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May 27 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marlboro County

Honorable S. B. Doby, Circuit Court Judge

ZAQUAI R. SHULER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000006

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

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ISSUE PRESENTED

Whether the PCR court erred in denying post-conviction relief where counsel failed to ensure Petitioner understood how much time he would serve upon the entry of the negotiated sentence, and where a guilty plea is invalid when it is entered in ignorance of its direct consequences, since Petitioner's guilty plea was not knowingly, intelligently and voluntarily tendered?

STATEMENT

Procedural history

On June 4, 2024, a Marlboro County Grand Jury indicted Zaquai Shuler, Petitioner, for attempted murder. App. 106 – 107. On August 27, 2024, Petitioner appeared before the Honorable Kirk Griffin for a guilty plea hearing. Petitioner was represented by Jacob Godwin. Margaret Scott prosecuted the case. App. 1; App. 3, ll. 10-11. The parties had negotiated a sentence of twelve years' imprisonment for the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN) in exchange for Petitioner's plea of guilty. App. 3, l. 10 – 5, l. 25. The court accepted the plea and accordingly sentenced Petitioner to twelve years. App. 9, ll. 7-12; App. 12, ll. 8-17.

On or about January 29, 2025, Petitioner filed an application for post-conviction relief (PCR). App. 14 -22. On or about July 18, 2025, the State made its return. App. 23 – 34. On September 3, 2025, a hearing was held on the matter before the Honorable S. Bryan Doby. Steven Fowler represented Petitioner. MacKinnon Westraad appeared on behalf of the State. App. 35. On December 29, 2025, the PCR court issued an order of dismissal. App. 83 – 105.

Relevant facts

Petitioner was an inmate at Evans Correctional Institution serving a ten-year sentence for armed robbery. App. 6, ll. 22-24; App. 8, ll. 13-16; App. 10, ll. 6-11; App. 47, ll. 1-2. In early 2024,¹ he was accused of, and subsequently indicted for, the offense of attempted murder for an alleged assault on Lieutenant Oscar Martinez, a corrections officer. App. 107; App. 6, l. 19 – 7,

¹ Although the indictment alleged the offense occurred on or about February 22, 2024, the prosecutor stated at the plea hearing that on January 27, 2024, the South Carolina Department of Corrections (SCDC) was notified regarding the inmate-on-employee assault. App. 107; App. 6, ll. 19-24. Similarly, counsel stated at the plea hearing the incident date was 214 days prior to the court date (which would place the incident date as January 27, 2024). App. 10, ll. 1-3.

l. 1. The State alleged Petitioner punched and kicked Martinez, causing a “brain bleed,” from which Martinez physically recovered. The State had video of the incident. App. 6, l. 19 – 8, l. 5.

On the day of his guilty plea, Petitioner was transported to the courthouse for the appointment of counsel. A public defender was present that day (counsel) and was appointed to represent Petitioner. App. 10, ll. 20-23; App. 67, ll. 4-21. Immediately after meeting with counsel for the first and only time, Petitioner pleaded guilty to the lesser offense of ABHAN for a negotiated sentence of twelve years. App. 69, ll. 3-12; App. 10, l. 20 – 11, l. 22; App. 3, ll. 10-16. However, as will be discussed below, when he entered the plea, Petitioner did not understand concurrent sentencing. He mistakenly thought it meant the sentence would be effectively backdated to the start of his other sentence.

Counsel told the plea judge that Petitioner was entitled to credit for 214 days from the incident date. App. 10, ll. 1-3. The court imposed the negotiated sentence of twelve years and ordered the sentence be run concurrent with the sentence Petitioner was already serving, and gave him credit for 214 days. App. 12, ll. 13-16.

At the PCR hearing, Petitioner explained his guilty plea was involuntary because counsel “told me if I took the plea, I would be doing two more years . . . he didn’t tell me I would be doing almost ten more years.” App. 47, ll. 10-20. “He told me if I take the 12-year plea, that it would be run concurrent, with my current SCDC sentence of ten years. And I asked him how much time I would have left and he said two years[.]” App. 47, ll. 1-4. “[H]e told me that I’d have two years left the whole time and I’m doing ten more years.” App. 47, l. 25 – 48, l. 1. Petitioner was surprised by his projected release date of 2034, “which would be nine years left.” App. 47, ll. 4-5. Petitioner noted his sentencing sheet only stated he would receive 214 days’ credit. App. 47, ll. 4-6. Petitioner stated counsel was ineffective because counsel did not “help

me out understand what is going on with my case.”² App. 64, ll. 21-23. Petitioner noted that as a layperson, he needed help from another inmate with the filing of his PCR application. App. 61, ll. 1-7; App. 21.

Counsel testified he showed Petitioner the video of the incident during their meeting. Counsel stated he expected the complainant would testify at a trial. App. 68, ll. 14-24. According to counsel, Petitioner wanted to take the plea offer that day and seemed to understand their discussions. App. 69, ll. 3-21. Counsel claimed he explained “concurrent versus consecutive” to Petitioner. Counsel stated he did not “understand [Petitioner’s] complaint about the time” that was being raised at the PCR hearing. App. 70, ll. 1-6.

The PCR court addressed the allegation that the plea was involuntary in the order of dismissal, and stated it would treat the claim of an involuntary plea as an ineffective assistance of counsel claim. App. 95; App. 94 – 100. The PCR court found Petitioner “did not present any evidence to this Court that his sentences were not running concurrently.” App. 99. The order stated:

Applicant [] argued that Plea Counsel misinformed him by telling him he would get credit for time served for the eight years he had already served on his ten-year sentence, and that he would thus serve only two additional years. However, Applicant clearly understood he would be serving more time than that, as he testified he specifically asked Plea Counsel if he could get time served or five years. Plea counsel told him he could not get that amount, and that even ten years would be pushing it. (PCR Tr. pp. 20, 29). Applicant also testified that his sentencing sheet reflected only 214 days of credit, with a twelve-year negotiated sentence to run concurrently with his active sentence, and he signed the sentencing sheet. (PCR Tr. pp. 13, 38). Combined with Plea Counsel’s testimony that Applicant seemed to understand the sentence he would receive and the meaning of a concurrent sentence, this Court

² Petitioner also testified that when discussing plea negotiations with counsel, Petitioner “tried to ask him to see if I could get time served or can I get like, five years or something, but he told me I can’t.” App. 53, l. 17 – 54, l. 3. “He said ten years is pushing it.” App. 63, ll. 12-13.

finds Plea Counsel was not deficient in advising Applicant of the time he would serve.

Applicant also failed to prove he suffered any prejudice on this allegation. He was facing a charge of attempted murder of an SCDC officer, with powerful video evidence and testimony from the victim. After seeing the video and speaking with Plea Counsel, he wanted to take a plea offer that day if he could. Thus, instead of facing thirty years in addition to his active sentence, Applicant could be released in the next ten years. This Court finds Applicant made the rational decision to take the offer, with an understanding of the length of the sentence and the consequences of the plea, and received the benefit of the bargain.

App. 99 – 100.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in denying post-conviction relief where counsel failed to ensure Petitioner understood how much time he would serve upon the entry of the negotiated sentence, and where a guilty plea is invalid when it is entered in ignorance of its direct consequences, since Petitioner's guilty plea was 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). The record must establish the defendant had “a full understanding of what the plea connotes and of its consequence.” *Boykin v. Alabama*, 395 U.S. 238, 244 (1969). Before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. 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. *Id.*, 395 U.S. at 243. Additionally, 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) (citing *Boykin, supra*). “A plea made in ignorance of its direct consequences is entered in ignorance and is invalid.” *Burnett v. State*, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003) (citing *State v. Hazel*, 275 S.C. 392, 275 S.E.2d 602 (1980)).

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). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. An applicant must prove “that counsel's performance was deficient” and fell below reasonable professional norms, and the deficient

performance prejudiced the applicant. *Id.* 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). “[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill v. Lockhart*, 474 U.S. at 58.

“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*). A “petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” *Padilla v. Kentucky*, 559 U.S. at 372. “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).

“When considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether information conveyed by the plea judge cured any possible error made by counsel.” *Burnett v. State*, 352 S.C. at 592, 576 S.E.2d at 145 (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998)).

Petitioner, a layperson, thought a concurrent sentence meant the twelve-year sentence for this offense would be wholly concurrent with his prior ten-year sentence for armed robbery, meaning he would only serve an additional two years. Petitioner explained he thought this because counsel told him this. Counsel misadvised Petitioner regarding the direct consequences

of his plea bargain—the amount of time in prison that he would serve as a result of entering the plea. Even if counsel did not misadvise Petitioner on this point, at a minimum, counsel failed to ensure Petitioner understood that a concurrent sentence did not mean the instant sentence was back-dated to his prior offense. Petitioner established deficient performance. *Strickland v. Washington*, 466 U.S. at 687. Petitioner’s plea was tendered in ignorance, without a full understanding of the consequences, because of the deficiency.

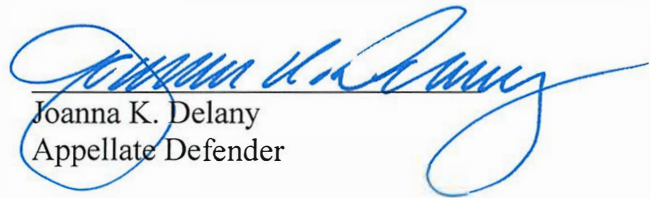
Although the PCR court found that Petitioner understood he would be serving more time than two years since he asked counsel if he could get time served or five years, this finding was error. App. 100. That fact does not reflect a correct understanding of concurrent sentencing. A time served or five-year sentence, back-dated to where Petitioner mistakenly thought a concurrent sentence would be back-dated, would have meant he served no time for the offense. A twelve-year sentence, back-dated to where Petitioner mistakenly thought a concurrent sentence would be back-dated, meant Petitioner would only serve two more years. Similarly, the PCR court’s finding—that Petitioner’s signature on the sentencing sheet showed his plea was intelligent since the sentencing sheet stated 214 days’ credit—is problematic. App. 100. Neither of the above circumstances show that Petitioner understood the amount of time he would be serving. Petitioner was a layperson who needed help simply to file his PCR application. App. 21.

Had Petitioner known his concurrent sentence was not wholly concurrent with his prior sentence (i.e., it would not be backdated to the start of his prior sentence) he would not have pleaded guilty and would have insisted on going to trial. A decision to reject the plea bargain would have been rational because Petitioner accepted the plea bargain to get the benefit of what he incorrectly understood to be effectively a two-year sentence. By incorrectly advising

Petitioner about his time credit, or, at a minimum, by failing to ensure Petitioner understood how a concurrent sentence would apply to this case, counsel's deficient performance resulted in Petitioner's entry of a plea that was not knowingly, intelligently and voluntarily tendered. Petitioner has proven deficiency and prejudice. *Hill v. Lockhart*, 474 U.S. at 56; *Frierson v. State*, 423 S.C. at 262, 815 S.E.2d at 436.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari to allow full briefing on this issue.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of May, 2026.

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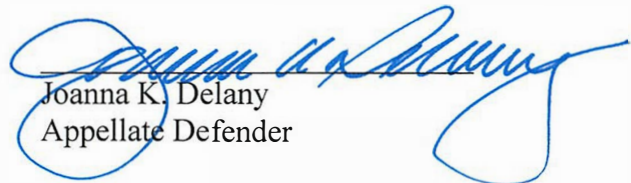
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Zaquai Shuler 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 S. B. Doby, which was held on September 3, 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 Zaquai Shuler.

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of May, 2026.

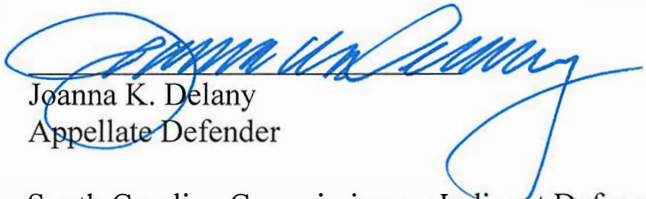
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CERTIFICATE OF COUNSEL

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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Appellate Defender

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Division of Appellate Defense
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This 27th day of May, 2026.