RECEIVED
May 21 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Beaufort County
The Honorable Carmen T. Mullen, Plea Judge
The Honorable Frank R. Addy, Jr., Post-Conviction Relief Judge

Appellate Case No. 2025-002107

CHRISTOPHER RAY SMITH, #294203,

PETITIONER-RESPONDENT,

v.

STATE OF SOUTH CAROLINA

RESPONDENT-PETITIONER,

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

KYLEE KANEALEY
Assistant Attorney General
S.C. Bar No. 107060

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR
RESPONDENT-PETITIONER

TABLE OF CONTENTS

PETITIONER'S STATEMENT OF ISSUE ON PETITION FOR CERTIORARI

Did the post-conviction relief court err in finding defense counsel was not ineffective where counsel misadvised Mr. Smith what percentage of his sentence he would serve, which rendered Mr. Smith's guilty pleas invalid because they were not intelligently made?

COUNTERSTATEMENT OF ISSUE ON PETITION FOR CERTIORARI

Whether the post-conviction relief court properly determined Petitioner failed to establish counsel's representation was deficient or the requisite prejudice necessary to reverse his conviction, where counsel did not misadvise Petitioner what percentage of his sentence he would serve?

STATEMENT OF THE CASE

In December 2020, the Beaufort County Grand Jury indicted Petitioner Christopher Ray Smith for two counts of PWID oxycodone (2020-GS-07-00334; -01417); trafficking heroin (2020-GS-07-00358); trafficking cocaine (2020-GS-07-00359); PWID buprenorphine (2020-GS-07-01418); PWID amphetamine (2020-GS-07-01419); and PWID alprazolam (2020-GS-07-01420). In June 2022, Petitioner was further indicted but waived presentment for trafficking methamphetamine (2020-GS-07-01415); trafficking heroin (2020-GS-07-01416); PWID amphetamine (2021-GS-07-01077); PWID buprenorphine (2021-GS-07-01078); and PWID oxycodone (2021-GS-07-01079). All of Petitioner's charges arose from three separate incidents.

On April 11, 2019, police discovered Petitioner's truck had crashed in a ditch on the side of the highway. Petitioner was inside his truck and appeared disoriented. After providing false information to the police, Petitioner was arrested, and his truck was searched incident to his arrest. The search revealed drugs, drug paraphernalia, and a large amount of cash in Petitioner's truck.[1]

On January 27, 2020, police conducted a traffic stop on Petitioner, during which police discovered Petitioner had an active arrest warrant. Police arrested Petitioner and discovered a multitude of different drugs in Petitioner's truck in a search incident to arrest.[2]

On July 16, 2020, police conducted surveillance on a hotel where they believed Petitioner was staying. When Petitioner exited his hotel room, police arrested Petitioner in the hotel parking lot for having active arrest warrants. After his arrest, Petitioner confessed he had cash and various

[1] This incident resulted in Petitioner's first indictment for PWID oxycodone (2020-GS-07-00334).
[2] This incident resulted in the rest of Petitioner's December 2020 indictments (2020-GS-07-00358; -00359; -01417; -01418; -01419; and -01420).

drugs in his hotel room. Police obtained and executed a search warrant for Petitioner's hotel room and discovered various types of drugs and cash.[3]

On May 17, 2022, Petitioner pled guilty[4] before the Honorable Carmen T. Mullen to all charges stemming from his January 2020 arrest.[5] Petitioner was represented by Jeffrey Stephens, Esquire. Assistant Solicitor Samantha Molina represented the State. On May 18, 2022, Petitioner pled guilty to his remaining charges.[6] Judge Mullen accepted Petitioner's plea and sentenced him concurrently to twenty-five years for each count of trafficking heroin; fifteen years for each count of PWID oxycodone; ten years each for trafficking cocaine and trafficking methamphetamine; five years for each count of PWID buprenorphine and PWID amphetamine; and three years for PWID alprazolam. Petitioner did not file a direct appeal.

On April 17, 2023, Petitioner filed an application for post-conviction relief (PCR) alleging the following:

1. Ineffective assistance of counsel:
   a. Counsel failed to challenge the improper Terry[7] stop and the fruit of the poisonous tree
      i. "On January 27, 2020 the Beaufort County violent crimes division conducted a traffic stop of Smith without probable cause. Smith was also forcibly removed from vehicle without properly being notified of any violations. The stop was unlawful and resulted in an illegal seizure and illegal search of Smith and vehicle. Any evidence retrieved should have been suppressed requiring dismissal for lack of evidence. Had I known I had a right to challenge the seizure and searches I would have pleaded not guilty."

---

[3] This incident resulted in all of Petitioner's indictments in June 2022.
[4] On May 16, 2022, Petitioner proceeded to trial, and a jury was selected. However, on May 17, 2022, Petitioner decided to enter a guilty plea.
[5] Petitioner's counsel was not prepared to advise Petitioner on his remaining charges until counsel could properly review Petitioner's case file with Petitioner. In addition, Judge Mullen recommended Smith be sentenced to all charges in one day, rather than two, so he would receive less strikes.
[6] Petitioner waived presentment of his indictments for all June 2022 charges (2020-GS-07-01415 to -01416 and 2021-GS-07-01077 to -01079).
[7] 392 U.S. 1, 88 S.Ct. 1868, 20 L.E.2d 889 (1968).

b. Counsel failed to properly advise Smith on his guilty plea:
   i. "On May 18, 2022 Attorney advised me that the negotiated plea would have required only 65% of service of the 25 years, and was eligible for parole and work credits."

The State filed its Return on November 23, 2023, and requested an evidentiary hearing. Through counsel, on October 10, 2024, Petitioner filed an amended PCR application with the following allegations:

1. Smith did not enter the plea freely and voluntarily or knowingly and intelligently.
   a. Smith was under the impression that his sentence, if he pled was going to be 65%.
   b. Counsel was ineffective in advising Smith that even if the Court said 85% that this requirement was in the process of being reduced to 65%.
2. That the bifurcation of the plea and sentencing created confusion in Smith's understanding of what he was pleading to and the sentence he was receiving.
3. That additional charges had yet to be indicted when Smith entered into a plea on May 17, 2022. Smith did not have sufficient time to go over discovery with his attorney. As a result, Smith lacked sufficient information to enter into his plea.
4. Smith lacked sufficient information and understanding regarding serious and most serious charges and the strikes associated with these charges.

An evidentiary hearing was held on April 15, 2025, before the Honorable Frank R. Addy, Jr. Petitioner was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Smith testified on his own behalf. Respondent presented the testimony of Jeffrey Stephens, Esquire (Plea Counsel). At the close of the evidentiary hearing, this Court took the matter under advisement.

The post-conviction relief court granted relief in part by filed order on August 18, 2025,[8] finding Petitioner established the following:

> "This Court finds that trial counsel had an obligation to correct the plea court's misimpression that pleading to all four serious charges together would result in just a single strike, not two. Failure to provide this information qualifies as deficient

[8] Respondent received written notice of the filing of the Order Granting Post-Conviction Relief on August 25, 2025.

> performance in regard to prevailing professional standards. Cherry, 300 S.C. at 117, 386 S.E2d at 625 (citing Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). This Court also finds that Smith was credible with his regard to the confusion concerning the May 18, 2022 plea and, obviously, being one strike away from life imprisonment is a much more precarious position than being two strikes away from LWOP. This is clear evidence of prejudice to Smith, as the circumstances surrounding his conviction changed drastically due to the ineffective representation of trial counsel. Cherry, 300 S.C. at 117-118, 386 S.E.2d at 625. Accordingly, this Court finds that Smith has demonstrated ineffectiveness and prejudice, satisfying both prongs of the relevant case law test, with respect to the plea of May 18, 2022."

(Order Granting PCR Relief p. 8).

On September 5, 2025, the State filed a motion to reconsider the partial grant of relief pursuant to Rule 59(e), SCRCP, arguing the Court applied the wrong standard in assessing prejudice and Smith failed to establish prejudice when applying the correct standard. (App. p. 146). On October 1, 2025, Judge Addy summarily denied and dismissed the State's motion without a hearing. Petitioner timely imitated an appeal as to the denied convictions. The State timely initiated an appeal as to the granted convictions. This return to the petition for writ of certiorari follows.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly determined Petitioner failed to establish counsel's representation was deficient or the requisite prejudice necessary to reverse his conviction, where counsel did not misadvise Petitioner what percentage of his sentence he would serve.

On appeal, Petitioner asserts the post-conviction relief court erred in not finding plea counsel's representation constitutionally ineffective where plea counsel "wrongly advised Mr. Smith that he would only serve sixty-five percent of his sentence," thereby rendering his May 17, 2022, guilty pleas unknowing and unintelligent. (Pet. PWC p. 12). However, the post-conviction relief court correctly rejected this claim after carefully considering live testimony from both Petitioner and counsel, along with the full record. The court's factual finding that no misadvice occurred is amply supported by the evidence and is entitled to substantial deference on appeal.

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 11 5, 11 7-1 8, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985). When reviewing a guilty plea, the Strickland deficiency prong remains unchanged—Applicant must show counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58–59. To show prejudice, Applicant must show a

reasonable probability exists "that, but for counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. Parole eligibility constitutes a collateral, rather than direct, consequence of a guilty plea. See generally Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991); Smith v. State, 329 S.C. 280, 494 S.E.2d 789 (1997). Counsel, therefore, has no affirmative constitutional duty to advise a defendant about parole eligibility unless counsel provides affirmative misadvice on the subject. Here, the post-conviction relief court expressly found that no such misadvice occurred.

Here, after hearing the testimony, the post-conviction relief court made a clear and unequivocal credibility determination: "upon review of the record as a whole, this Court finds trial counsel's testimony much more credible than Applicant's." (App. p. 135; see also App. p. 126). Counsel testified that he was fully aware that the trafficking charges carried an eighty-five percent (85%) service requirement under S.C. Code § 24-13-100 and that he "can't believe" he would have advised a client facing more than twenty years that the offenses were sixty-five percent (65%) offenses. (App. pp. 98-99). Counsel explained:

> "Again, I don't have my notes to say exactly, or I didn't take notes because we were in a court setting and I didn't write down exactly what we discussed. I can only tell you that I am aware that's not good law. I can't believe that I would have told a client that's charged with a trafficking offense that potentially carries more than twenty years in prison, that that would have been sixty-five percent offense. I do believe we discussed that there might be a change to the law that might allow him to have another look at his sentence if mandatory minimums went away or were reduced, but I was basically trying to hold out hope because there was nothing else I could do. I do not believe that I informed him that his trafficking charges were subject to sixty-five percent and not eighty-five percent charges. I just can't say for sure. All I can tell you is I knew it wasn't good law. I would not have advised a client that that was good law. But I can't say exactly what I told him."

(App. pp. 98-99).

The post-conviction relief court credited this testimony and rejected Petitioner's contrary account. (App. p. 135). See State v. Scott, 420 S.C. 108, 115, 800 S.E.2d 793, 797 (Ct. App. 2017),

aff'd as modified, 424 S.C. 463, 819 S.E.2d 116 (2018) ("...[T]his Court generally defers to the credibility findings of the circuit court"); see also USAA Prop & Cas. Ins. Co. v. Clegg, 377 S.C. 323, 659 S.E.2d 209 (2008)("[N]oting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony"). Thus, there is clearly evidence in the record supporting the PCR court's finding. See Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (During appellate review, findings of fact "will be upheld if 'any evidence of probative value' exists in the record to support the lower court's findings").

Even assuming, *arguendo*, some deficiency in counsel's advice, any potential defect was cured by the thorough plea colloquy conducted by Judge Mullen. A defendant entering a guilty plea must be aware of the nature of the charges, the maximum and any mandatory minimum penalties, and the constitutional rights being waived. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). "Any defects in the information conveyed by defense counsel can be cured by information provided at the guilty plea proceeding." Rollinson v. State, 346 S.C. 506, 513, 552 S.E.2d 290, 293 (2001) (citing Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998)). "The knowing and voluntary nature of the plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel or both.'" Id. (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

Here, Judge Mullen explicitly warned Petitioner that the offenses to which he was pleading guilty on May 17 "had mandatory minimums and [were] a serious offense which meant [they were] 'not parole eligible.'" (App. pp. 12, 17-22). The post-conviction relief court further detailed the specific mandatory minimums and sentencing ranges for each charge: trafficking heroin, 25-year

mandatory minimum up to 40 years; trafficking cocaine, 3-year mandatory minimum up to 10 years; and the various PWID charges with their respective ranges. (App. pp. 13-14). Petitioner affirmed on the record that he understood these consequences and still wished to plead guilty. These on-the-record advisements fully satisfied due process and rendered the pleas knowing and intelligent. Ray, 310 S.C. at 437, 427 S.E.2d at 174.

Additionally, the record contains strong contemporaneous corroboration that counsel did not convey any 65% expectation. During mitigation at the May 18 sentencing hearing, plea counsel stated that Petitioner's "biggest regret" was that his mother would not live to see him released from prison, specifically referencing release "in his early 60's." (App. p. 36). Petitioner was forty-three (43) years old at sentencing. Serving eighty-five percent of a twenty-five-year sentence, after credit for time served, yields release at approximately age sixty-one, which is precisely consistent with counsel's statement and wholly inconsistent with any belief that Petitioner would serve only sixty-five percent.

Finally, even if this Court were to assume deficiency, which the record does not support, Petitioner cannot establish prejudice under Hill v. Lockhart. Petitioner must show a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill, 474 U.S. at 59. The post-conviction relief court expressly found that the underlying facts of the January 2020 incident were "not very complicated" and that "extensive repeated meetings were not necessary" for counsel to prepare adequately. (App. p. 134). Petitioner faced overwhelming evidence on multiple separate incidents, including drugs discovered incident to lawful arrests, his own confession on the July 2020 charges, and physical evidence recovered pursuant to warrants. Petitioner had already received the benefit of a global concurrent twenty-five-year resolution. There is simply no reasonable probability that Petitioner, who had already

decided to plead after a jury was selected and a pre-trial motion had gone against him, would have rejected the plea and proceeded to trial on these charges. See Hill, 474 U.S. at 59; see also Lee v. United States, 582 U.S. 357, 372 (2017) (prejudice requires more than a bare assertion; the defendant must show a reasonable probability of a different outcome).

Because the post-conviction relief court's determination that Petitioner failed to prove either deficiency or prejudice is supported by abundant probative evidence and a correct application of law, it should be affirmed. This Court should deny the petition for writ of certiorari to this issue.

CONCLUSION

Based on the foregoing, the PCR court correctly determined that Petitioner failed to show that counsel provided constitutionally ineffective assistance. Therefore, this Court should deny Petitioner's Petition for Writ of Certiorari.

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

KYLEE MARCELLA KANEALEY
Assistant Attorney General

By: _____
Kylee Marcella Kanealey
S.C. Bar No. 107060

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT-PETITIONER

May 21, 2026

RECEIVED
May 21 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Beaufort County
The Honorable Carmen T. Mullen, Plea Judge
The Honorable Frank R. Addy, Jr., Post-Conviction Relief Judge

Appellate Case No. 2025-002107

CHRISTOPHER RAY SMITH,

PETITIONER-RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT-PETITIONER.

PROOF OF SERVICE

I, Vickie Hall, certify that I have served the within Respondent-Petitioner's Return to Petition for Writ of Certiorari on Sarah Elizabeth Shipe, Esquire, counsel of record for the Petitioner-Respondent, by electronic mail to the primary e-mail address listed for counsel in the Attorney Information System (AIS):

Sarah Elizabeth Shipe, Esquire
sshipe@sccid.sc.gov

I further certify that all parties required by Rule to be served, have been served.

This 21st day of May, 2026.

Vickie Hall

Vickie Hall, Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

From: Vickie Hall
To: Shipe, Sarah
Cc: Carter, Wanda; dbast@sccid.sc.gov; Leverett, Scott; Kylee Kanealey
Subject: Christopher Ray Smith v. State | 2025-002107 | State"s Return to Petition for Writ of Certiorari
Date: Thursday, May 21, 2026 3:35:00 PM
Attachments: image001.png
SMITH Christopher - State"s Return to Petition for Writ of Certiorari.pdf

Good afternoon,

Attached for service in the above-referenced case is Respondent-Petitioner's Return to Petition for Writ of Certiorari, which will be filed shortly with the Court of Appeals via email filing.

Respectfully,

VICKIE HALL, Legal Assistant
Office of the South Carolina Attorney General
Post-Conviction Relief | Office 803-734-2227
P.O. Box 11549 | Columbia, SC 29211
scag.gov

ALAN WILSON
ATTORNEY GENERAL

May 21, 2026

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
(via email only: ctappfilings@sccourts.org)

RE: **Christopher Ray Smith v. State of South Carolina**
Appellate Case No. 2025-002107

Dear Ms. Kitchings:

Attached for filing please find the Respondent-Petitioner's Return to Petition for Writ of Certiorari for the above-captioned post-conviction relief Cross Appeal. Counsel for Petitioner-Respondent is also being served with a copy of the same.

Please let me know if I may provide anything additional at this time.

Sincerely,

Kylee Marcella Kanealey
Assistant Attorney General
S.C. Bar No. 107060

cc: Sarah Elizabeth Shipe, Counsel for Petitioner-Respondent (*via email only*)