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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Daniel D. Hall, Circuit Court Judge

ANTWON M. ROGERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002210

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge err in refusing to find counsel ineffective in failing to present full mitigation by not notifying Petitioner's family of the date of the guilty plea so they could appear on his behalf?

STATEMENT

In November of 2015, the Grenville County Grand Jury indicted Petitioner, Antwon M. Rogers, for kidnapping, criminal sexual conduct first-degree, reckless driving, failure to stop for a blue light, two counts of possession of a weapon during the commission of a violent crime, criminal conspiracy, grand larceny, and habitual traffic offender, indictments #2015-GS-23-9874, 9875, 9876, 9877, 9878, 9879, 9880, 9882. On June 4, 2019, Petitioner appeared before the Honorable Edward W. Miller and pled guilty to kidnapping and criminal sexual conduct first-degree. (App. pp. 24-27). Petitioner additionally pled guilty to armed robbery and criminal sexual conduct first-degree from Pickens County, indictments #2016-GS-39-93, 240. (App. pp. 28-31). It appears that those convictions are not challenged in this application. (App. p. 92, n. #1). Teal Johnson represented Petitioner. Doug Richardson represented the State. Judge Miller sentenced Petitioner to thirty (30) years concurrent for each of the four charges. (App. pp. 32-35). Petitioner did not appeal the sentence or convictions.

On March 3, 2020, Petitioner filed a *pro se* application for post-conviction relief [PCR]. (App. pp. 36-43). The State filed a return and motion for more definite statement on May 21, 2020. (App. pp. 44-49). Petitioner, with counsel, filed an amended PCR application on September 9, 2022. (App. pp. 50-52). On March 8, 2023, an evidentiary hearing was held before the Honorable Daniel D. Hall. Sarah M. Henry represented Petitioner. D. Russ Barlow, II, represented the State. In a written order filed October 14, 2025, Judge Hall denied relief and dismissed the application. A timely notice of intent to appeal was filed on October 30, 2025. This appeal follows.

ARGUMENT

The PCR judge erred in refusing to find counsel ineffective in failing to present full mitigation by not notifying Petitioner's family of the date of the guilty plea so they could appear on his behalf.

In the amended PCR application Petitioner alleged, "Ms. Johnson [plea counsel] was aware that Applicant was being held in restricted housing at the GCDC and was unable to contact his family and support. Ms. Johnson failed to contact any of his family for them to show up and support him at his plea hearing, and this potentially affected his sentencing from the court." (App. p. 51). During the PCR hearing Petitioner testified that plea counsel failed to contact his family to come to the plea. (App. p. 64, lines 8-15). Petitioner testified that he was not able to contact his family because he was housed in "the shoe" and was shackled. (App. p. 64, lines 16-18). Petitioner testified that the State portrayed him as a monster and having family at the plea could have rebutted that portrayal. (App. p. 65, line 13 – p. 66, lines 1-17).

Plea counsel testified that she called family members on May 30, 2019, but did not know why she did not call them back right before the plea on June 4, 2019. (App. p. 85, line 16- p. 86, lines 1-9). In the order of dismissal the PCR judge wrote:

> As an initial basis for denying this allegation, Applicant asserts that his family could have shown he was a man of good character, however, Applicant did not present those witnesses to this Court to pass on the testimony that they may have provided at the plea hearing. Mere speculation of such testimony cannot satisfy the prejudice burden of proof, and the witnesses must be presented at the evidentiary hearing. *Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279-280 (2019). Even so, considering the facts and circumstances of this case, testimony of Applicant's good character from family members would have been of little help in regard to Applicant's sentencing. *See Strickland*, 466 U.S. at 699 (finding that counsel reasonably surmised that character evidence would be of little help considering the aggravating circumstances of the case).
>
> Additionally, in non-capital cases, there is no required fact finding that could reduce or increase the sentencing range. The sentencing range is set by statute as a result of the plea. Considering Applicant was sentenced within the sentencing

> range, and was well aware of the possibility of being sentencing [sic] to the max, it is nearly impossible to show the required *Strickland* prejudice.

(App. p. 99). The PCR judge erred. The presence of family members at the guilty plea, without testimony, would have shown the sentencing judge that Petitioner had the support of his family and was not the monster the State portrayed him to be. Speculation about their testimony is not necessary as their presence alone would have been important. Plea counsel was deficient for failing to notify Petitioner's family to be present during the guilty plea. There is a reasonable probability that if family members had been present, Petitioner would have received less than the maximum sentence.

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 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."

In Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984), the Court wrote, "At sentencing, a judge has an obligation to consider information material to punishment. State v.

Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976). A sentencing judge 'may appropriately conduct an inquiry broad in scope, largely unlimited as to either the kind of information he may consider, or the source from which it may come.' United States v. Tucker, 404 U.S. 443, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972); State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976).

In State v. Gleaton, 444 S.C. 394, 426–27, 906 S.E.2d 630, 647 (Ct. App. 2024), the South Carolina Court of Appeals wrote:

> Regarding sentencing, our supreme court has explained: Generally, a sentencing judge has great discretion in the kind of evidence she may use to assist her in determining the punishment to be imposed. Indeed, she is obligated to consider information material to punishment and may "exercise a wide discretion in the sources and types of evidence used to assist [her] in determining the kind and extent of punishment to be imposed within limits fixed by law." State v. Quinn, 430 S.C. 115, 125-26, 843 S.E.2d 355, 360-61 (2020) (internal citations omitted).

In Gleaton the trial judge refused to defer sentencing to allow for the defendant's family members to be present for sentencing. The South Carolina Court of Appeals found the failure to defer to allow for the defendant's family members to be present for sentencing was not reversible error but noted that affidavits from family members were submitted in post-trial motions. No such affidavits were presented in this case.

Plea counsel was deficient in for failing to notify Petitioner's family to be present during the guilty plea. Counsel's deficient performance affected the outcome of the plea process. There is a reasonable probability that if family members had been present, Petitioner would have received less than the maximum sentence.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of April, 2026.

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Counsel for Antwon Rogers states:

1. She is Senior Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Daniel D. Hall, which was held on March 8, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Antwon Rogers.

Respectfully Submitted,

Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of April, 2026.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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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ATTORNEY FOR PETITIONER

This 6th day of April, 2026.