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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Marvin H. Dukes, III, Circuit Court Judge

JOHNATHAN BARNES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002009

JOHNSON PETITION FOR WRIT OF CERTIORARI

Gary H Johnson
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ISSUE PRESENTED

Did the PCR court err in focusing on the lack of the impact on petitioner's sentence of plea counsel's failure to discuss and advise on all charges before allowing petitioner to plead guilty rather than whether, but for those errors, petitioner would not have pled guilty?

STATEMENT

Petitioner was indicted on April 15, 2021, by a York County grand jury for possession of cocaine arising from an incident on January 29, 2020. App. 17 – 18. Petitioner was also indicted on November 18, 2021, by a York County grand jury for trafficking in methamphetamine (28g or more), trafficking in cocaine, possession of a weapon during the commission of a violent crime, possession with intent to distribute hash (THC), possession with intent to distribute fentanyl, possession with intent to distribute heroin, possession with intent to distribute marijuana, unlawful possession of a stolen handgun, and unlawful carry of a handgun, all from an incident arising on May 4, 2021. App. 18 – 47. As part of a negotiated plea, several charges were dismissed and petitioner pled guilty on March 19, 2022, before the Honorable William A. McKinnon to possession with intent to distribute marijuana (second offense), possession of cocaine (second offense), and trafficking in methamphetamine (28g or more, second offense) with a negotiated prison sentence of fifteen-years' incarceration. App. 2, l. 2 – 5, l. 2. Petitioner was represented by Tyler Bratton and Austin Smith appeared on behalf of the state. App. 1. Petitioner was sentenced to fifteen years for the trafficking offense and "time served" for the remaining offenses. App. 4, ll. 11 – 25; 14, l. 8 – 15, l. 2.

Petitioner filed for post-conviction relief by written application dated October 3, 2022. App. 48 – 54. An additional application for post-conviction relief dated October 11, 2023, was filed with additional concerns regarding his guilty plea. App. 55 – 63. The two applications were consolidated and an amended application was filed on petitioner's behalf by Chelsey Marto on February 11, 2025. App. 64 – 65. The matter proceeded with an evidentiary hearing before the Honorable Marvin H. Dukes, III, on February 13, 2025. App. 76. Ms. Marto appeared on behalf

of petitioner and Zachary Jones represented the state. By written order dated September 5, 2025, Judge Dukes denied relief and dismissed the action. App. 103 – 114.

This petition for certiorari follows.

ARGUMENT

The PCR court erred in focusing on the lack of the impact on petitioner's sentence of plea counsel's failure to discuss and advise on all charges before allowing petitioner to plead guilty rather than whether, but for those errors, petitioner would not have pled guilty.

A. Standard of Review.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). "Thus, when challenging a guilty plea, a PCR applicant must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the applicant would not have pled guilty." Ervin v. State of South Carolina, 438 S.C. 559, 565, 885 S.E.2d 387, 390 (2023) (internal citations omitted).

In a guilty plea setting, "the prejudice analysis is limited to the outcome of the plea process—whether but for counsel's deficiency, the defendant would have declined to plead and instead proceeded to trial." Frierson v. State, 423 S.C. 257, 263, 815 S.E.2d 433, 436 (2018). "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." Hill v. Lockhart, 474 U.S. 52, 59 (1985). However, this Court may "not avoid a finding of prejudice on the basis of the likelihood of a guilty verdict, even if Petitioner is throwing a 'Hail Mary.'" Taylor v. State, 422 S.C. 222, 233, 810 S.E.2d 862, 867 (2018).

In advising defendants to accept a plea, counsel must be accurate in their statements of the law. See Taylor, 422 S.C. at 229, 810 S.E.2d at 865 ("Given that Petitioner's offense was manifestly one subjecting Petitioner to deportation, we are compelled to find that counsel's failure to correctly advise Petitioner was deficient as a matter of law."); Robinson v. State, 422 S.C. 78, 86, 810 S.E.2d 32, 36 (2018) ("Because the PCR court failed to recognize that plea counsel's advice was deficient—as an increased punishment under the amended law would have violated the *ex post facto* clauses of the United States Constitution and South Carolina Constitution—the PCR court's decision is controlled by an error of law and we reverse."); Goins v. State, 397 S.C. 568, 574–75, 726 S.E.2d 1, 4 (2012) (holding plea counsel's incorrect advice regarding search of hotel room in violation of well-established law constituted deficient performance).

B. How the matter was addressed at PCR.

During the PCR hearing, plea counsel admitted that he did not discuss the details or impact of all the crimes for which petitioner was about to enter a guilty plea since they were "not relevant" to the time plea counsel had negotiated.

> Q. Now, you just admitted that you never discussed the sentence for the lesser charges with Mr. Barnes. Is that correct?
>
> A. I mean, it was fifteen years either way. A judge is going to run them concurrent no matter what they are, but no, I didn't specifically say they were time served 'cause I didn't know until the day of court.

App. 100, ll. 2 – 8.

The original plea transcript supports petitioner's assertion (and plea counsel's admission) that he was not fully informed of the nature of the plea by plea counsel:

THE COURT: Now, I understand your attorney has negotiated with the State for a 15-year sentence on the methamphetamine charge, a five-year sentence on the cocaine charge and ten-year sentence on the marijuana charge, is that correct?

THE DEFENDANT: Could you repeat that?

THE COURT: Yes, sir. My understanding of the negotiation is a 15-year sentence on the methamphetamine charge and then the other two charges don't carry 15 years. So it will be five years on the cocaine and ten years on the marijuana charge. Is that your understanding?

THE DEFENDANT: *Well, now it is.*

MS. SMITH: *Your Honor, we can just time served those other two.*

THE COURT: *Okay. Any objection Mr. Bratton?*

MR. BRATTON: *That sounds great, Your Honor.*

THE COURT: So Mr. Barnes, the new negotiation is a 310 day time served sentences on the marijuana charge and the cocaine charge and then 15-year active sentence on the trafficking methamphetamine charge.

Is that your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Barnes, I know there's nobody that wants to go to prison for 15 years but because this is a negotiated sentence I have to ask you, is that the sentence you want me to impose, that 15-year sentence?

THE DEFENDANT: *I would like to ask you if can be lenient on my sentence.*

THE COURT: *Mr. Barnes, I can not be lenient.* This is a negotiation, meaning your attorney and the solicitor have agreed on the sentence. So if I take the plea at all it will be a 15-year sentence. That's why I have to ask that question to make sure understand that.

THE DEFENDANT: Yes, sir.

App. 4, l. 5 – 5, l. 15. (emphasis added).

The record clearly establishes that plea counsel was solely concerned with the number of years petitioner would serve and was not concerned with the need to explain exactly what crime(s) were covered by petitioner's guilty plea. Plea counsel admitted the sole important point was that petitioner knew he was to be sentenced to 15 years, negating the need to worry over such details. App. 98, ll. 2 – 12.

C. How the PCR court ruled.

The PCR court ultimately ruled that any assertion that plea counsel did not fully discuss the nature of each criminal offense (be it the lesser included offenses or the level of charge for trafficking, first or second offense) was not credible since the actual sentence had been negotiated to 15 years regardless of any of these details. App. 109.

D. How the PCR court erred.

"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." Gustine v. State, 325 S.C. 123, 127, 480 S.E.2d 444, 446 (1997) (quoting Hill v. Lockhart, 474 U.S. 52, 56 (1985)). Here, plea counsel admitted that he and the solicitor simply "threw in" lesser offenses and agreed to sentencing since they did not alter the ultimate time petitioner would serve. This same "it did not make any difference" attitude permeated the agreement to plead trafficking second, despite petitioner's obvious confusion between pleading to a first offense versus a second.

The PCR court accepted the "it made no difference" regarding plea counsel's failure to discuss and review the details of the plea before allowing it to proceed since the prison sentence was a negotiated 15 years, but that finding is contrary to the standard by which the PCR court should have determined the prejudice prong of the analysis. The correct question before the PCR court was not if plea counsel's failure to advise petitioner regarding all the offenses to which he was pleading would have changed the plea sentence, but rather was there a "reasonable probability that, but for counsel's errors, [petitioner] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Petitioner was clearly confused during the plea colloquy.

> THE COURT: Yes, sir. My understanding of the negotiation is a 15-year sentence on the methamphetamine charge and then the other two charges don't carry 15 years. So it will be five years on the cocaine and ten years on the marijuana charge. Is that your understanding?
>
> THE DEFENDANT: *Well, now it is.*

App. 4, ll. 11 – 17 (emphasis added).

> THE COURT: Mr. Barnes, I know there's nobody that wants to go to prison for 15 years but because this is a negotiated sentence I have to ask you, is that the sentence you want me to impose, that 15-year sentence?
>
> THE DEFENDANT: *I would like to ask you if can be lenient on my sentence.*
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> THE COURT: Mr. Barnes, I can not be lenient. This is a negotiation, meaning your attorney and the solicitor have agreed on the sentence. So if I take the-plea at all it will be a 15-year sentence. That's why I have to ask that question to make sure understand that.
>
> THE DEFENDANT: Yes, sir.

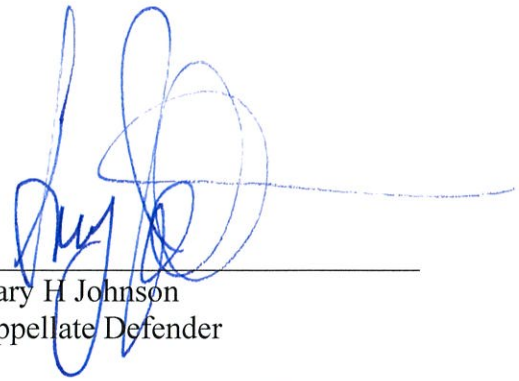
App. 5, ll. 9 – 15 (emphasis added).

Here, rather than apply the correct standard in reviewing whether plea counsel was effective in allowing petitioner to plead guilty to multiple charges without prior consultation and legal guidance because it made no difference in the sentence, the PCR court erred in being paternalistic in trying to protect petitioner from the consequences of granting PCR. This was an error of law, as the PCR court should not "avoid a finding of prejudice on the basis of the likelihood of a guilty verdict, even if Petitioner is throwing a 'Hail Mary.'" Taylor, 422 S.C. at 233, 810 S.E.2d at 867. In the guilty plea context, the PCR court should not avoid a finding of prejudice when an attorney allows a client to plead guilty to multiple charges without consultation or advice simply because it "makes no difference" in the sentence that counsel has negotiated. The proper question before the PCR court was whether, absent plea counsel's ineffective advice regarding the nature and extend of the plea, would petitioner still have entered a guilty plea.

Based upon the testimony and evidence presented to the PCR court and the confusion petitioner exhibited during the original guilty plea colloquy, the answer to that question is that petitioner would not have entered the guilty plea absent plea counsel's failure to review and advise petitioner regarding all matters covered by the guilty plea. Here, petitioner was not informed by plea counsel or advised by plea counsel regarding two offenses for which he entered a guilty plea: possession with intent to distribute marijuana (second offense), possession of cocaine (second offense). Allowing a client to plead to multiple offenses without providing guidance or advising client of the impact of such pleas falls below the standard of competent representation outlined in Strickland v. Washington, 466 U.S. 668, 686 (1984), and "there is a reasonable probability that, but for counsel's errors, [petitioner] would not have pled guilty." Ervin v. State of South Carolina, 438 S.C. 559, 565, 885 S.E.2d 387, 390 (2023).

CONCLUSION

Based upon the foregoing argument, this Court should grant the petition for certiorari and reverse petitioner's denial of post-conviction relief.



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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Johnathan Barnes states:

1. He is Appellate Defender 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 Marvin H. Dukes, III, which was held on February 13, 2025, 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 Johnathan Barnes.

Respectfully Submitted,

Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of February, 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."

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This 26th day of February, 2026.