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THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

S.C. SUPREME COURT

On Petition for Writ of Certiorari to the Court of Common Pleas  
Appeal from Beaufort County  
The Honorable Carmen T. Mullen, Plea Judge  
The Honorable Frank R. Addy, Jr., Post-Conviction Relief Judge

Appellate Case No. 2025-002107

CHRISTOPHER RAY SMITH, #294203,

PETITIONER-RESPONDENT,

v.

STATE OF SOUTH CAROLINA

RESPONDENT-PETITIONER.

**PETITION FOR WRIT OF CERTIORARI**

ALAN WILSON  
Attorney General

D. RUSSELL BARLOW, II  
Senior Assistant Deputy Attorney General

KYLEE KANEALEY  
Assistant Attorney General  
S.C. Bar No. 107060

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR  
RESPONDENT-PETITIONER

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**STATEMENT OF ISSUE ON PETITION FOR CERTIORARI**

Whether post-conviction relief court erred in finding plea counsel's representation was constitutionally ineffective and granting post-conviction relief, where the post-conviction relief court applied the trial prejudice standard rather than the Hill v. Lockhart prejudice standard required for guilty pleas, and where Smith failed to establish he would not have pled guilty and insisted on going to trial?

## STATEMENT OF THE CASE

In December 2020, the Beaufort County Grand Jury indicted Christopher Ray Smith for two counts of PWID oxycodone (2020-GS-07-00334; -01417); trafficking heroin (2020-GS-07-00358); trafficking cocaine (2020-GS-07-00359); PWID buprenorphine (2020-GS-07-01418); PWID amphetamine (2020-GS-07-01419); and PWID alprazolam (2020-GS-07-01420). In June 2022, Smith was further indicted but waived presentment for trafficking methamphetamine (2020-GS-07-01415); trafficking heroin (2020-GS-07-01416); PWID amphetamine (2021-GS-07-01077); PWID buprenorphine (2021-GS-07-01078); and PWID oxycodone (2021-GS-07-01079). All of Smith's charges arose from three separate incidents.

On April 11, 2019, police discovered Smith's truck had crashed in a ditch on the side of the highway. Smith was inside his truck and appeared disoriented. After providing false information to the police, Smith was arrested, and his truck was searched incident to his arrest. The search revealed drugs, drug paraphernalia, and a large amount of cash in Smith's truck.<sup>1</sup>

On January 27, 2020, police conducted a traffic stop on Smith, during which police discovered Smith had an active arrest warrant. Police arrested Smith and discovered a multitude of different drugs in Smith's truck in a search incident to arrest.<sup>2</sup>

On July 16, 2020, police conducted surveillance on a hotel where they believed Smith was staying. When Smith exited his hotel room, police arrested Smith in the hotel parking lot for having active arrest warrants. After his arrest, Smith confessed he had cash and various drugs in his hotel

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<sup>1</sup> This incident resulted in Smith's first indictment for PWID oxycodone (2020-GS-07-00334).

<sup>2</sup> This incident resulted in the rest of Smith's December 2020 indictments (2020-GS-07-00358; -00359; -01417; -01418; -01419; and -01420).

room. Police obtained and executed a search warrant for Smith's hotel room and discovered various types of drugs and cash.<sup>3</sup>

On May 17, 2022, Smith pled guilty<sup>4</sup> before the Honorable Carmen T. Mullen to all charges stemming from his January 2020 arrest.<sup>5</sup> Smith was represented by Jeffrey Stephens, Esquire. Assistant Solicitor Samantha Molina represented the State. On May 18, 2022, Smith pled guilty to his remaining charges.<sup>6</sup> Judge Mullen accepted Smith's plea and sentenced him concurrently to twenty-five years for each count of trafficking heroin; fifteen years for each count of PWID oxycodone; ten years each for trafficking cocaine and trafficking methamphetamine; five years for each count of PWID buprenorphine and PWID amphetamine; and three years for PWID alprazolam. Smith did not file a direct appeal.

On April 17, 2023, Smith filed an application for post-conviction relief (PCR) alleging the following:

1. Ineffective assistance of counsel:
  - a. Counsel failed to challenge the improper Terry<sup>7</sup> stop and the fruit of the poisonous tree.
    - i. "On January 27, 2020 the Beaufort County violent crimes division conducted a traffic stop of Smith without probable cause. Smith was also forcibly removed from vehicle without properly being notified of any violations. The stop was unlawful and resulted in an illegal seizure and illegal search of Smith and vehicle. Any evidence retrieved should have been suppressed requiring dismissal for lack of evidence. Had I known I had a right to challenge the seizure and searches I would have pleaded not guilty."
  - b. Counsel failed to properly advise Smith on his guilty plea.

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<sup>3</sup> This incident resulted in all of Smith's indictments in June 2022.

<sup>4</sup> On May 16, 2022, Smith proceeded to trial, and a jury was selected. However, on May 17, 2022, Smith decided to enter a guilty plea.

<sup>5</sup> Smith's counsel was not prepared to advise Smith on his remaining charges until counsel could properly review Smith's case file with Smith. In addition, Judge Mullen recommended Smith be sentenced to all charges in one day, rather than two, so he would receive less strikes.

<sup>6</sup> Smith waived presentment of his indictments for all June 2022 charges (2020-GS-07-01415 to -01416 and 2021-GS-07-01077 to -01079).

<sup>7</sup> 392 U.S. 1, 88 S.Ct. 1868, 20 L.E.2d 889 (1968).

- i. “On May 18, 2022 Attorney advised me that the negotiated plea would have required only 65% of service of the 25 years, and was eligible for parole and work credits.”

The State filed its Return on November 23, 2023, and requested an evidentiary hearing. Through counsel, on October 10, 2024, Smith filed an amended PCR application with the following allegations:

1. Smith did not enter the plea freely and voluntarily or knowingly and intelligently.
  - a. The Smith was under the impression that his sentence, if he pled was going to be 65%.
  - b. Counsel was ineffective in advising Smith that even if the Court said 85% that this requirement was in the process of being reduced to 65%.
2. That the bifurcation of the plea and sentencing created confusion in Smith’s understanding of what he was pleading to and the sentence he was receiving.
3. That additional charges had yet to be indicted when Smith entered into a plea on May 17, 2022. Smith did not have sufficient time to go over discovery with his attorney. As a result, Smith lacked sufficient information to enter into his plea.
4. Smith lacked sufficient information and understanding regarding serious and most serious charges and the strikes associated with these charges.

An evidentiary hearing was held on April 15, 2025, before the Honorable Frank R. Addy, Jr. Smith was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Smith testified on his own behalf. Respondent presented the testimony of Jeffrey Stephens, Esquire (Plea Counsel). At the close of the evidentiary hearing, this Court took the matter under advisement.

The Court granted relief in part by filed order on August 18, 2025,<sup>8</sup> finding Smith established the following:

“This Court finds that trial counsel had an obligation to correct the plea court’s misimpression that pleading to all four serious charges together would result in just a single strike, not two. Failure to provide this information qualifies as deficient performance in regard to prevailing professional standards. Cherry, 300 S.C. at 117,

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<sup>8</sup> Respondent received written notice of the filing of the Order Granting Post-Conviction Relief on August 25, 2025.

386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). This Court also finds that Smith was credible with his regard to the confusion concerning the May 18, 2022 plea and, obviously, being one strike away from life imprisonment is a much more precarious position than being two strikes away from LWOP. This is clear evidence of prejudice to Smith, as the circumstances surrounding his conviction changed drastically due to the ineffective representation of trial counsel. Cherry, 300 S.C. at 117-118, 386 S.E.2d at 625. Accordingly, this Court finds that Smith has demonstrated ineffectiveness and prejudice, satisfying both prongs of the relevant case law test, with respect to the plea of May 18, 2022.”

(Order Granting PCR Relief p. 8).

On September 5, 2025, the State filed a motion to reconsider the partial grant of relief pursuant to Rule 59(e), SCRPC, arguing the Court applied the wrong standard in assessing prejudice and Smith failed to establish prejudice when applying the correct standard. (App. p. 146). On October 1, 2025, Judge Addy summarily denied and dismissed the State’s motion without a hearing. The State then timely initiated this instant appeal.

## STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief court. Id. 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 erred in finding plea counsel's representation was constitutionally ineffective and granting post-conviction relief, where the post-conviction relief court applied the trial prejudice standard rather than the Hill v. Lockhart<sup>9</sup> prejudice standard required for guilty pleas, and where Smith failed to establish he would not have pled guilty and insisted on going to trial.**

**A. The post-conviction relief court applied the trial prejudice standard rather than the Hill v. Lockhart prejudice standard required for guilty pleas.**

In its order granting relief, the post-conviction relief court erred as a matter of law when it applied the ineffective assistance of counsel standard applicable to contested trials rather than the distinct prejudice standard required when a person challenges a *guilty plea*. The post-conviction relief court further erred in finding that Plea Counsel's alleged error in advising Smith he was "one strike away" from life imprisonment (rather than two strikes away) constituted "clear evidence of prejudice to Smith, as the circumstances surrounding his conviction changed drastically due to the ineffective representation of [plea] counsel." This finding does not apply the correct legal standard, and the post-conviction relief court erred as a matter of law. To establish prejudice in the guilty-plea context, a defendant must show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S. at 59. The post-conviction relief court's observation that the circumstances surrounding Smith's conviction "changed drastically" is not a finding that Smith carried this burden. By substituting the incorrect prejudice standard, the post-conviction relief court committed reversible legal error.

**B. Smith failed to establish prejudice under the correct Hill standard, that he would not have pled guilty and would have insisted on going to trial.**

Even if the post-conviction relief court had applied the correct standard, Smith failed to

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<sup>9</sup> 474 U.S. 52 (1985).

prove prejudice. He never alleged, much less proved, that, had he known the second set of charges would count as a second strike under S.C. Code § 17-25-20, he would have rejected the plea and insisted on going to trial. See Hill, 474 U.S. at 60 (finding no prejudice where petitioner “did not allege... that, had counsel correctly informed him..., he would have pleaded not guilty and insisted on going to trial”). Courts must not “upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies”; they must instead “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” Lee v. United States, 582 U.S. 357, 368 (2017).

The contemporaneous evidence before this Court demonstrates that Smith actively sought to plead guilty. Smith testified at the post-conviction relief hearing that “things were not going well” at the pretrial hearing, so he directed Plea Counsel to negotiate a plea. (App. p. 82). Plea Counsel confirmed that Smith was “pushing for a plea” and that they discussed the risk that the sentences might not run concurrently if the cases were not resolved together. (App. p. 115). Smith also received a tangible benefit from the plea: concurrent sentencing on both sets of charges. Had he proceeded to trial on the second set, he risked consecutive sentences and a substantially longer term of imprisonment.

Most damaging to his claim, Smith testified at the post-conviction relief hearing: “I was under the impression that it was two strikes.” (App. p. 91). His own admission directly negates any assertion that the strike classification drove his decision to plead.

Objectively, there is no reasonable probability that Smith would have insisted on going to trial even if correctly advised about the strikes. Hill, 474 U.S. at 59 (prejudice depends on “the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea”). Plea Counsel testified that a recorded jail call by Smith was “devastating” to the

defense. (App. p. 97). Smith was fully informed of the drug lab results, the search warrant, and the incident report supporting the second set of charges. (App. p. 115). Given the overwhelming strength of the State's case and the risk of a far harsher sentence after trial, and the fact that a conviction would still have produced a second strike, a reasonable defendant in Smith's position would not have rejected the favorable plea offer merely because of the strike classification. Additionally, a reasonable attorney would not have altered the plea recommendation based solely on this issue.

Because the post-conviction relief court's misapplication of the prejudice standard was an error of law and Smith failed to carry his burden under Hill, this Court should grant certiorari, and the post-conviction relief court's grant of relief should be reversed.

**CONCLUSION**

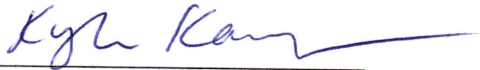
For the reasons stated above, this Court should grant the Petition for Writ of Certiorari. Should this Court grant certiorari, Petitioner requests permission under the rules to brief the issues discussed above fully.

Respectfully Submitted,

ALAN WILSON  
Attorney General

D. RUSSELL BARLOW, II  
Senior Assistant Deputy Attorney General

KYLEE MARCELLA KANEALEY  
Assistant Attorney General

By:   
Kylee Marcella Kanealey  
S.C. Bar No. 107060

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT-PETITIONER

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