

RECEIVED

Mar 17 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable D. Craig Brown, Circuit Court Judge

CECELIA E. KNOX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002499

PETITION FOR WRIT OF CERTIORARI

GARY H JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR court erred in excusing the clearly erroneous legal advice of counsel that a conviction for murder that resulted in less than a life sentence was eligible for parole after serving 85% of the time, an error reinforced by the court, on the sole basis that because petitioner was given a life sentence the error did not impact the guilty plea.....3

CONCLUSION.....7

ISSUE PRESENTED

Did the PCR court err in excusing the clearly erroneous legal advice of counsel that a conviction for murder that resulted in less than a life sentence was eligible for parole after serving 85% of the time, an error reinforced by the plea court, on the sole basis that because petitioner was given a life sentence the error did not impact the guilty plea?

STATEMENT

Petitioner was indicted on the charge of murder and desecration of human remains by a Florence County grand jury on August 22, 2019. App. 111. Petitioner appeared before the Honorable D. Craig Brown on December 12, 2019, and entered a guilty plea without recommendation to the murder charge. App. 1. J. Ryan White appeared on behalf of the state and Caroline Lawson represented petitioner. App. 1. During the guilty plea, petitioner was informed that if sentenced to less than life, she would be parole eligible after serving 85% of the sentence. App. 6, 17 – 21. Judge Brown sentenced petitioner to life. App. 112.

Petitioner filed for post-conviction relief, asserting ineffective assistance of plea counsel. App. 23. By amended application filed by Ola Johnson on petitioner's behalf, petitioner asserted plea counsel erroneously advised that the sentence, should petitioner plead guilty, could be thirty-years with parole eligibility after service of 85%. App. 30.

An evidentiary hearing was held before the Honorable G.D. Morgan, Jr., on January 23, 2024. App. 44. Mr. Johnson appeared on behalf of petitioner and Shayla Flores and D. Russell Barlow II appeared on behalf of the state. App. 44. Plea counsel testified regarding her belief that a conviction for murder that was less than life was parole eligible. App. 67, ll. 1 – 25. Judge Morgan denied relief by written order, finding the advice by plea counsel and the statements by the plea court regarding parole eligibility were in error, but that the error did not impact the plea since petitioner was sentenced to life and petitioner did not want to go to trial. App. 93 – 94.

This petition follows.

ARGUMENT

The PCR court erred in excusing the clearly erroneous legal advice of counsel that a conviction for murder that resulted in less than a life sentence was eligible for parole after serving 85% of the time, an error reinforced by the court, on the sole basis that because petitioner was given a life sentence the error did not impact the guilty plea.

Generally, a guilty plea waives non-jurisdictional defects and violations of constitutionally protected rights. State v. Green, 436 S.C. 492, 494, 872 S.E.2d 869, 870 (Ct. App. 2022). “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). “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.” Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018). 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, 423 S.C. at 263, 815 S.E.2d at 436. “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).

“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)). In advising defendants to accept a plea, counsel must be accurate in their statements of the law. See Taylor v. State, 422 S.C. 222, 229, 810 S.E.2d 862, 865 (2018) (“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).

Under South Carolina law, a sentence for murder does not allow eligibility “for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section.” S.C. Code Ann. § 16-3-20 (2010 as amended). Contrary to this clear statement of law, plea counsel informed petitioner that a sentence of thirty-years with 85% credit was a possibility in connection with the plea. The PCR court was correct in finding this advice was in error by both plea counsel and the plea court. App. 93. This holding is firmly supported by the record.

Plea counsel testified that she still believed a murder charge was parole eligible if the defendant received less than life at the time of the PCR hearing. App. 67, ll. 1 – 25. The plea court wrongly informed petitioner that, if she was given a thirty-year sentence, she would only

have to serve 85% of the time, mirroring plea counsel's erroneous advice. App. 6, ll. 17 – 21. As petitioner relayed during the PCR hearing:

Q: What do you feel like -- as far as her advising with regards to potential sentence in this case, what did she tell you?

A: I didn't understand fully. What I understood was we was going to go to court and she was going to ask for a lower sentence, 30 -- you know what I'm saying? -- 30, 40, 50 years, but when I got there, I was just slammed with natural life, *and I didn't understand what happened.*

App. 52, ll. 4 – 11. Certainly, petitioner entered a guilty plea under the mistaken belief, based upon ineffective assistance of counsel, that she could have been sentenced to a thirty-year sentence but only be required to serve 85% of that time.

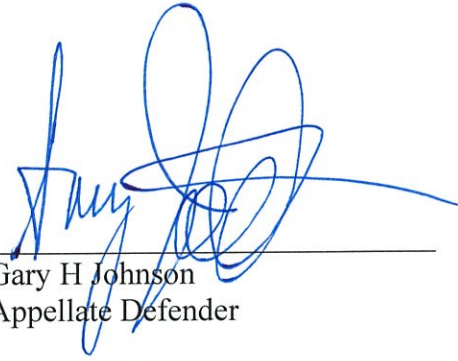
However, the PCR court erred in finding the erroneous advice of counsel, uncorrected by the plea court who mimicked the incorrect sentence information, was harmless since petitioner was sentenced to natural life. App. 93-94. This holding represents a fundamental misapprehension of the law regarding a guilty plea. The appropriate question before the PCR court was, in light of plea counsel's acknowledged error regarding the sentence exposure, would petitioner have still pled guilty?

Here, rather than apply the correct standard in reviewing whether plea counsel was effective in allowing petitioner to plead guilty to a murder charge in the hope that she would receive the minimum sentence and only have to serve 85% of same, the PCR court focused on the actual sentence in determining the erroneous advice simply made no difference. 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.

Allowing a client to plead straight up to murder under the incorrect impression that they had the chance to receive a thirty-year sentence and only serve 85% of that time fell 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.



A handwritten signature in blue ink, appearing to read "Gary H. Johnson", is written over a horizontal line. The signature is stylized and cursive.

Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of March, 2026.