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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

Honorable Edward W. Miller, Circuit Court Judge

MICHAEL DAUGHERTY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002435

JOHNSON PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
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ISSUE PRESENTED

Was the guilty plea rendered involuntary by the fact that, based on a confusing example provided by plea counsel, Petitioner believed he would receive a sentence of between ten and twelve years for voluntary manslaughter and possession of a weapon during the commission of a violent crime but instead was sentenced to twenty-five years for voluntary manslaughter and five years consecutive for the weapon charge?

STATEMENT

In October of 2020, the Clarendon County Grand Jury indicted Petitioner, Michael Leon Daugherty, for murder and possession of a weapon during the commission of a violent crime, indictment #2020-GS-14-0352. (App. pp. 27-28). On January 10, 2022, Petitioner appeared before the Honorable D. Craig Brown and pled guilty to voluntary manslaughter and possession of a weapon during the commission of a violent crime. Timoth L. Griffith represented Petitioner. Darla F. Pierce represented the State. Judge Brown sentenced Petitioner to twenty-five (25) years for voluntary manslaughter and five (5) years consecutive for the weapon charge. (App. pp. 29-32). Petitioner did not appeal the sentence or conviction.

On June 27, 2022, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 33-39). The State filed a return on September 6, 2022. (App. pp. 40-50). Petitioner filed an amended PCR application on October 17, 2022. (App. pp. 51-55). On November 3, 2022, an evidentiary hearing was held before the Honorable Edward W. Miller. Michael H. Lifsey represented Petitioner. Zachary W. Jones represented the State. In a written order filed November 25, 2025, Judge Miller granted relief in part and denied relief in part. (App. pp. 86-99). The State did not appeal the part of the order granting relief in the form of re-sentencing for the weapon charge. A timely notice of intent to appeal was filed on December 9, 2025. This appeal follows.

ARGUMENT

The guilty plea was rendered involuntary by the fact that, based on a confusing example provided by plea counsel, Petitioner believed he would receive a sentence of between ten and twelve years for voluntary manslaughter and possession of a weapon during the commission of a violent crime but instead was sentenced to twenty-five years for voluntary manslaughter and five years consecutive for the weapon charge.

In the amended PCR application Petitioner alleged, "Applicant's plea counsel informed Applicant that he would receive a sentence of between 10 and 12 years and not the 25 year sentence for Voluntary Manslaughter and the 5 year consecutive sentence for Possession of a Weapon During the Commission of a Violent Crime that Applicant actually received. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial." (App. p. 52).

During the PCR hearing when asked what plea counsel advised about sentencing, Petitioner testified, "He [plea counsel] said the judge going to give me 10 or 12 years and I tell him I'd take it." (App. p. 67, lines 3-4). The following took place between PCR counsel and Petitioner:

> Q. So are you saying you plead guilty because you thought you were going to get 10 to 12 years?
>
> A. Yes, sir.
>
> Q. Is that what you got?
>
> A. No, sir.
>
> Q. Okay. Would you have pled guilty if you knew you weren't going to get – if you knew you were going to get 30 years in prison?
>
> A. I wasn't going to take it.
>
> Q. Sorry, what's that?
>
> A. I wasn't going to take it.

Q. What would you have done if you had known the judge was going to give you 30 years in prison? Would you have pled or would you have had a jury trial?

A. I would have insisted on a jury trial.

(App. p. 67, lines 5-19).

During the PCR hearing plea counsel testified:

When we started getting closer to some kind of arrangement for a trial or whether he was going to plea or not and I negotiated with the solicitor and they agreed that he could plead to voluntary manslaughter, I explained to him the difference that it carried up to 30 years; but when I was – he says that I told him he was only going to get such and such. I said, but a lot of times you may or may not get that, I've seen people et 10 or 12 years, 15 years, but it's always up to the judge. I cannot predict for you what the judge would do, but it carries up to 30 years.

(App. p. 73, lines 5-14).

In the order the PCR judge correctly granted relief in the form of a remand for re-sentencing on the weapon charge. (App. pp. 96-98). The PCR judge, however, erred in denying relief for the voluntary manslaughter charge writing:

During the guilty plea colloquy, the plea court clearly informed Applicant that he was entering a plea to voluntary manslaughter and possession of a weapon during the commission of a violent crime, with no negotiations or recommendations as to sentencing; the plea court told Applicant he was facing up to thirty years for voluntary manslaughter and five years, consecutive, for the weapon charge. (Tr. P. 4, line 15 – p. 5, line 1; p. 6, line 14-p.7, line 3). Applicant consistently, and under oath, responded that he understood the plea court's statements. In addition, at the evidentiary hearing, Counsel denied ever telling Applicant that he would receive only 10-12 years. Counsel testified he informed Applicant that the sentence would be up to the judge, that Applicant was facing up to thirty years on manslaughter and five years on the weapon charge, and that he could not predict what the judge would do and there were no guarantees. Counsel explained he simply mentioned 10-12 years as an example of lower sentences that he had seen judges impose for voluntary manslaughter in the past, as part of his explanation that the judge could choose to sentence Applicant to less that the maximum.

The Court finds Counsel's testimony credible, and Applicant's contrary testimony not credible, as to this issue. Applicant's statements at the guilty plea colloquy refute his current claim that he believed he was only facing 10-12 years for pleading guilty. The Court finds Applicant has failed to meet his burden of

> proving Counsel improperly promised him a 10-12 year sentence. Accordingly, this allegation is denied and dismissed with prejudice.

(App. p. 94). The PCR judge erred. Petitioner was aware that voluntary manslaughter carried up to thirty years. Counsel's confusing example of a ten-to-twelve-year sentence, however, implied that Petitioner would receive a comparative sentence. The confusing example rendered the guilty plea involuntary.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "To find a guilty plea

is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.' " Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.' " Hill, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

> In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), "[I]n order to satisfy the 'prejudice' requirement, the defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial."

Plea counsel was deficient for providing the confusing example of a ten-to-twelve-year sentence for voluntary manslaughter. There is a reasonable probability that, but for counsel's deficient performance, Petitioner would not have pled guilty and would have insisted on going to trial.

CONCLUSION

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

Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of May, 2026.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Daugherty states:

1. She is Senior Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Edward W. Miller, which was held on Nov. 3, 2022, 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 Michael Daugherty.

Respectfully Submitted,

Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of May, 2026.

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CERTIFICATE OF COUNSEL

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

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This 8th day of May, 2026.