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Jun 05 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Jane H. Merrill, Circuit Court Judge

KRISTI R. POWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002330

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding that Petitioner's guilty plea was knowingly, voluntarily, and freely entered where Petitioner was under the influence of methamphetamine at the time of the plea?

STATEMENT OF THE CASE

Officers with the Anderson County Sheriff's Office were targeting Andrew Marshal McElrath, an individual that was selling methamphetamine out of a home owned by Petitioner. Officers performed surveillance of the property that led to traffic stops on individuals who left the property after purchasing drugs from McElrath. Based on the investigation, officers obtained a search warrant for Petitioner's home. In late January 2021 officers served the search warrant on the home and discovered a large quantity of methamphetamine in the back bedroom¹ as well as firearms in a vehicle. App. 9, ll. 1-8; App. 64, ll. 1-5; App. 98-101. Petitioner was subsequently indicted by an Anderson County grand jury for trafficking methamphetamine, 200 or more grams, first offense and possession of a weapon during the commission of a violent crime. App. 122-123.

On July 13, 2022, Petitioner appeared with her counsel Bruce A. Byrholdt before the Honorable R. Lawton McIntosh to enter a guilty plea. Mary Grace Holahan prosecuted the case. App. 1-2. The state agreed to dismiss the weapons charge, reduce the trafficking charge down to the 28 to 100 grams level, and recommend the mandatory minimum of seven years based on Petitioner's lack of a prior criminal record. App. 3; 9. Judge McIntosh accepted the plea recommendation and sentenced Petitioner to seven years of imprisonment. App. 10.

A direct appeal was not taken. Petitioner filed a *pro se* PCR application on December 9, 2022. App. 12-33. The state filed a return and partial motion to dismiss on March 18, 2024. App. 34-49. PCR Counsel Susannah Ross filed an amended application on September 5, 2025.

¹ Petitioner testified she stayed in the living room while the methamphetamine was found in the back bedroom. She maintained the drugs were McElrath's. The firearms belonged to an ex-boyfriend of Petitioner's and were in the car to be returned to him. App. 83, ll. 1-21.

App. 50-51. An evidentiary hearing was held on September 8, 2025, before the Honorable Jane H. Merrill. App. 52.

Petitioner testified that plea counsel had told her he believed he could get her zero to seven years because of her health issues if she were to plead guilty. App. 61, ll. 4-22. She had been diagnosed with stage four throat cancer in 2011, and she had undergone extensive treatment which had resulted in the placement of a tracheostomy in 2012. App. 20; App. 61, ll. 23-25. At the time of her guilty plea, Petitioner was still undergoing medical treatment related to her throat cancer and tracheostomy. At the advice of counsel, she appeared in court with medical records and papers documenting upcoming medical appointments, however none of the records were presented to the plea court. App. 62, ll. 1-3. The Friday before the plea, Petitioner signed a piece of paper in plea counsel's office. When she returned to court, she did not realize it was to plead guilty. App. 65, l. 11 – 66, l. 7. Petitioner testified she had a drug problem for years but did not sell drugs. App. 62, ll. 13-15; 64, ll. 22-25. Petitioner testified she pled guilty because she “had a drug problem and [] liked doing drugs back then. And that's why I just pleaded guilty because I thought that's what I was supposed to do.” App. 68, ll. 4-7. She stated that at the time of the plea she was under the influence of methamphetamine, despite telling the plea court that she was not under the influence of anything. App. 72, l. 22 – 73, l. 12. Petitioner did not know that she could plead not guilty at the time of the plea. App. 74, ll. 10-13.

Plea counsel testified that Petitioner “knew she was involved in something that she shouldn't have been involved in” and that considering her health problems, she did not have a lot of options to resolve the case as she was facing a mandatory twenty-five years if she lost at trial. He maintained the decision to plead guilty was Petitioner's. App. 77, l. 10 – 78, l. 25. Counsel conceded he did not present the medical records because it was apparent Petitioner was unwell,

and no one contested that fact. App. 80, l. 1 – 81, l. 21. In his opinion, Petitioner did not appear under the influence during the plea. He continued “the problem that she was having was the same problem she was having with her throat cancer. That was the only problem I was aware of. It was hard for the Court to understand her. We had to take things slowly, but it was done.” App. 80, ll. 14-24.

Judge Merrill took the matter under advisement. App. 95, l. 25 – 96, l. 5. An order of dismissal was filed on October 23, 2025. App. 106-121. Regarding being under the influence at the time of the plea, the PCR court found Petitioner’s testimony not credible while finding plea counsel’s testimony credible. It further found that the plea transcript showed Petitioner clearly and easily answering the plea court’s questions and that the plea court had no concerns about Petitioner’s mental state during the plea. The court found no deficiency and no prejudice. App. 119.

ARGUMENT

The PCR court erred in finding that Petitioner’s guilty plea was knowingly, voluntarily, and freely entered where Petitioner was under the influence of methamphetamine at the time of the plea.

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury... Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him); see also Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding a defendant must understand the sentencing consequences of his plea for it to be considered voluntarily given). Therefore, a trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969). Additionally, before a plea can be accepted, a defendant must be aware of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000).

“An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.” Wiggins v. Smith, 539 U.S. 510, 521 (2003) (citation omitted). “To establish deficient performance, a petitioner must demonstrate that counsel's representation ‘fell below an objective standard of reasonableness.’” Id. (quoting Strickland v. Washington, 466 U.S. 668, (1984)). “[T]o establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” Id. at 534 (quotations and citation omitted).

An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The “prejudice,” requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pled guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Importantly, “the voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

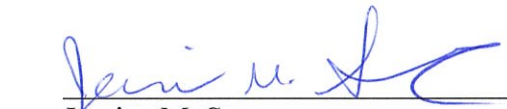
To prevail on a claim that a guilt plea was involuntary due to the influence of medication or drugs a PCR applicant must show “that his mental faculties were so impaired by drugs when he pleaded that he was incapable of full understanding and appreciation of the charges against him, of comprehending his constitutional rights, and of realizing the consequences of his plea.” Garren v. State, 423 S.C. 1, 15–16, 813 S.E.2d 704, 712 (2018) citing United States v. Truglio, 493 F.2d 574, 578 (4th Cir. 1974) (quotation marks and citation omitted). “A PCR court must consider ‘objective data’ about the nature and effect of the medication the defendant had taken and evaluate whether such medication ‘had the capability to produce a sufficient effect on his

mental faculties to render him incompetent to enter a guilty plea.’ ” Id. citing United States v. Damon, 191 F.3d 561, 565 (4th Cir. 1999) (recognizing that not all medication will influence a defendant's mental state to the point that the guilty plea must be invalidated) (citation omitted). “The dispositive feature of this inquiry is whether the medication is in fact causing such an impairment.” Id. citing United States v. Caramadre, 807 F.3d 359, 368 (1st Cir. 2015).

Petitioner was a methamphetamine addict and had been a drug user for numerous years. She was using drugs until the time of her incarceration. She testified that she told the plea judge she was not under the influence because counsel told her to answer yes, but she was on methamphetamine during the plea. While plea counsel did not believe, in retrospect, that Petitioner was under the influence during the plea, he did admit that they had to move slowly during the plea. Plea counsel was under a duty to ensure that Petitioner was not under the influence of any substance that could have impacted her ability to understand what she was doing. The failure to ensure a years-long drug addict was in fact not on drugs during the guilty plea was deficient performance. Petitioner was prejudiced because she did not understand what she was doing and unknowingly pled guilty to a crime she maintained she did not commit. Petitioner has shown ineffective assistance of plea counsel.

CONCLUSION

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



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 5th day of June, 2026.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kristi Powell 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 Jane H. Merrill, which was held on September 8, 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 Kristi Powell.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of June, 2026.

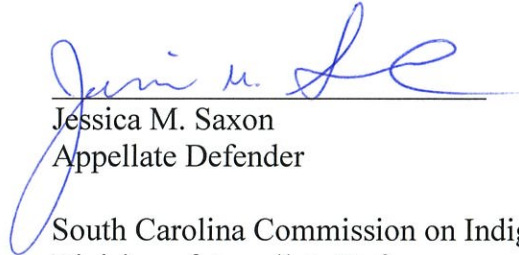
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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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