STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

Unpublished Opinion No. 2026-UP-071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

Lower Court Case No. 2017-CP-40-4543

ERICK E WELLS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001835

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on March 24, 2026.

QUESTION PRESENTED

Did the Court of Appeals err in holding probative evidence did not support the post-conviction relief court's findings that Erick Wells's guilty plea was involuntary and that plea counsel was ineffective where Mr. Wells did not have the benefit of reviewing important 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 OF THE CASE

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. On December 7, 2016, an evidentiary hearing was held before the Honorable Jean H. Toal. App.

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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.

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 ruled from the bench. The court 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 PCR 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.

The Court of Appeals reversed the PCR court's grant of relief in *Wells v. State*, 2026-UP-071 (S.C. Ct. App. filed Feb. 3, 2026). Petitioner sought rehearing which was denied on March 24, 2026.

This petition for a writ of certiorari follows.

ARGUMENT

There is probative evidence in the record to support the post-conviction relief 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.

Relevant 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 guilty 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.

In mitigation defense counsel told the court this was a "global plea" which combined three separate investigations. Counsel admitted to the plea court that 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 the reason Mr. Wells ran when 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 entering 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 the discovery prior to Mr. 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 the plea judge, Judge Cothran, was a

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[3] The solicitor agreed an officer's gun accidentally fired during the search. App. 15, l. 25-16, l. 2.

"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 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 contended 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 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 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. Counsel filed a motion to compel discovery looking for 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 outstanding and that it likely would not be available before trial or at all. App. 94, ll. 10-25. Counsel 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 that would have been made. That is troubling" App. 110, ll. 5-10.

The court requested counsel for Mr. Wells and counsel for the state collaborate on a proposed order granting Mr. Wells 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.

Discussion

Contrary to the Court of Appeals opinion, 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.

This Court 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

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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.

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) 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.

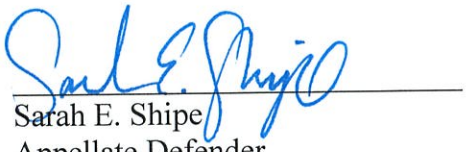
Mr. Wells was urged by trial counsel to plead guilty in front of a visiting judge, which counsel hoped would be lenient. Counsel was motivated, according to his own testimony, because the state was threatening to call the case quickly. Counsel testified he did not have all the necessary discovery and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

The PCR court properly granted relief and this Court should grant his petition for a writ of certiorari to review the Court of Appeals' decision.

CONCLUSION

Based on the foregoing argument, a writ of certiorari should be issued to allow full briefing on these issues.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of April, 2026.

STATE OF SOUTH CAROLINA

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ERICK E WELLS,

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V.

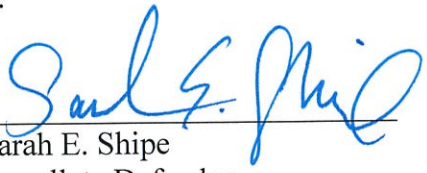
STATE OF SOUTH CAROLINA,

RESPONDENT

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 writ of certiorari to the Court of Appeals and appendix 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 the South Carolina Court of Appeals; and on Erick E. Wells, #281942, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 10th day of April, 2026.



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