RECEIVED
Apr 10 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

KENYA R. JENKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001739

JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

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

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Was petitioner's guilty plea knowing and voluntary when he testified at PCR that he wanted to go to trial and only pled guilty because he mistakenly thought he would receive the death penalty?

STATEMENT

Petitioner was indicted in Richland County for armed robbery and a weapons charge. App. 86-89. On November 9, 2021, petitioner pled guilty before the Honorable Robert E. Hood. App. 1. Bret West represented the State and Richard Marsh represented petitioner. App. 1. Judge Hood sentenced petitioner to ten years' imprisonment for armed robbery and a concurrent term of five years' imprisonment on the weapons charge. App. 11. Petitioner did not appeal.

On April 27, 2022, petitioner filed a PCR application. App. 13. On January 12, 2023, the Honorable George M. McFaddin held a hearing. App. 35. Michael L. Lifsey represented petitioner and Danielle Dixon represented the State. App. 35. On August 20, 2025, Judge McFaddin denied relief. App. 77. This petition follows.

ARGUMENT

Petitioner's guilty plea was unknowing and involuntary because he mistakenly thought he would receive the death penalty.

Petitioner informed both his original attorney and plea counsel Marsh that he wanted to go to trial instead of pleading guilty. App. 40-41. At Marsh's initial visit, petitioner told him he wanted an investigator to look into the suggestiveness of the victim's identification and the firing of the arresting officer for misconduct. App. 40. Marsh refused to get an investigator. App. 49. Marsh replied he was "100-percent sure" petitioner would be convicted if he went to trial. App. 41. Marsh also told petitioner he would "definitely get the max." App. 41.

Petitioner understood "the max" to mean the death penalty because of the wording of the indictment on the weapons charge. App. 41. The cover page on the indictment says, "Indictment for WEAPONS / POSS. WEAPON DURING VIOLENT CRIME, IF NOT ALSO SENTENCED TO LIFE WITHOUT PAROLE OR DEATH." App. 88. Petitioner, a layman, misread this part of his indictment as informing him he could get the death penalty. App. 41-43. He said he thought the sentence would be, "Death. It says it. It says it on the paper. It says life without parole or death." App. 42.

Petitioner testified Marsh told him if he plead, he would get five years. App. 44. "He never said that if I went to trial and lost trial then they won't—they wasn't going to kill me. App. 44. Marsh admitted he never told petitioner that the weapons charge did not carry the death penalty. App. 62. Petitioner only understood the weapons charge carried a maximum of five years after he got to prison. App. 43-44.

Marsh did not meet with petitioner enough times for petitioner to fully understand the charges and what they carried. App. 45. He did not review notes petitioner gave him. App. 44.

Plea counsel was too busy with other cases. App. 44-45. His only concern during their meetings was getting petitioner to accept a plea. App. 44-45.

During the plea colloquy, petitioner answered that he was guilty, that he understood the crimes and the sentences, and that he was satisfied with his attorney because of how he was prepared by plea counsel. App. 45-46. Plea counsel told him if he did not answer the judge's questions in the right way, the judge would refuse the plea and he "would be catching the max," which, in petitioner's mind, meant execution. App. 46.

The PCR court denied relief on this ground. App. 82-83. The court found petitioner's testimony about the maximum sentence not credible. App. 83. The court also credited the plea colloquy where petitioner indicated he understood the maximum sentence was five years. App. 83. The court also denied relief on the ground that petitioner was coached into answering questions at the colloquy. App. 83-84.

The PCR court erred in finding petitioner's misunderstanding regarding the death penalty was not credible. Petitioner's failure to understand the potential sentence he faced meant that his plea could not be knowing and voluntary. His confidence in his attorney was shattered by the refusal to hire an investigator. "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 566 U.S. 156, 162 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 559 U.S. 356, 364 (2010) (internal quotations omitted). Plea counsel has a duty to conduct an independent investigation. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

"An accused is entitled to counsel's considered and reasonable judgment." Simuel v. State, 432 S.C. 150, 154, 850 S.E.2d 642, 644 (Ct. App. 2020). Counsel must conduct a reasonable investigation before making strategic judgments about the course of the litigation. Wiggins v.

Smith, 539 U.S. 510, 522-23 (2003). The reviewing court conducts an objective review of counsel's performance measured against prevailing professional norms. Id.

These considerations also apply to a defendant's understanding of potential sentences. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant's trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. Hinson found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

The prejudice component in a guilty plea is whether petitioner would have reasonably chosen to go to trial; not whether he would have been convicted. Smith v. State, 369 S.C. 135, 631 S.E.2d 135 (2006). A defendant's testimony that he would have gone to trial can suffice to prove prejudice in a guilty plea PCR. See id.

In Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991), plea counsel was ineffective for erroneously advising the defendant that he faced a sentence of life without parole. Id. at 375, 401 S.E.2d at 152. The State argued that since the defendant faced a possible seventy-five year sentence, he could not have been prejudiced by the erroneous advice. Id. at 376, 401 S.E.2d at 152-53. The Ray Court dismissed the State's reliance on a "possible" maximum sentence because had the defendant proceeded to trial, he could have faced a much shorter sentence. Id. Here, just like in Ray, the defendant's misconception about the maximum sentence induced a guilty plea. Petitioner proved prejudice by adamantly insisting he would have gone to trial. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.

David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 10th day of April, 2026.

RECEIVED
Apr 10 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

KENYA R. JENKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

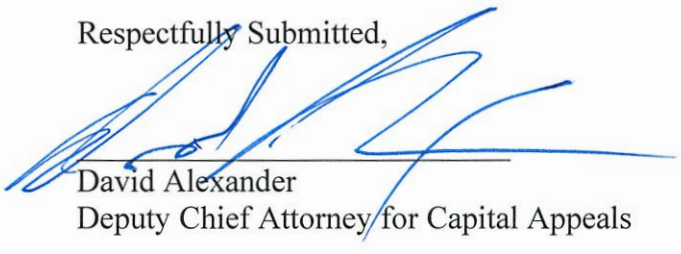
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kenya Jenkins states:

1. He is Deputy Chief Attorney for Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, which was held on Jan. 12 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Kenya Jenkins.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 10th day of April, 2026.

RECEIVED

Apr 10 2026

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

David Alexander
Deputy Chief Attorney for Capital Appeals

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

ATTORNEY FOR PETITIONER

This 10th day of April, 2026.