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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable David P Caraker, Jr, Circuit Court Judge

JOSHUA THOMAS BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002338

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Senior 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

Was the guilty plea, entered at the end of the trial after the State rested, rendered involuntary by the tense exchange between trial counsel and the trial judge with the trial judge threatening to hold trial counsel in contempt, then denying Petitioner's motion to relieve counsel?

STATEMENT

In March of 2018, the Lexington County Grand Jury indicted Petitioner, Joshua Thomas Brown, for attempted murder, indictment #2016-GS-32-00873. (App. pp. 771-772). On June 18, 2018, Petitioner proceeded to jury trial before the Honorable R. Knox McMahon. Stephen Story, Jael Gilreath, and Jason Turnblad represented Petitioner at trial. Suzanne Mayes and Kate Usry prosecuted the case. The State called approximately eighteen witnesses and rested on Jume 21, 2018. (App. p. 678, lines 6-7). The defense called one witness on June 21, 2018. (App. p. 682, lines 21-25). During the direct examination of the one witness, the State objected, the jury was sent out, and a tense exchange took place between defense counsel and the trial judge. (App. pp. 684-690). The next day, June 22, 2018, Petitioner moved to relieve counsel. (App. pp. 699 – 704). The judge denied the motion to relieve counsel. (App. p. 704, lines 11-12). After an in-camera hearing about what the jury may have overheard from the day before, Petitioner decided to enter a plea of guilty. (App. pp. 712-741). Judge McMahon sentenced Petitioner to twenty-three (23) years. (App. p. 736, lines 20-24; p. 773). Petitioner did not appeal the conviction or sentence.

On June 4, 2019, Petitioner filed a *pro se* application for post-conviction relief [PCR]. (App. pp. 774-778). The State filed a return and motion for more definite statement on October 4, 2019. (App. pp. 779-792). An amended PCR application was filed by counsel on August 24, 2024. (App. pp. 793-803). On August 26, 2024, an evidentiary hearing was held before the Honorable David P. Caraker, Jr. Ashley McMahan represented Petitioner. Donald Zelenka represented the State. In a written order signed November 6, 2025, Judge Caraker denied relief and dismissed the application. A timely notice of intent to appeal was filed on November 20, 2025. This petition for writ of certiorari follows.

ARGUMENT

The guilty plea, entered at the end of the trial after the State rested, was rendered involuntary by the tense exchange between trial counsel and the trial judge with the trial judge threatening to hold trial counsel in contempt, then denying Petitioner's motion to relieve counsel.

At the end of the trial after the State rested, Petitioner pled guilty to attempted murder of his wife, Ann James. (App. p. 718, lines 1-5). Prior to the plea, during the direct examination of the first defense witness, counsel asked, "During the years of 2013 till about 2015, did you ever witness any instances of violence that Ms. Ann may have committed against Mr. - " (App. p. 684, lines 16-19). The State objected and asked to approach the bench. (App. p. 684, lines 20-21). The judge sent the jury out. The State objected on the ground that the witness did not have specific knowledge about instances of violence. (App. p. 685, lines 2-9). Defense counsel explained that the witness saw injuries on Petitioner. Counsel also explained that the witness saw a video of Ms. Ann threatening Petitioner with violence. (App. p. 685, lines 17-22). After hearing argument from both sides and questioning defense counsel the following exchange took place:

> The Court: Well, why you making me cross-examine you? Don't do me like that. Do me like Alicia Keys said: Tell me like it is; don't make me read between the lines. What? I don't like your body language either. It's disrespectful. And you're hiding the ball from me. Did this witness observe acts of violence committed by Ms. James on Mr. Brown? Yes or no?
>
> Mr. Story: No, Your Honor.
>
> The Court: Well, why don't you tell me that to start with instead of me having to have this type of dance and this type of gamesmanship? Why?
>
> Mr. Story: Your Honor, I answered your questions.

> The Court: No, you did not. You were not truthful with me. You said he saw the injuries. I said inflicted? No. I had even prefaced my remarks by saying he saw the injuries, somebody else told him that they came from her.
>
> Sheriff –
> I'm not taking you [the witness] into custody, but just have him sit in the courtroom. Because you cannot talk to anybody during this brief recess. Don't think I'm taking you into custody. Okay?
>
> Bring me the jury in.
>
> I want briefs from both parties by 8:00 in the morning on this issue. And if I find one thing untowards in it, bring a lawyer, because there's going to be a contempt hearing.

(App. p. 689, line 1 – p. 690, lines 1-4). The judge sent the jury home for the evening and asked the court reporter for a rough draft of the transcript of the "colloquy" with Mr. Story. (App. p. 690, lines 5-24).

The next day the judge heard argument from both sides. (App. pp. 691 – 698). While waiting for witnesses Petitioner asked the judge to relieve his counsel. (App. p. 699, line 1 – p. 700, lines 1-18). Petitioner told the judge, "I no longer feel comfortable with my public defenders that's on my case and would like them to be relieved from my trial. I'm very uncomfortable with the animosity that has been presented between the Court and my trial attorneys. I no longer feel like I can get a fair trial at this point. My rights are not being protected. Yesterday, you yelled so loud, I really truly believed --" (App. p. 699, lines 21- p. 700, lines 1-4). Petitioner was concerned that the jury overheard the loud exchange from yesterday. (App. p. 700, lines 12-18; p. 703, lines 21-23). The judge told Petitioner, "Well, you have an option, you have one option. I deny your motion to relieve your attorneys; however, you may proceed -- after I advise you of the dangers of self-representation, you may proceed and represent yourself." (App. p. 704, lines 4-8). When Petitioner advised that he had consulted new counsel, the judge again denied the motion to relieve counsel. (App. p. 704, lines 9-12).

The defense moved to poll the jury to determine if they overheard the loud exchange from the day before. (App. p. 704, line 24 – p. 705, lines 1-7). The defense called a case manager from the Public Defender Office who testified she overheard the loud exchange. (App. pp. 705-707). The judge then questioned the foreperson of the jury who testified the jury did not hear anything from the day before. (App. pp. 708-710). Defense counsel withdrew the motion to poll the jury. (App. p. 710, lines 15-17). After a brief recess, Petitioner entered a guilty plea to attempted murder for a negotiated sentencing range of between twenty (20) and thirty (30) years. (App. pp. 712-736). The State withdrew the notice of intent to seek a sentence of life without parole. (App. p. 718, lines 13-21). The judge sentenced Petitioner to twenty-three (23) years. (App. p. 736, lines 20-24; p. 773).

In the amended PCR application Petitioner alleged ineffective assistance of counsel because, "During Applicant's trial, Mr. Story enraged the judge to the point the judge threatened contempt. It was at this point the Applicant felt he had no choice but to plead guilty. *See* Transcript at page 684, line 20 – page 690, line 24. And, in fact, move to have his attorneys relieved because he no longer felt comfortable with them. See Transcript, page 699, line 15 – page" (App. p. 793).

During the PCR hearing Petitioner testified about the judge becoming angry with trial counsel. (App. p. 812, line 22 – p. 813, lines 1-10). On cross-examination the State asked Petitioner, "Then you decided not to give the jury the chance to make that determination. Is that correct?" (App. p. 836, lines 13-14). Petitioner answered, "Not after what happened between Mr. Story and the Judge. No, I wasn't." (App. p. 836, lines 13-14). Petitioner agreed that at the time of the guilty plea he felt like he had no other choice. (App. p. 836, lines 23-25).

When trial counsel Jael Gilreath was asked why Petitioner accepted the plea offer she testified, "A big factor was the fact that the LWOP, the life without parole, was being taken off the table. That was a big factor. Another was the – I guess maybe rapport between us and Judge McMahon. And I remember him saying something along the lines of about how he, you know, the Judge clearly didn't like us and didn't – and wasn't going to agree with us, wasn't going to, you know, none of his decisions were going to go our way, essentially, and that he didn't, you know, he didn't foresee things going well based on that." (App. p. 863, lines 14-22).

In the order of dismissal the PCR judge wrote, "This Court finds the allegations related to the interaction between the trial judge and Counsel Story do not require post-conviction relief. The claim is raised as a claim of ineffective assistance of counsel. In light of the entry of the voluntary guilty plea, this ground is without merit." (App. p. 909). The PCR judge erred. The guilty plea was rendered involuntary by the tense exchange between trial counsel and the trial judge with the trial judge threatening contempt, then denying Petitioner's motion to relieve counsel.

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."

The guilty plea in this case does not represent a voluntary choice among the alternative courses of action open to Petitioner. Petitioner pled guilty after the tense exchange between trial counsel and the judge that caused Petitioner to move to relieve counsel. When the judge denied the motion to relieve counsel, Petitioner felt he had no choice other than to plead guilty. There is a reasonable probability that if trial counsel had not angered the judge, Petitioner would have continued with trial and allowed the jury to decide.

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 16th day of June, 2026.