Gomberg*, 38 N.Y.2d 307, 313, 342 N.E.2d 550, 553 (1975). When a defense counsel, whether retained or appointed, appears before a trial judge representing two defendants arising out of the same set of facts, the trial judge should have an obligation to assure the defendants they have a conflict free counsel. Conflict free counsel is required by the Sixth Amendment of the United States Constitution and Art. I, § 14 of the Constitution of the State of South Carolina.

## CONCLUSION

For the foregoing reasons this Court should grant this Petition for Writ of Certiorari, hold that David Gates did not have conflict free counsel as required by the state and federal constitutions and issue an opinion granting David Gates a new trial and to require trial courts to conduct a hearing as to whether any conflict exists when a trial judge knows an attorney is representing more than one defendant in cases arising out of the same facts.

January 22, 2026



C. Rauch Wise  
305 Main Street  
Greenwood, SC 29646  
(864) 229-5010  
[Rauchwise@gmail.com](mailto:Rauchwise@gmail.com)  
S.C. Bar № 6188

Attorney for David Gates