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May 21 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

CARY STEPHENS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002315

JOHNSON PETITION FOR WRIT OF CERTIORARI

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where he only pled guilty due to trial counsel's promise that he would be sentenced to thirty years imprisonment if he pled guilty instead of proceeding to trial and where Petitioner was actually sentenced to forty years?

STATEMENT OF THE CASE

Petitioner shot his girlfriend, Deja Dantley, in the parking lot of the Citadel Mall in Charleston during the early evening hours of February 26, 2019. Witnesses claimed the two had been arguing about their relationship for roughly twenty minutes. As the two were leaving, each in their own car, the state claimed Petitioner fired one shot at Dantley, killing her. App. 12, l. 1 – 13, l. 25.

A Charleston County grand jury indicted Petitioner on September 9, 2019, for murder and possession of a weapon during the commission of a violent crime. App. 120-123. Petitioner pled guilty as indicted on October 11, 2022, before the Honorable R. Lawton McIntosh. App. 1. Solicitor Scarlett Wilson represented the state. Peter McCoy represented Petitioner. App. 1. At the beginning of the plea proceeding, the solicitor informed the court that the parties had negotiated a sentence range of thirty to forty years imprisonment. App. 4, ll. 10-14. At the conclusion of the hearing, Petitioner was sentenced to forty years' imprisonment. App. 32, ll. 12-17. On October 19, 2022, Petitioner filed a motion to reconsider his sentence. App. 34. By order filed October 31, 2022, the court denied Petitioner's motion without a hearing. App. 35.

On October 10, 2023, Petitioner file an application for post-conviction relief (PCR) raising the claim argued in this petition. App. 36-56. The state filed a return to this application on December 16, 2024. App. 57-62. An evidentiary hearing was convened on August 6, 2025, before the Honorable Marin Dukes, III. App. 63. Assistant Attorney General Kylee Kanealey represented the state. Christopher L. Murphy represented Petitioner. App. 63.

Petitioner testified at the hearing that the decedent was his girlfriend and that he was her "only support system" because her family lived in Washington, D.C. The couple was transient and would go "from hotel to hotel" or sneak into Petitioner's mother's house. Petitioner

explained that on the day of the shooting, the decedent was angry because she discovered that Petitioner had cheated on her. Petitioner would often "go sit at the mall" by himself. On that day, the decedent found Petitioner parked outside the mall. She began yelling at Petitioner. Petitioner tried to ignore her and went into the mall. The decedent followed Petitioner into the mall and continued to yell at him. Because she was so loud, after about fifteen minutes, Petitioner went back outside. He left the mall in his car, but the decedent continued to follow Petitioner in her own car. Petitioner drove around "the Ponderosa area" and tried "to lose her" but the decedent continued to chase Petitioner. Petitioner testified that he drove back to the mall and parked. After the two argued again, Petitioner told the decedent to stop following him. He explained that he pointed a gun at the decedent "and the gun went off." At the time of the shooting, Petitioner and the decedent were both in their own cars and Petitioner was trying to leave. Petitioner testified that he did not mean to shoot the decedent. He was only trying to scare her, "like, 'Please quit following me.'" Petitioner maintained that despite their "toxic relationship," he never wanted to cause the decedent any harm and always tried to be her "protector." App. 69, l. 7 – 77, l. 4.

Based on what occurred, Petitioner testified that he wanted trial counsel to pursue an accident defense or seek a conviction on a lesser included offense. He maintained that had trial counsel thoroughly reviewed the evidence, the outcome of his case would have been different. App. 69, l. 19 – 70, l. 25.

Moreover, Petitioner testified that before he pled guilty, trial counsel's paralegal, the person who informed him of the plea offer, told Petitioner that the offer was a negotiated thirty year sentence. Accordingly, when Petitioner signed the plea "paperwork" with counsel's paralegal, Petitioner thought he would receive a thirty year sentence. However, about five

minutes before the plea hearing began, Petitioner learned the negotiated sentence was actually a range of thirty to forty years. At that point, Petitioner tried to back out of the plea and told trial counsel that he wanted to go to trial, but counsel pressured Petitioner to plead guilty. Counsel brought Petitioner's mother into the room where the two were meeting and Petitioner's mother, who was crying, told Petitioner to "take the plea." Counsel told Petitioner he had "to go through" with the plea that day. Petitioner testified that if he would have known the negotiated agreement included a sentence range of thirty to forty years before the day of his plea, he would have rejected the offer and gone to trial. Tr. 81, l. 3 – 83, l. 1.

Peter McCoy, Petitioner's trial counsel, testified that he thoroughly reviewed all of the evidence and felt the evidence against Petitioner was overwhelming. App. 87, l. 19 – 88, l. 20. McCoy explained that he was retained by Petitioner's family roughly three years after Petitioner's arrest. During the two months prior to Petitioner's plea, McCoy testified that either he or his paralegal met with Petitioner somewhere between five and nine times. McCoy believed he spent "adequate" time with Petitioner. App. 85, l. 25 – 87, l. 24.

McCoy testified that his "understanding from the moment [he] got on the case" was that Petitioner did not want to go to trial. App. 91, ll. 4-7. He discussed with Petitioner the negotiated sentence, which was a range of thirty to forty years. According to McCoy, he never told Petitioner that he would be sentenced to only thirty years. McCoy maintained that he does not tell clients what is going to happen in court. However, McCoy believed thirty years was an "appropriate" sentence given Petitioner's acceptance of responsibility and his remorse. App. 94, l. 11 – 95, l. 19.

By order filed November 10, 2025, the PCR court denied Petitioner relief. App. 113-119. The court found Petitioner freely, knowingly, and voluntarily pled guilty. App. 118. In support

of this finding, the court concluded that trial counsel credibly testified that he discussed the terms of the plea with Petitioner. Moreover, the court emphasized that Petitioner told the plea judge that no one had forced, threatened, or promised him anything in an effort to get him plead guilty and that he understood the sentencing range of the negotiated plea. App. 117.

Because Petitioner did not knowingly, intelligently, and voluntarily plead guilty due to plea counsel's promise that Petitioner would be sentenced to thirty years imprisonment if he pled guilty, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where Petitioner only pled guilty due to trial counsel's promise that he would be sentenced to thirty years imprisonment if he pled guilty instead of proceeding to trial and where Petitioner was actually sentenced to forty years.

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to the improper influence of trial counsel's promise that the judge would sentence Petitioner to thirty years' imprisonment if he pled guilty. Petitioner was prejudiced because, as Petitioner's testimony indicated, he would not have pled guilty but for counsel's promise that he would be sentenced to thirty years.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "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; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. In the context of a guilty plea, a petitioner must show that counsel's performance was deficient, and "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." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); See Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927

(2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). This Court has held that a "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000)); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

The difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). "The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (internal quotations omitted) (applying the two part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984), to claims of the same against plea counsel).

"The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled." Strickland, 466 U.S. at 685 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275-276 (1942)). A guilty plea that was "entered by one fully aware of the direct consequences . . . must stand *unless* induced by . . . misrepresentation (including unfulfilled or unfulfillable promises) . . . " Brady v. United States, 397 U.S. 742, 755 (1970) (emphasis added) (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (reversed on other grounds, 356 U.S. 26 (1958)). Accordingly,

counsel provides ineffective assistance in the adversarial system when he induces the defendant to plead guilty.

In this case, Petitioner was induced into pleading guilty by trial counsel's statement to Petitioner that he would be sentenced to the mandatory minimum of thirty years imprisonment if he pled guilty. This promise prevented Petitioner's guilty plea from being knowingly and voluntarily made and, consequently, rendered it invalid. See Berry, 381 S.C. at 635, 675 S.E.2d at 427. A plea is not voluntary when it is induced by misrepresentation, including unfulfilled promises. See Brady, 397 U.S. at 755. A reasonably competent criminal defense attorney would not have promised Petitioner that he would be sentenced to thirty years imprisonment when the negotiated sentence was not for thirty years, but rather a range of thirty to forty years imprisonment. Petitioner said he only learned about the actual sentencing range five minutes before his plea hearing began and that trial counsel told him it was too late at that point to back out and that Petitioner had to go through with the plea.

Moreover, there is a reasonable probability that but for trial counsel's statement that Petitioner would be sentenced to thirty years, Petitioner would not have pled guilty and would have insisted on proceeding to trial. Petitioner testified that he would not have pled guilty if he would have known the negotiated sentence was actually a range of thirty to forty years. Thus, Petitioner was prejudiced by counsel's promise. Lockhart, 474 U.S. at 59. It was *only* because of this promise that Petitioner decided to plead guilty.

Respectfully, as a result of the invalid plea and the resulting prejudice, Petitioner's convictions should be reversed and he should be granted a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of May, 2026.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cary Stephens states:

1. She is an 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, which was held on August 6, 2025, before the Honorable Marvin H Dukes, III, 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 Cary Stephens.

Respectfully Submitted,

Lara M. Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 21st 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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