RECEIVED
May 07 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Marvin H. Dukes, III, Circuit Court Judge

TARELL L. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002322

JOHNSON PETITION FOR WRIT OF CERTIORARI

JOANNA K. DELANY
Appellate Defender

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

Whether the court erred in denying post-conviction relief, where counsel provided ineffective representation which resulted in Petitioner's entry of pleas that were not knowingly, intelligently, and voluntarily tendered?

STATEMENT

Procedural history

During the November term of 2023, a Charleston County Grand Jury indicted Petitioner for first-degree burglary and second-degree arson. App. 61 – 64. On January 30, 2024, Petitioner appeared before the Honorable Roger M. Young, Sr., for a guilty plea hearing. Petitioner was represented by Gregory Voigt. Charles Patrick, III, prosecuted the case. App. 1. Trial of the case had already begun when the proceedings switched to a plea. App. 4, ll. 19-23; App. 44, ll. 18-22. Petitioner pleaded guilty "straight up" as indicted. App. 4, ll. 3-13. The court engaged in a plea colloquy with Petitioner and it heard the facts of the case as recited by the solicitor. The court found Petitioner's pleas were voluntarily entered and it found a substantial factual basis to accept the pleas. App. 4, l. 19 – 9, l. 2. Petitioner was sentenced to serve concurrent twenty-year terms of imprisonment for each offense. App. 14, ll. 9-13; App. 65 – 68.

On or about March 22, 2024, Petitioner filed an application for post-conviction relief (PCR). App. 16 – 22. On May 15, 2025, the State served its return. App. 23 – 28. On August 6, 2025, a hearing was held on the matter before the Honorable Marvin H. Dukes, III. Christopher Murphy represented Petitioner. Kylee Kanealey appeared on behalf of the State. App. 29. On November 17, 2025, the PCR court issued an order of dismissal. App. 55 – 50. This petition for writ of certiorari follows.

Relevant facts

At the guilty plea hearing, the State alleged as follows. On December 28, 2021, North Charleston Police Department and Fire Department responded to a structure fire at a residential building. A subsequent investigation determined the fire was set intentionally. App. 7, ll. 14-24.

According to the State, there was Ring surveillance video from a neighboring home which showed the suspect leaving the building next door when the smoke detector was going off. App. 7, l. 25 – 8, l. 4. The solicitor also claimed there were incriminating text messages between Petitioner and the victim, and that a neighbor identified Petitioner in a photographic lineup. App. 8, ll. 5-12. Counsel told the court that since being detained, Petitioner had been diagnosed with schizophrenia and was now taking medication, and a few days before this Petitioner's friend died in front of him from a drug overdose, sending him into a "spiral." App. 11, ll. 11-17.

At the PCR hearing, Petitioner explained he did not want to plead guilty. However, he had repeatedly written to counsel and asked to see the video surveillance footage, which Petitioner explained should have shown there were "no grounds" for the burglary (and thus for the ensuing arson). Petitioner averred the camera would have shown he simply knocked on the door and "never stepped foot in the house." App. 33, l. 24 – 34, l. 2; App. 35, l. 21 – 38, l. 3. After beginning trial and still not having been able to see the video, Appellant pleaded guilty because he felt counsel was unprepared for trial. App. 39, ll. 8-10.

Counsel did not disagree with Petitioner on an important point—he admitted Petitioner had never seen the video. Counsel claimed there was "no way to play the media" (apparently because Petitioner was held in pre-trial detention for 749 days). Nevertheless, counsel claimed he himself had viewed the video footage and had discussed it with Petitioner. Counsel claimed the video showed a man with a similar build to Petitioner approach the apartment and raise a leg as if to kick in the door. The man's face was not identifiable from the footage. App. 14, ll. 12-13; App. 42, l. 22 – 44, l. 2; App. 50, ll. 2-3. Counsel stated he believed Petitioner understood what he was doing as far as the voluntariness of his pleas. App. 48, ll. 7-22.

In its order of dismissal, the PCR court concluded,

> This Court finds Counsel thoroughly discussed the discovery with Applicant. Applicant did not present the video he allegedly did not see and did not present any testimony that had he seen the video, he would have insisted on going to trial instead of pleading guilty. This Court further finds Applicant has failed to set forth what more Counsel should have done regarding the discovery or discussed further that would have changed his decision to plead guilty. *See Hill* at 59. This Court finds Applicant has failed to meet his burden of proving deficiency and prejudice and thus, this claim is denied.

App. 58. The order of dismissal further stated, "based on the evidence presented at the plea hearing and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty. Applicant has failed to prove deficiency and prejudice[.]" App. 59.

ARGUMENT

The court erred in denying post-conviction relief, where counsel provided ineffective representation which resulted in Petitioner's entry of pleas that were not knowingly, intelligently, and voluntarily tendered.

The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). Waivers "of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Gustine v. State*, 325 S.C. 123, 128, 480 S.E.2d 444, 446 (1997) (quoting *Brady v. United States,* 397 U.S. 742, 748 (1970)). A "defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999) (quoting *Sanchez v. United States,* 50 F.3d 1448, 1453 (9th Cir. 1995)).

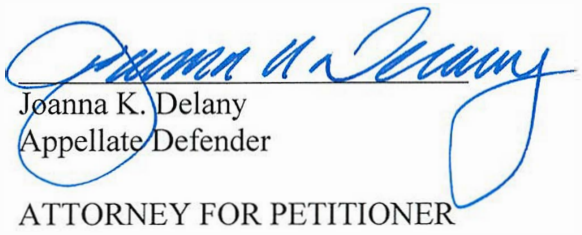
The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A defendant is entitled to the effective assistance of competent counsel before deciding whether to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and the deficient performance prejudiced him. *Strickland*, 466 U.S. at 687.

"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." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing *Hill v. Lockhart*, *supra*). "The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial." *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018).

Counsel's advice that Petitioner plead guilty was deficient performance given his failure to show important discovery to Petitioner. Many defendants are detained pre-trial. In modern times, much discovery is digital. Counsel should have had Petitioner transported to watch the video at the courthouse or arranged for him to watch the video in a designated area at the detention center. His failure to do so fell below reasonable professional norms. *Strickland*, 466 U.S. at 687. Petitioner understandably believed counsel was unprepared for trial. Petitioner asked to see the video, and he needed to do so to determine the strength of the case against him. Without doing so, he could not make an informed decision about which course to pursue and his guilty pleas were not knowing and intelligent. Thus, counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, intelligently, and voluntarily tendered. Petitioner has proven error and prejudice. *Hill v. Lockhart*, 474 U.S. at 56; *Frierson v. State*, 423 S.C. at 262, 815 S.E.2d at 436. This Court should grant the petition for writ of certiorari.

CONCLUSION

Based on the forgoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on this issue.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of May, 2026.

RECEIVED
May 07 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Marvin H. Dukes, III, Circuit Court Judge

TARELL L. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tarell Richardson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Marvin H. Dukes, III, which was held on Aug. 6, 2025, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Tarell Richardson.

Respectfully Submitted,

Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of May, 2026.

RECEIVED

May 07 2026

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

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

Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR PETITIONER

This 7th day of May, 2026.