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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Jean H. Toal, Circuit Court Judge

Unpublished Opinion No. 2026-UP-071
(S.C. Ct. App. Submitted February 3, 2026-Filed February 18, 2026)

ERICK E WELLS,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2023-001835

APPENDIX

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Court of Common Pleas
Appeal from Richland County
Honorable Jean Hoefer Toal, Retired Chief Justice
Appellate Case No. 2023-001835

ERICK E. WELLS,

Respondent,

vs.

THE STATE,

Petitioner.

BRIEF OF PETITIONER

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STATEMENT OF ISSUE ON CERTIORARI

Did the post-conviction relief judge reversibly err by concluding—in a legally-erroneous manner and without factual support—plea counsel was constitutionally ineffective and Wells's guilty plea was involuntarily entered when the record conclusively demonstrated Wells knowingly, intelligently, and voluntarily entered a constitutionally-valid guilty plea with the assistance of constitutionally-effective plea counsel and with an adequate understanding of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights being waived?

STATEMENT OF THE CASE

Combined Procedural and Factual History

In August of 2013, Respondent Erick E. Wells—a seasoned criminal with numerous prior convictions for drug crimes and other offenses that spanned roughly two full decades—was arrested after he was found inside a residence with illegal narcotics. (App'x pp. 6-7; p. 9). Specifically, during that incident, deputies from the Richland County Sheriff's Office executed a search warrant at a particular residence, and, upon entering it, they found Wells standing in front of a kitchen stove that he was in the process of using to manufacture crack cocaine. (App'x p. 7). Upon seeing the officers, Wells tossed a bag containing crack cocaine and attempted to flee. (App'x p. 7). However, his flight attempt was unsuccessful, and, during an ensuing search of the residence, deputies discovered a total of approximately twenty-three grams of crack cocaine and four grams of cocaine along with items associated with drug dealing. (App'x p. 7). Following that, the deputies spoke with Wells, and he admitted responsibility for all the drugs recovered during the search. (App'x p. 16). Wells was then transported to a detention center, and, from that location, he was recorded placing an incriminating call in which he openly discussed "cooking" crack cocaine. (App'x p. 7; p. 16).

Subsequent to that, Wells was released on bond. (App'x pp. 6-7). In December of 2013, Wells—while out on bond—was again arrested. (App'x pp. 7-8). That arrest occurred at the conclusion of a high-speed vehicle chase. (App'x pp. 7-8). Regarding that incident, a deputy on patrol observed Wells speeding while driving and attempted to initiate a traffic stop in response. (App'x pp. 7-8). Instead of stopping, Wells fled, and he proceeded to lead deputies on an extended chase during which he nearly caused several collisions. (App'x p. 8). Eventually

though, Wells finally stopped and surrendered. (App'x p. 8). When he did, deputies took him into custody and located crack cocaine inside his vehicle. (App'x p. 8).

Following that arrest, Wells was once again released on bond. (App'x p. 12; p. 90). Thereafter, in February of 2014, Wells was yet again arrested for several more drug-related charges. (App'x p. 3; p. 12; p. 90).

Just a few days later, the Richland County Grand Jury indicted Wells for third-offense trafficking in crack cocaine along with other charges in connection to the first of his three sequential arrests. (App'x p. 3; pp. 28-29). Thereafter, on April 2, 2014, Wells appeared in the Richland County Court of General Sessions to plead guilty before the Honorable R. Ferrell Cothran, Jr., circuit court judge, in order to resolve *all* his pending charges stemming from the various arrests. (App'x pp. 3-4; p. 12).

During the course of that guilty plea hearing, Wells—with the assistance of plea counsel—waived presentment on several of his charges and pled guilty to the lesser offense of second-offense trafficking in crack cocaine in connection to the first of his most-recent arrests along with failure to stop for a blue light and third-offense possession of crack cocaine in connection to the second of those arrests.[1] (App'x pp. 3-6). Meanwhile, in exchange for Wells's entry of the "global" guilty plea, the solicitor agreed to a negotiated sentencing range of between ten and twenty years. (App'x p. 3). Furthermore, he agreed to dismiss all Wells's other charges, including three related to the third most-recent arrest.[2] (App'x p. 3; p. 12).

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[1] Despite that, the Richland County Grand Jury still issued indictments on April 7, 2014, for two of the charges to which Wells had already pled guilty. (App'x pp. 20-21; pp. 26-27).

[2] More specifically, the solicitor dismissed charges including possession of crack cocaine with intent to distribute, possession of cocaine with intent to distribute, and possession of marijuana. Records for Erick Wells, Richland County Fifth Judicial Circuit Public Index, https://publicindex.sccourts.org/richland/publicindex.

In entering his guilty plea, Wells confirmed he was aware of the potential sentencing ranges for his various offenses and acknowledged he understood he would be waiving his constitutional rights—including his right to remain silent, right to a jury trial, right to require the State to prove his guilt beyond a reasonable doubt, right to cross-examine witnesses, and right to present evidence and testimony in his defense—by pleading guilty. (App'x pp. 4-6). Likewise, Wells personally verified it was his desire to enter the guilty plea, confirmed he was doing so without being subjected to any threats or promises, acknowledged he had been afforded an opportunity to review his discovery with plea counsel before entering his plea, and identified no issues with the manner in which the solicitor had handled his cases. (App'x pp. 3-6).

Following that, the solicitor recounted the details of the first two incidents that gave rise to the charges to which Wells was entering his guilty plea. (App'x pp. 6-8). Likewise, the solicitor advised the plea judge of the details of Wells's lengthy criminal record, which included convictions for numerous prior cocaine and crack cocaine offenses along with several convictions for failure to stop for a blue light. (App'x p. 9). At the conclusion of the solicitor's presentation, Wells confirmed the "basic facts" recounted by the solicitor were correct, and he directly admitted he was in possession of cocaine and crack cocaine during the first incident, had crack cocaine inside his vehicle during the second incident, and had also failed to stop for a blue light during that incident. (App'x pp. 9-10).

Once all that had been presented and confirmed, the plea judge concluded a factual basis existed for Wells's charges and plea. (App'x p. 10). Accordingly, Wells's guilty plea was accepted. (App'x p. 10).

Following that, plea counsel conceded Wells "obviously" had a "bad record" that included at least six earlier drug convictions, but he disputed some of Wells's other convictions.

(App'x pp. 10-11). Beyond that, plea counsel—demonstrating his existing familiarity with the event—noted a "negligent discharge" of one of the deputies' firearms had occurred when they were entering the residence to execute the search warrant during the first incident, and he contended that discharge was the true reason why Wells attempted to flee at that time. (App'x pp. 13-14). Plea counsel then requested a ten-year sentence, which was the minimum possible pursuant to the negotiated sentencing range agreed to by the parties. (App'x p. 3; p. 14).

In rebuttal, the solicitor requested the maximum sentence permissible based on the negotiations. (App'x p. 16). As support for that request, the solicitor noted Wells had continuously engaged in criminal behavior resulting in multiple arrests and had already received a substantial benefit as a result of the plea bargain reached by avoiding a conviction for the indicted offense of third-offense trafficking in crack cocaine, which carried a mandatory minimum sentence of twenty-five years up to a maximum sentence of thirty years. (App'x pp. 15-16). In addition to that, the solicitor acknowledged the "accidental discharge" of a firearm had occurred, and he indicated that occurrence had already been taken into account during the plea negotiations. (App'x pp. 15-16).

Ultimately, after considering the matter, the plea judge—consistent with the negotiated sentencing range agreed to by the parties—sentenced Wells to concurrent terms of imprisonment of fifteen years for second-offense trafficking in cocaine, ten years for third-offense possession of crack cocaine, and three years for failure to stop for a blue light. (App'x p. 18). And, in imposing that sentence, the plea judge indicated "[t]hat's the best [he] c[ould] do for [Wells] with [Wells's] prior record." (App'x p. 18).

Wells then initiated an appeal. (App'x p. 41; p. 45). However, on appeal, this Court dismissed Wells's appeal after finding he had failed to provide a sufficient explanation as

required by the South Carolina Appellate Court Rules.[3] [4] (App'x p. 41). Thereafter, on July 14, 2014, the remittitur was issued. (App'x pp. 42-43).

Within just days of the issuance of the remittitur, Wells timely filed an application for post-conviction relief ("PCR"). (App'x pp. 44-60). Amongst the claims raised through that application, Wells alleged plea counsel was constitutionally ineffective for failing to "fully" review discovery with him and his guilty plea had purportedly not been voluntarily entered. (App'x pp. 53-54).

In response, the State filed a return requesting an evidentiary hearing. (App'x pp. 61-66). On December 7, 2015, an evidentiary hearing was conducted in the Richland County Court of Common Pleas with the Honorable Jean Hoefer Toal, Retired Chief Justice, presiding. (App'x p. 67; pp. 69-70).

During the course of that hearing, Wells testified on his own behalf. (App'x pp. 70-71). Through his testimony, Wells claimed he never saw any discovery prior to entering his guilty plea but nonetheless did so because plea counsel believed the plea judge was a good judge and

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[3] In her order granting relief, the PCR judge inaccurately stated Wells's case was affirmed on appeal after a brief was filed pursuant to Anders v. California, 386 U.S. 738 (1967). (App'x p. 121). The same misstatement was also made in the State's return to Wells's PCR application. (App'x p. 62).

[4] While the appellate records presented to the PCR judge have been included in the appendix, the complete records associated with Wells's appeal following his guilty plea are currently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. Erick Wells, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=56519. Notably, in his pro se notice of appeal filed shortly after he entered his guilty pleas, Wells alleged his rights were violated because he "never saw [his] motion for discovery." Id. Similarly, in the guilty plea explanation submitted by Wells's plea counsel, plea counsel stated: "The defendant believes that his plea was involuntary and illegal because he received ineffective assistance of counsel. He further believes that the State, by and through its representatives within the Richland County Sheriff's Department and Fifth Circuit Solicitor's Office, violated his rights by unfairly targeting him and *by withholding evidence from him*." Id. (emphasis added).

they would be able to argue for a ten-year sentence, which Wells believed he was "probably" going to get. (App'x pp. 71-75; p. 87). Wells alleged he then saw his discovery for the first time after plea counsel sent it to him while he was in prison. (App'x pp. 76-77; p. 82). Wells further claimed he would not have pled guilty if he had known what was in the discovery because he saw a lot of unspecified issues that were not "researched or addressed." (App'x p. 77). Beyond that, Wells explained his focus had been solely on getting a plea offer and he had futilely wanted plea counsel to get the trafficking charge "dropped" even though plea counsel assured him that could not be done. (App'x p. 85). Furthermore, despite his substantial preexisting experience with the criminal justice system, Wells claimed he had not truly understood the rights he was surrendering by entering his guilty plea. (App'x p. 9; p. 85).

In addition to Wells's testimony, plea counsel recounted the details of his representation of Wells. (App'x pp. 88-89). In doing so, plea counsel, who had over twenty years of practicing experience, indicated he was appointed to Wells's case due to a conflict with the public defender's office, moved for discovery after being appointed in October of 2013, and "almost immediately" received partial discovery related to the first of Wells's arrests. (App'x p. 89). Following that, plea counsel stated he met with Wells and Wells provided him with information about the negligent discharge of the firearm, which had not been referenced in the provided discovery materials. (App'x pp. 89-90). Based on that, plea counsel indicated he immediately began "pressing" the solicitor about that matter and, while he was working on that, Wells was arrested for a second time. (App'x p. 90). Plea counsel confirmed he then obtained "initial discovery" about the second case and was attempting to get more when Wells was arrested for a third time. (App'x p. 90). Following that, plea counsel explained he filed a motion to compel discovery with a copy of a memorandum drafted by Chief Justice Toal attached to it. (App'x pp.

91-92; p. 101; pp. 115-117). Plea counsel indicated he then received a supplemental report about the shooting incident two days later and he followed up by making fourteen separate requests of the solicitor. (App'x pp. 93-94; p. 101; p. 118). After that, plea counsel explained he received some information in response to those requests while other requests went unmet, such as one seeking the identity of anyone "pushing" for a higher sentence for Wells. (App'x pp. 101-103; p. 118). Importantly though, plea counsel conceded he believed some of the requests were not met because the requested information did not actually exist, one of his requests had simply been a "rhetorical question," and he knew from the outset his request for the solicitor to perform broad non-case-specific statistical research for him was not going to occur. (App'x pp. 101-103; p. 118). Furthermore, plea counsel confirmed he reviewed all the discovery he received with Wells and the two went over both what they had *and* what they were still missing, which—significantly—solely related to the accidental discharge event. (App'x pp. 92-94; pp. 96-97; pp. 104-105; p. 107). Plea counsel further confirmed he had all the discovery concerning the facts, which were "pretty well solidified," and had everything he needed in connection to the trafficking charge. (App'x pp. 106-108). Beyond that, plea counsel indicated the decision to enter the guilty plea was Wells's, and that decision was made after he had advised Wells about the risks of a trial in which Wells was facing a minimum sentence of twenty-five years in comparison to the benefits of a plea through which Wells potentially—but not necessarily—would be able to receive a sentence as low as ten years. (App'x p. 95; pp. 97-98; pp. 106-108).

After all that testimony was presented, the PCR judge indicated she believed the conduct of law enforcement in Wells's case had been "troubling" and Wells not receiving the discovery requested raised "real questions as to the voluntariness of the plea." (App'x p. 108). The PCR judge then orally ruled Wells's plea had not been voluntary based on law enforcement's failure

to provide the requested discovery concerning the accidental discharge of the firearm, which she opined—without having viewed any additional discovery—"might" have led to the plea judge having a different view of Wells's evasion attempt and might have influenced the solicitor's plea offer. (App'x pp. 109-110). Finally, the PCR judge indicated she was also granting relief based on a finding of ineffective assistance of counsel that resulted from "ineffective conduct that was induced by the failure of the [S]tate to provide the information that was on multiple occasions requested, legitimately so." (App'x p. 111).

Thereafter, through an order dated August 28, 2019, the PCR judge confirmed her grant of relief. (App'x pp. 120-128). Specifically, in granting relief, the PCR judge ruled:

> The Court finds Counsel was ineffective, and this ineffectiveness was induced by law enforcement's failure to answer Counsel's legitimate requests for information – particularly regarding the discharge of one of the officers' firearm during the service of the search warrant. This Court finds [Wells]'s plea was not voluntarily given because said failure deprived [Wells] of the benefit of full discovery prior to entering his plea. Therefore, this Court finds [Wells]'s request for relief due to an involuntary guilty plea should be granted.

(App'x p. 127). Accordingly, the PCR judge awarded Wells a new trial. (App'x pp. 127-128).

Following that, the State timely filed a motion to reconsider, alter, or amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (App'x pp. 129-139). However, through an order filed just over four years later, the PCR judge denied the State's motion without a hearing. (App'x pp. 140-141). The State then timely filed a notice of appeal.

After initiating the appeal, the State filed a petition for a writ of certiorari in the Supreme Court, and the Supreme Court transferred the matter to the Court of Appeals. Subsequently, on September 18, 2025, this Court granted the State's petition.

ARGUMENT

The post-conviction relief judge reversibly erred by concluding—in a legally-erroneous manner and without factual support—plea counsel was constitutionally ineffective and Wells's guilty plea was involuntarily entered because the record conclusively demonstrated Wells knowingly, intelligently, and voluntarily entered a constitutionally-valid guilty plea with the assistance of constitutionally-effective plea counsel and with an adequate understanding of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights being waived.

Standard of Review

In PCR cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge's factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) ("Under the proper standard of review, the appellate court's 'view' must be limited to whether there is probative evidence to support the PCR court's factual findings."). Meanwhile, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge's rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014). Moreover, when conducting such an analysis in the context of a PCR appeal involving a guilty plea issue, the appellate court will consider the entire record, including the transcript from the guilty plea hearing and the evidence presented at the PCR hearing, because the voluntariness of a guilty plea must be determined from an examination of the record as a whole. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420-421 (2000); see State v. Tucker, 376 S.C. 412, 419, 656 S.E.2d 403, 407 (Ct. App. 2008) ("An appellate court will review the totality of the circumstances to discern if a plea was entered into knowingly and intelligently."). Ultimately, if

the PCR judge's decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

Law Regarding the Voluntariness of a Guilty Plea

As has long been recognized, guilty pleas and plea bargains are important components of our nation's—and state's—criminal justice system. Blackledge v. Allison, 431 U.S. 63, 71 (1977). Such pleas provide significant benefits to all involved, including by allowing defendants to obtain speedy disposition of their cases and by allowing both courts and prosecutors to conserve limited resources. Id. Critically though, the benefits of a guilty plea can only truly be secured "if dispositions by guilty plea are accorded a great measure of finality." Id. In light of that, "[f]ew principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Sims, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (Ct. App. 2018) (citation and internal quotations omitted).

For a guilty plea to be knowing, voluntary, and intelligent, all that is required is: (1) the defendant must have a sufficient understanding of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights being waived; and (2) the record must reflect a factual basis for the plea. Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001); see Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000) ("[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." (emphasis removed)); Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) ("To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of the plea and the charges against him.").

Significantly though, "the Constitution, in respect to a defendant's awareness of relevant circumstances, does *not* require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor." United States v. Ruiz, 536 U.S. 622, 630 (2002) (emphasis added); see Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) ("[A] defendant may choose to forgo a legal challenge and opt for what he considers a favorable plea arrangement, especially where other charges will be dismissed or sentences are run concurrently. This 'give and take' lies at the heart of virtually every guilty plea, as plea agreements allow our overly burdened criminal courts to function."). In the end, "[t]he 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." McMillian v. State, 383 S.C. 480, 485, 680 S.E.2d 905, 907 (2009) (citation and internal quotations omitted).

Law Applicable to Ineffective Assistance of Plea Counsel Claims

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). Pursuant to that right, the defendant is entitled to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970). However, that does not mean entitlement to perfect or mistake-free representation. Burt v. Titlow, 571 U.S. 12, 24 (2013). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 687-688 (1984). Meanwhile, counsel's assistance is considered constitutionally ineffective only when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686.

When faced with a claim of ineffective assistance of counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant must establish: (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the heavy burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001).

Regarding the deficiency prong of the analysis, the proper measure of performance is whether counsel provided representation within the objectively reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). To establish deficiency, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. Thus, counsel's performance will be considered deficient only when it objectively amounted to incompetence under prevailing professional norms and not when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. For that burden to be met, counsel's deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the proceeding would have been different but

for counsel's unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). Moreover, "[t]he likelihood of a different result must be substantial, not just conceivable." Richter, 562 U.S. at 112; see Strickland, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

Furthermore, when an applicant is raising a challenge to a guilty plea predicated upon an ineffective assistance of counsel claim, the same two-pronged analysis remains applicable. Hill v. Lockhart, 474 U.S. 52, 58 (1985). "In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered." Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). Meanwhile, to establish prejudice in the context of a guilty plea, the applicant must demonstrate there was a reasonable probability the applicant would not have pled guilty and, instead, would have insisted on going to trial but for plea counsel's errors. Hill, 474 U.S. at 59; see Jones v. State, 333 S.C. 6, 8, 507 S.E.2d 324, 325 (1998) ("A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty."). Significantly, due to the finality interests at stake, caution must be exercised before a guilty plea is set aside in a case in which a proper plea colloquy was conducted. Jamison, 410 S.C. at 468-469, 765 S.E.2d at 129.

Application of the Pertinent Law to Wells's Case

In the case sub judice, the PCR judge granted relief to Wells upon concluding: (1) Wells's guilty plea was involuntarily entered; and (2) Wells's plea counsel was constitutionally ineffective. Notably, in reaching those dual conclusions, the PCR judge did *not* find a Brady[5] violation had occurred in Wells's case or find plea counsel had failed to take some action—such

[5] Brady v. Maryland, 373 U.S. 83 (1963).

as conducting additional investigation—that needed to be undertaken in order for Wells to be adequately represented. See, e.g., Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (instructing a defendant "may challenge the voluntary nature of his guilty plea in a PCR action by asserting an alleged Brady violation"). Instead, the PCR judge simply determined both Wells's guilty plea was not a voluntary one *and* plea counsel's performance was not constitutionally adequate because Wells had not received all the information that had been requested by plea counsel by the time Wells elected to accept the State's plea offer and enter his guilty plea. And, significantly, the PCR judge reached such a determination *without* having reviewed any discovery materials or other information that had been requested prior to the plea and without even determining whether that requested matter *even existed at all*. Contrary to the PCR judge's ruling, Wells was not entitled to relief as his guilty plea was knowingly, intelligently, and voluntarily entered and his plea counsel's performance was not constitutionally ineffective.

Demonstrating that fact, Wells was aware of everything he needed to be aware of in order to be able to enter a valid guilty plea prior to his entry of one in the case at bar. Specifically, as reflected in the record, he knew and understood the nature of the charges to which he was pleading guilty, including the potential penalties that could be imposed for those offenses. Likewise, Wells—who had *substantial* preexisting familiarity with the criminal justice system that began decades before he entered his guilty plea—confirmed he understood all the critical constitutional rights he was waiving by pleading guilty. Furthermore, there was unquestionably a factual basis for the offense to which Wells pled guilty, and Wells personally affirmed he possessed crack cocaine and cocaine during the first incident, possessed more drugs during the second incident, and also failed to stop for a blue light. Meanwhile, based on the discussion that

occurred at the guilty plea hearing concerning the accidental discharge of a firearm during the first incident, Wells was fully aware of that occurrence as were the plea judge, plea counsel, and the solicitor.

Under such circumstances, Wells knew of and confirmed all that was necessary for him to be able to validly plead guilty. See Rollison, 346 S.C. at 511, 552 S.E.2d at 292 ("All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea."). As a result, Wells's guilty plea was a voluntary and valid one, and that remained true regardless of whether Wells—who had been advised by plea counsel of what they did and did not possess as far as discovery was concerned *before* making his plea decision—had or had not yet received all the information that had been requested by plea counsel. See Hyman v. State, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012) (rejecting—through an opinion authored by Chief Justice Toal—the suggestion "a criminal defendant may never enter a plea voluntarily without the State first disclosing all of the evidence in its possession"); see also Ruiz, 536 U.S. at 629 ("[T]he Constitution does not require the prosecutor to share all useful information with the defendant."); United States v. Graf, 827 F.3d 581, 584 (7th Cir. 2016) ("[W]e have often held that a defendant can offer a knowing and voluntary plea *without having received full discovery* from the government." (emphasis added)); United States v. Underwood, 174 F.3d 850, 854 (7th Cir. 1999) ("[A] guilty plea entered by a defendant who does not see the prosecution's hand in advance will still be voluntary if, as was true in this case, the plea follows disclosure of an adequate factual basis."). Moreover, because Wells's guilty plea was a voluntary and valid one, plea counsel's performance was in no way constitutionally ineffective. Cf. Rollison, 346 S.C. at 511-512, 552 S.E.2d at 292-293 ("A

review of both the plea record and respondent's PCR testimony indicates he was well aware that he was pleading guilty both to first offense possession and to second offense PWID, and of the potential sentences he faced as a result. Further, there was a sufficient factual basis presented for both the PWID charge and the separate possession charge in the recitation made by the solicitor at the plea. This is all that is required, and the plea was proper. Respondent received the benefit of the agreement for which he bargained and cannot now complain. There is no evidence in the record to support the PCR judge's finding that trial counsel was ineffective in allowing respondent to accept this plea bargain. A finding that is without evidentiary support must be reversed.").

For all those reasons, the PCR judge erred by granting relief to Wells. See Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996) ("[T]his Court will not uphold the findings of a PCR court if no probative evidence supports those findings."); see also Premo v. Moore, 562 U.S. 115, 124-125 (2011) ("Acknowledging guilt and accepting responsibility by an early plea respond to certain basic premises in the law and its function. Those principles are eroded if a guilty plea is too easily set aside based on facts and circumstances not apparent to a competent attorney when actions and advice leading to the plea took place. Plea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks. The opportunities, of course, include pleading to a lesser charge and obtaining a lesser sentence, as compared with what might be the outcome not only at trial but also from a later plea offer if the case grows stronger and prosecutors find stiffened resolve. A risk, in addition to the obvious one of losing the chance for a defense verdict, is that an early plea bargain might come before the prosecution finds its case is getting weaker, not stronger. The State's case can begin to fall apart as stories change, witnesses

become unavailable, and new suspects are identified. These considerations make strict adherence to the Strickland standard all the more essential when reviewing the choices an attorney made at the plea bargain stage."). And, that is particularly true due to the fact the PCR judge granted that relief without requiring Wells to produce any additional information that had not been previously disclosed and without verifying any such information even existed at all. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (reversing—through an opinion authored by Justice Toal—a PCR judge's finding defense counsel was constitutionally ineffective for failing to obtain all necessary discovery documents before trial and explaining: "Since the contents of these documents were never revealed at the PCR hearing, Defendant has failed to present any evidence of probative value demonstrating how the failure to obtain the unproduced statements or acquire the other documents in a more timely fashion prejudiced the defense."); cf. Rollison, 346 S.C. at 510, 552 S.E.2d at 292 ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. Here, we are left to speculate whether, in fact, the search was unconstitutional. The PCR judge's finding that without further investigation by Defense Counsel it would be impossible to decide on the legality of the search is an insufficient basis upon which to order PCR." (citation and internal quotations omitted)). Accordingly, the PCR judge's ruling granting relief must be reversed as it was legally and factually erroneous. See Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (recognizing a PCR judge's decision will be reversed when it is controlled by an error of law).

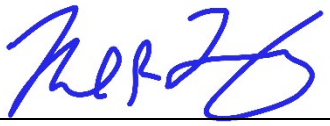
CONCLUSION

For all the foregoing reasons, it is respectfully the PCR judge's grant of relief should be reversed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

BY: 
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR PETITIONER

September 19, 2025

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Court of Common Pleas
Appeal from Richland County
Honorable Jean Hoefer Toal, Retired Chief Justice
Appellate Case No. 2023-001835

ERICK E. WELLS,

Respondent,

vs.

THE STATE,

Petitioner.

PROOF OF SERVICE

I, Grace Sommer, certify I have served the within Brief of Petitioner on Respondent by sending an electronic copy via email to the address listed in AIS for the following individual:

Sarah E. Shipe, Esquire
S.C. Commission on Indigent Defense
Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 19th day of September, 2025.

GRACE SOMMER
Legal Assistant
Office of the Attorney General

RECEIVED
Oct 20 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Richland County

Honorable Jean H. Toal, Circuit Court Judge

ERICK E. WELLS,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2023-001835

BRIEF OF RESPONDENT

SARAH E. SHIPE
Appellate Defender

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

ATTORNEY FOR RESPONDENT

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ISSUE PRESENTED BY THE STATE

Did the post-conviction relief judge reversibly err by concluding—in a legally erroneous manner and without factual support—plea counsel was constitutionally ineffective and Wells's guilty plea was involuntarily entered when the record conclusively demonstrated Wells knowingly, intelligently, and voluntarily entered a constitutionally-valid guilty plea with the assistance of constitutionally-effective plea counsel and with an adequate understanding of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights being waived?

COUNTER STATEMENT OF THE ISSUE

Does any evidence support the PCR court's finding that Mr. Wells's guilty plea was involuntary because he did not have the benefit of reviewing favorable discovery before the entry of his guilty plea where the state denied defense counsel's legitimate requests for discovery which in turn denied Mr. Wells the assistance of counsel that the Constitution guarantees?

STATEMENT

Procedural History

On February 19, 2014, a Richland County grand jury indicted Erick Wells for trafficking crack cocaine, more than ten grams less than twenty-eight grams, third offense. App. 28-29. On April 2, 2014, Mr. Wells pled guilty to failure to stop for blue lights, possession of crack cocaine, third offense, and trafficking crack cocaine more than ten grams less than twenty-eight grams, second offense before the Honorable R. Ferrell Cothran, Jr. App. 1-18.[1] Mr. Wells was represented by Theodore Lupton. App. 1. Assistant solicitor, Daniel Coble, represented the state. App. 1.

Pursuant to a negotiated range of ten to twenty years, Judge Cothran sentenced Mr. Wells to concurrent terms of fifteen years' imprisonment for trafficking crack cocaine, ten years' imprisonment for possession of crack cocaine, and three years' imprisonment for failure to stop for blue lights. App. 18, ll. 3-8; 30-32.

In April, 2014, Mr. Wells filed a notice of appeal. On May 6, 2014, Mr. Wells filed an amended notice of appeal contending that his guilty plea was involuntary due to ineffective assistance of counsel and the state withholding evidence. On June 27, 2014, the South Carolina Court of Appeals signed an order dismissing Mr. Wells's appeal where he failed to provide a sufficient explanation as required.[2] App. 41.

Thereafter, Mr. Wells filed an application for post-conviction relief (PCR). App. 44-60.

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1 After Mr. Wells's guilty plea April 9, 2014, a Richland County grand jury indicted him for possession of crack cocaine, first offense; and failure to stop for blue light/siren. App. 20-27. The indictments appear twice in the appendix the duplicate versions of each include written amendments. App. 20-27.

2 The order granting PCR inaccurately states that Mr. Well's case was affirmed on appeal after an *Anders v. California*, 386 U.S. 738 (1967), brief was filed. The state corrects the error in its brief. Brief of petitioner 6, fn 3.

On December 7, 2016, an evidentiary hearing was held before the Honorable Jean H. Toal. App. 67-112. Mr. Wells was represented by Anna Good. Jessica Kinard appeared on behalf of the state. App. 67. At the conclusion of the hearing the PCR court made ruled on the record and subsequently requested counsel for Mr. Wells and counsel for the state "collaborate" on a proposed order granting Mr. Wells PCR. App. 108-112; 111, ll. 14-18. The PCR court ruled Mr. Wells's case should be retried where (1) counsel was ineffective and where (2) Mr. Wells's guilty plea was involuntary. App. 111, l. 14-112, l. 3.

August 28, 2019, the PCR court signed an order, ostensibly authored by both parties, granting Mr. Wells PCR. App. 120-128. The PCR court found counsel "was ineffective, and this ineffectiveness was induced by law enforcement's failure to answer counsel's legitimate requests for information." App. 127. Additionally. the court found Mr. Wells's request for relief should be granted and he should receive a new trial where his guilty plea was involuntary because he was deprived of the "benefit of full discovery prior to entering his plea." App. 127.

Counsel for the state made a motion to reconsider. App. 129-139. The PCR court denied the state's motion to reconsider. App. 140-141. The court found the previous order made "sufficient findings of fact and conclusions of law to sustain its decision to remand" Mr. Wells's case for a new trial. The court reiterated that Mr. Wells was "constitutionally deprived because of the State's failure to produced requested documents in discovery, thereby rendering his plea involuntary." App. 140-141.

Facts

On April 2, 2014, Mr. Wells pled guilty to trafficking crack cocaine, possession of crack cocaine, and failure to stop for blue lights pursuant to the state's agreement to a negotiated range of ten to twenty years' imprisonment. App. 3, ll. 9-17.

During the plea hearing, the solicitor told the plea court that on August 2, 2013, the Richland County Sheriff's Department executed a search warrant at a home on Chestnut Street in Richland County. The solicitor claimed when the officers entered the home, they saw Mr. Wells in the kitchen by the stove and that when Mr. Wells saw officers, he ran, throwing a baggy of crack. While searching the home, officers found other drugs and drug paraphernalia. App. 7, ll. 3-20. Regarding the possession charge and the failure to stop charge, the solicitor told the court that on December 11, 2013, Mr. Wells was speeding and when the officer tried to pull him over Mr. Wells continued driving, almost causing multiple accidents. Mr. Wells eventually pulled over and .12 grams of crack cocaine was found in the car. App. 7, l. 21-8, l. 13.

The plea court asked Mr. Wells if he agreed to the facts and defense counsel responded, "as far as the basic facts, we'll expand on some, but, yes." The court asked Mr. Wells if he agreed and Mr. Wells said, "yes, sir." App. 9, ll. 22-25. Consequently, the plea court found there was a factual basis for Mr. Wells's guilty plea. App. 10, ll. 17-18.

During mitigation defense counsel told the court this was a "global plea" which combined three separate investigations. Counsel acknowledged to the plea court he had not been able to speak with the officer involved in the first case. App. 12, ll. 9-20. He contended that, although the total weight of drugs found in the home during the first incident—for which Mr. Wells was charged with trafficking—was twenty-three grams, Mr. Wells was only found with a few grams of powder cocaine in his hand. App. 13, ll. 2-4. Defense counsel went on to tell the plea court that during that incident one of the officers accidently fired their weapon. The discharge of a firearm, rather than evasion of law enforcement, was why Mr. Wells ran when the

officers entered the home.[3] App. 14, ll.

At his evidentiary hearing Mr. Wells testified he hired defense counsel in October 2013. App. 71, ll. 2-13. He said defense counsel discussed multiple offers from the state with him during their visits. App. 71, ll. 10-25; 73, ll. 5-14. Mr. Wells testified that during negotiations he did not want to take the state's offer because he believed his prior record would result in a harsh sentence. App. 74, ll. 2-3. Mr. Wells testified throughout the hearing that counsel had not reviewed all of his discovery with him prior to his guilty plea in April 2014. App. 71, l. 24-72, l. 4; 72, ll. 21-25; 73, ll. 15-24; 74, ll. 11-23. Counsel had not reviewed all of Mr. Wells's discovery because he did not *have* all of the discovery prior to Wells's guilty plea hearing. Mr. Wells did not receive discovery in his case until the following July when he was incarcerated at McCormick Correctional Institution. App. 76, l. 23-77, l. 10.

Ultimately, Mr. Wells accepted an offer from the state and pled guilty to a negotiated range of ten to twenty years' imprisonment. He explained that on the day of his guilty plea defense counsel urged him to take the state's offer because Judge Cothran was a "good judge" and "wasn't from around here." At defense counsel's insistence that this was the best course of action and because of counsel's warning that he would not get another opportunity like this, Mr. Wells accepted the state's offer and pled guilty. App. 76, ll. 6-11; 86, ll. 17-25. Mr. Wells asserted he would not have pled guilty if he had seen his discovery prior to his guilty plea. App. 77, ll. 11-19.

Defense counsel testified that he was appointed in Mr. Wells's case at the end of October 2013. App. 89, ll. 3-7. Regarding discovery counsel testified he received "partial discovery" in the first, and most serious trafficking case. After speaking with Mr. Wells, counsel learned about

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3 The solicitor agreed there was an accidental discharge during the officer's search during the first incident. App. 15, l. 25-16, l. 2.

the accidental discharge of a firearm by law enforcement during the incident. App. 89, ll. 13-25. He acknowledged there was no information regarding the accidental discharge of the officer's weapon included in Wells's discovery. Counsel said he began "pressing" the solicitor's office for more information. App. 90, ll. 1-4. Counsel testified he was focused on the trafficking case because the state was aggressively pushing, "threatening to call it for trial pretty early on in the case." App. 91, ll. 1-5. He filed a motion to compel discovery looking for some specific information he believed was relevant to the trafficking case. App. 91, ll. 7-14; Applicant's exhibit 1, Applicant's exhibit 3.

Defense counsel testified, "they kept noticing it for trial," and he felt the solicitor's office was pushing for a trial and there was a chance the case would go to trial soon. He discussed this with Mr. Wells and explained that there was still discovery missing and that it likely would not be available before trial or at all. App. 94, ll. 10-25. He claimed he discussed with Mr. Wells that Wells had "certain defenses" related to the lack of information and what could be done at trial. App. 95, ll. 3-13. Counsel testified as follows regarding the guilty plea:

> Ultimately we ended up with an offer of - - range of ten to twenty on a trafficking second. And I felt that Judge Cothran, who I think everybody in this court is familiar with, is a fine and very fair and respectable judge, and felt like he would do a, a - - provide a fair listening to our arguments and give a fair sentence, and I was hoping for a ten-year sentence. Unfortunately he gave us fifteen.

App. 96, ll. 1-8.

Counsel testified he reviewed the "discovery [he] had with [Mr. Wells]." App. 92, ll. 9-11. However, counsel admitted he did not have all the discovery in Mr. Wells's case prior to the guilty plea. App. 106, ll. 16-22

At the conclusion of the hearing the PCR court ruled that Mr. Wells's guilty plea was not voluntary as a result of the failure of "law enforcement authorities to answer the discovery that

was requested." App. 109, ll. 15-20. The court cited 2004 memorandum, which raised concerns about the failure to give discovery and how it affects the voluntariness of a guilty plea. App. 109, ll. 11-15; Applicant's exhibit 2. The court went on to say the trafficking charge might have been "viewed in a different light had the judge had the benefit of the discovery that was requested" and that had all the discovery been turned over "it might also have influenced the plea offer." App. 110, ll. 5-10. The court requested counsel for Mr. Wells and counsel for the state collaborate on a proposed order granting PCR. The court specified, "counsel was ineffective not because he wanted to be ineffective, but because that ineffective conduct was induced by the failure of the state to provide the information that was on multiple occasions requested, legitimately so." App. 111, ll. 14-22.

STANDARD OF REVIEW

Appellate courts give great deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them. *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). Questions of law are reviewed de novo, and the court can reverse the PCR court's decision when it is controlled by an error of law. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

ARGUMENT

There is evidence in the record that supports the PCR court's conclusion that Mr. Wells's guilty plea was involuntary where he did not have the benefit of reviewing favorable discovery before the entry of his guilty plea because the state denied defense counsel's legitimate requests for discovery which in turn denied Mr. Wells the assistance of counsel that the Constitution guarantees.

There is evidence supporting the lower court's factual findings and legal conclusions in this case and this Court should affirm the grant of PCR in this case based on the standard of review. Appellate courts give great deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them. *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). Questions of law are reviewed de novo, and the court can reverse the PCR court's decision when it is controlled by an error of law. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

The Supreme Court of South Carolina has considered the requirements of a voluntary and knowing guilty plea previously, including in the following cases.

In *State v. Hazel*, the Court held defendant's guilty plea was not knowing and therefore invalid because it was made without an understanding of the sentencing consequences. 275 S.C. 392, 271 S.E.2d 602 (1980). In that case neither defense counsel nor the plea court made defendant aware of the mandatory punishment for the offense they pled guilty to. *Id.*

In *Dover v. State*, the Court affirmed the lower court's grant of PCR, holding defendant's guilty plea was not voluntarily and understandingly made where defendant was not made aware

of the consequences of his guilty plea.[4] 304 S.C. 433, 405 S.E.2d 391 (1991). In that case the defendant pled guilty to twenty-nine indictments including grand larceny, burglary, second degree burglary and petit larceny and was given an aggregate sentence of twenty-five years' imprisonment. *Id.* at 434, 405 S.E.2d at 392. In that case the Court found defendant's guilty plea was not voluntarily and understandingly made where defendant did not have a full understanding of the consequences of his plea where it was not established that defendant understood the severity of the crimes or the sentences they carried. *Id.* The Court analogized *Dover* to *Hazel* where the defendant was not made aware that her charges carried a mandatory life sentence. *Id.* at 435, 405 S.E.2d at 392.

In *Harres v. Leeke*, the Court reversed the lower court's grant of PCR and held defendants' guilty pleas were voluntary and knowing. 282 S.C. 131, 318 S.E.2d 360 (1984). In that case two defendants pled guilty to exhibiting obscene films and were sentenced. *Id.* at 132, 318 S.E.2d at 360. At the PCR hearing the defendants testified it was their belief the plea court would sentence them to probation, and they were instead sentenced to active time. Based on the defendants' testimonies during the plea hearing and their testimonies during the PCR hearing the Court found the guilty pleas were knowing and voluntary. *Id.* at 133, 318 S.E.2d at 361.

Unlike *Harres v. Leeke*, Mr. Wells is *not* alleging he was promised a particular sentence if he pled guilty. He understood the range the state offered and although he was persuaded by counsel it would be beneficial to plead in front of a visiting judge that was not his allegation in support of relief. Rather, Mr. Wells testified that he should have had the benefit of reviewing discovery so that he could make an informed decision regarding the state's offer to plead guilty.

In *Rollinson v. State*, the Court reversed the lower court's grant of PCR and held (1)

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4 The Court disagreed with the lower court's reasoning and affirmed the result on other grounds appearing in the record.

counsel was not ineffective for failure to challenge the legality of a weapons frisk that led to discovery of drugs and (2) counsel was not ineffective in allowing defendant to plead guilty to both first and second offense drug charges. 346 S.C. 506, 507, 552 S.E.2d 290 (2001). In that case defendant pled guilty pursuant to a negotiated agreement to possession of crack cocaine possession with intent to distribute crack cocaine second offense and carrying a pistol. *Id.*

At PCR the lower court found counsel was ineffective in allowing defendant to plead to second offense possession with intent to distribute at the same time he was pleading guilty to his first drug offense. *Id.* at 510, 552 S.E.2d at 292. The Court disagreed finding he "knowingly intelligently, and voluntarily agreed to plead guilty to both as part of a plea bargain where the state dropped three other drug charges. *Id.* The Court found there was a sufficient factual basis presented for both charges reasoning "[a]ll that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." *Id.* at 511, 552 S.E.2d at 292.

In *Sellner v. State*, the Court reversed the PCR court's denial of relief, granted defendant a new trial, and held defense counsel's advice to defendant that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counsel's performance deficient. 461 S.C. 606, 607, 787 S.E.2d 525 (2016). In that case defendant was charged with armed robbery and because of prior convictions was subject to a sentence of life imprisonment without the possibility of parole. *Id.* at 608, 787 S.E.2d. at 526. At PCR, counsel testified there was no evidence defendant had a gun during the robbery or that he made any representation of a weapon. *Id.* at 609, 787 S.E.2d at 527. The Court found "counsel's advice to [defendant] that he could be convicted of armed robbery without proof of a physical

representation of a deadly weapon rendered counsel's performance deficient and the PCR court erred in finding [] counsel effective. *Id.* at 612, 787 S.E.2d at 528.

Without the benefit of reviewing important discovery Mr. Wells could not have made a voluntary guilty plea. Mr. Wells did not have information that would have been crucial to his determination whether to continue to trial or to accept a plea offer. Counsel's advice to plead guilty without having himself seen all of the discovery he requested was deficient performance.

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. *Boykin v. Alabama*, 395 U.S. 238 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights they are waiving. *Id.* Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers.

In addition to the requirements of *Boykin,* a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). "Any defects in the information conveyed by defense counsel can be cured by information provided at the guilty plea proceeding. *Rollinson v. State*, 346 S.C. 506, 513, 552 S.E.2d 290, 293 (2001) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415, (1998)). "The knowing and voluntary nature of the plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel or both.'" *Id.* (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

"An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." *Wiggins v. Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). The two-part test also "applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

In addressing the adequacy of a PCR applicant's guilty plea, it is proper to consider both the guilty plea transcript, and the evidence presented at the PCR hearing. *Id.* at 573, 713 S.E.2d at 615 (citing *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007)). "[T]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). *Sellner v. State*, 416 S.C. 606, 610–11, 787 S.E.2d 525, 527 (2016)

The PCR court correctly found counsel was deficient where it was unreasonable for defense counsel to advise Mr. Wells to plead guilty without having reviewed relevant discovery. The court's finding of deficiency is supported by probative evidence in the record. Mr. Wells testified he pled guilty without having seen important discovery in his case. Counsel's testimony corroborated Mr. Wells's testimony. Defense counsel admitted he did not have all the discovery in Mr. Wells's case at the time of his guilty plea. Mr. Wells's exhibits, defense counsel's motion

to compel discovery and email from defense counsel, admitted during the hearing further support the contention that Mr. Wells did not have the benefit of reviewing favorable discovery prior to pleading guilty.

The PCR court correctly found Mr. Wells was prejudiced by this deficiency where but for counsel's inaccurate advice he would not have pled guilty and instead gone to trial. Mr. Wells testified unequivocally that were it not for the advice of defense counsel he would have continued to trial. Mr. Wells specifically testified if he had seen this discovery, he would have continued to trial instead of taking a guilty plea.

Mr. Wells was urged by trial counsel to plead guilty in front of a visiting judge, which counsel hoped would be lenient. Counsel was motivated, according to his own testimony, because the state was threatening to call the case quickly. Counsel testified he did not have all the necessary discovery and did not believe he would have it before trial. The PCR court noted trial counsel was not intentionally deficient, but that counsel was induced where the state failed to turnover discovery after he repeatedly requested it. However, trial counsel's best intentions do not change the fact that Mr. Wells was prejudiced where he testified, he would have gone to trial but for counsel's advice to plead guilty.

Finally, the state's brief points out the PCR court did not find a *Brady* violation. Brief of Petitioner 14-15. In *Brady v. Maryland*, the Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). However, evidence of a *Brady* violation does appear in the record and this Court could affirm the lower court's decision based on other grounds

appearing in the record. *See Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391 (1991) (affirming the result on other grounds appearing in the record).

The PCR court correctly remanded Mr. Wells's case for a new trial and this Court should affirm.

CONCLUSION

Based on the foregoing, respondent respectfully requests that this Court affirm the lower court's grant of post-conviction relief.

Sarah M Candy for:
Sarah E. Shipe
Appellate Defender

ATTORNEY FOR RESPONDENT

This 20th day of October, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
Oct 20 2025
SC Court of Appeals

Appeal from Richland County

Honorable Jean H. Toal, Circuit Court Judge

ERICK E. WELLS,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2023-001835

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Respondent in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Erick E. Wells, #281942, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 20th day of October, 2025.

Sara M Caudy for:
Sarah E. Shipe
Appellate Defender

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Erick E. Wells, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2023-001835

Appeal From Richland County
Jean Hoefer Toal, Circuit Court Judge

Unpublished Opinion No. 2026-UP-071
Submitted February 3, 2026 – Filed February 18, 2026

REVERSED

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General Mark Reynolds Farthing, both of Columbia, for Petitioner.

Appellate Defender Sarah Elizabeth Shipe, of Columbia, for Respondent.

PER CURIAM: The State appeals the post-conviction relief (PCR) court's order granting Erick E. Wells a new trial. On appeal, the State argues the PCR court erred in finding Wells entered his guilty plea involuntarily and that plea counsel was constitutionally ineffective. We reverse pursuant to Rule 220(b), SCACR.

We hold probative evidence does not support the PCR court's findings that Wells's guilty plea was involuntary and that plea counsel was ineffective because Wells pled guilty with the understanding of the charges against him, the potential sentences he faced, and the rights he would waive. Furthermore, his guilty plea was made with the decision not to pursue a jury trial in which the discovery related to his actual guilt had already been obtained, and the fact Wells had not received all discovery generally did not preclude him from voluntarily entering a guilty plea. *See Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018) (stating a reviewing court "defer[s] to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them"); *Taylor v. State*, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013) ("In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered."); *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) ("Although the [plea] court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea."); *Rollison v. State*, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001) ("All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea."); *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) ("[A] defendant may choose to forgo a legal challenge and opt for what he considers a favorable plea arrangement, especially where other charges will be dismissed or sentences are run concurrently."); *id.* at 635-36, 675 S.E.2d at 427 ("The point . . . is that such decisions must be made knowingly and voluntarily with the advice of constitutionally competent counsel."); *Hyman v. State*, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012) (disagreeing with the contention "that a criminal defendant may never enter a plea voluntarily without the State first disclosing all of the evidence in its possession"), *abrogated on other grounds by Smalls*, 422 S.C. at 181 n.2, 810 S.E.2d at 839 n.2 (2018); *Hines v. State*, 435 S.C. 476, 490-91, 868 S.E.2d 387, 394 (Ct. App. 2021) (holding that the State's refusal to show the petitioner a video was not prosecutorial misconduct in part because the contents of the video were in no way exculpatory), *aff'd*, 443 S.C. 32, 902 S.E.2d 377 (2024).

We also hold probative evidence does not support the PCR court's finding that Wells was prejudiced by any alleged deficiency because the actual contents of the missing discovery were not introduced nor testified to at the PCR hearing, and Wells merely stated without specificity that it contained "a lot of issues that [were not] researched or addressed." Therefore, we hold Wells has failed to show that

but for the missing discovery, he would not have pled guilty. *See Hill v. Lockhart*, 474 U.S. 52, 59 (1985) ("[I]n order to satisfy the 'prejudice' requirement, the [petitioner] 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."); *Palacio v. State*, 333 S.C. 506, 512-13, 511 S.E.2d 62, 65-66 (1999) (holding the applicant failed to demonstrate any prejudice resulted from trial counsel's failure to obtain all discovery documents before trial because "the contents of these documents were never revealed at the PCR hearing," resulting in no "evidence of probative value demonstrating how the failure to obtain the unproduced statements or acquire the other documents in a more timely fashion prejudiced the defense").

REVERSED.[1]

THOMAS, MCDONALD, and TURNER, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ERICK E. WELLS,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2023-001835

Appeal from Richland County

Honorable Jean H. Toal, Circuit Court Judge

Unpublished Opinion No. 2026-UP-071
Submitted February 3, 2026-Filed February 18, 2026

PETITION FOR REHEARING

On February 18, 2026, this Court reversed the lower court's order granting Mr. Erick Wells post-conviction relief (PCR) where the state argued the PCR court erred in finding Mr. Wells entered his guilty plea involuntarily and that plea counsel was constitutionally ineffective. *Wells v. State*, Op. No. 2026-UP-071 (S.C. Ct. App. Filed Feb. 18, 2026). Mr. Wells respectfully requests rehearing pursuant to Rule 221(a), SCACR, considering the significant points overlooked and/or misapprehended by this Court, discussed below.

In its opinion this Court reversed pursuant to Rule 220(b), SCACR, and held "probative evidence [did] not support the PCR court's finding that Wells's guilty plea was involuntary and

that plea counsel was ineffective because Wells pled guilty with the understanding of the charges against him, the potential sentences he faced, and the rights he would waive." *Wells v. State*, Op. No. 2026-UP-071 (S.C. Ct. App. Filed Feb. 18, 2026). This Court further found his guilty plea was made with the decision not to pursue trial in which the discovery related to his actual guilt had been obtained, and the fact Mr. Wells had not reviewed all discovery did not preclude him from voluntarily entering a guilty plea. *Id.*

There is probative evidence in the record to support the PCR court's finding that Mr. Wells's guilty plea was involuntary and that plea counsel was ineffective. Without the benefit of reviewing *important* discovery Mr. Wells could not have made a voluntary guilty plea. Testimony at the evidentiary hearing revealed the discovery Mr. Wells was given did not include a police report containing information that an officer's gun accidentally discharged during their entry to search. Moreover the state was rushing and "threatening to call [Wells's case] for trial pretty early on in the case." App. 91, ll. 1-5. Defense counsel went as far as to file a motion to compel discovery looking for specific information he believed was relevant to Mr. Wells's trafficking case. Mr. Wells never received the discovery counsel sought and therefore did not have evidence that would have been crucial to his determination whether to continue to trial or to accept a plea offer. Additionally, counsel's testimony revealed he felt the state was pressuring him aggressively and would call the case to trial without even counsel having seen all of the discovery. App. 94, ll. 10-25. Counsel claimed he discussed with Mr. Wells that he had "certain defenses" related to the lack of information and what could be done at trial. App. 95, ll. 3-13.

The PCR court correctly found counsel was deficient where it was unreasonable for defense counsel to advise Mr. Wells to plead guilty without having reviewed relevant discovery. Counsel's advice to Wells that he should plead guilty without having himself seen all of the

discovery he requested was deficient performance. The court's finding of deficiency is supported by testimony from the evidentiary hearing. Mr. Wells testified he pled guilty without having seen full discovery in his case. Counsel's testimony corroborated Mr. Wells's testimony. Defense counsel admitted he did not have all the discovery in Mr. Wells's case at the time of his guilty plea. Mr. Wells's exhibits, defense counsel's motion to compel discovery and email from defense counsel, admitted during the hearing further support the contention that Mr. Wells did not have the benefit of reviewing favorable discovery prior to pleading guilty.

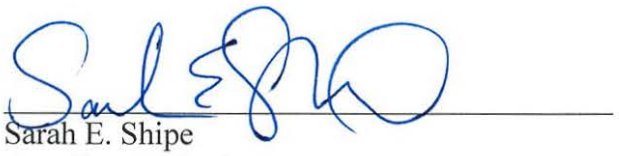
This Court also held that probative evidence did not support the PCR court's finding of prejudice in this case because the actual contents of the missing discovery were not introduced or testified to at the evidentiary hearing. *Wells v. State*, Op. No. 2026-UP-071 (S.C. Ct. App. Filed Feb. 18, 2026).

The PCR court correctly found Mr. Wells was prejudiced by this deficiency where but for counsel's inaccurate advice he would not have pled guilty and instead gone to trial. Additionally, testimony from the evidentiary hearing showed the state failed to answer the requests for discovery in Mr. Wells's case. Mr. Wells testified unequivocally that were it not for the advice of defense counsel he would have continued to trial. Mr. Wells specifically testified if he had seen this discovery, he would have continued to trial instead of taking a guilty plea. Instead, his decision whether to plead guilty or continue to trial was rushed and pressured by defense counsel who failed to hold the state to their duty to disclose discovery and as such gave Mr. Wells bad advice as a result.

Mr. Wells was urged by defense counsel to plead guilty in front of a visiting judge, which counsel hoped would be lenient. Counsel was motivated, according to his own testimony, because the state was threatening to call the case quickly. Counsel testified he did not have all

the necessary discovery and did not believe he would have it before trial. Mr. Wells was faced with making a decision to choose a trial where his counsel could not be prepared, because he had not seen all of the state's evidence, or taking a guilty plea in front of a judge he was assured would be lenient. The PCR court noted trial counsel was not intentionally deficient, but counsel was induced where the state failed to turnover discovery after counsel repeatedly requested it. However, defense counsel's good intentions do not change the fact that Mr. Wells was prejudiced by his where he testified, he would have gone to trial but for counsel's advice to plead guilty.

The PCR court correctly remanded Mr. Wells's case for a new trial and this Court should rehear this case and affirm the lower court's grant of PCR.



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR RESPONDENT

This 5th day of March, 2026.

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Mar 05 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable Jean H. Toal, Circuit Court Judge

ERICK E. WELLS,

RESPONDENT

V.

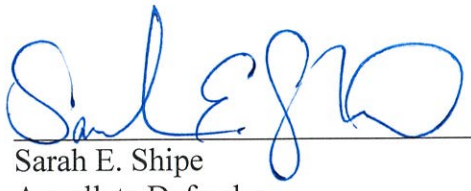
STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2023-001835

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Erick E. Wells, #281942, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 5th day of March, 2026.



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ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

Erick E. Wells, Respondent,

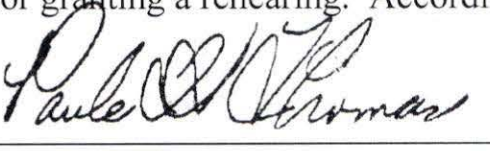
v.

State of South Carolina, Petitioner.

Appellate Case No. 2023-001835

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



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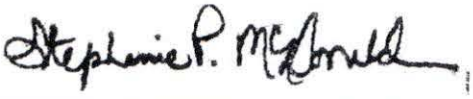

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J.

Columbia, South Carolina

cc:
Mark Reynolds Farthing, Esquire
Sarah Elizabeth Shipe, Esquire
Alan McCrory Wilson, Esquire
Erick E. Wells, 281942
The Honorable Jean Hoefer Toal

FILED
Mar 24 2026