

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Union County  
John C. Hayes, III, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

DEC 27 2013

S.C. Supreme Court

YOLANDA D. THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-001224  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

CARMEN V. GANJEHSANI  
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**

Did the PCR court err in finding that plea counsel provided effective assistance of counsel where Petitioner asserts that she would have gone to trial if her plea counsel had not led her to believe that she would only receive thirty years if she pled guilty to murder and where Petitioner did not understand that she could receive life without parole upon pleading guilty?

## STATEMENT

### **Indictments**

On March 27, 2008, Petitioner Yolanda Dee Thompson was indicted by the Union County Grand Jury for one count of murder. App. 119-120. Petitioner was subsequently indicted on February 26, 2009 for (1) kidnapping; (2) armed robbery; (3) possession of a knife during the commission of a violent crime; and (4) criminal conspiracy; and. App. 4; 122-129.

### **Guilty Plea**

On March 6, 2009, Petitioner appeared before the Honorable Lee S. Alford to plead guilty to the above-referenced charges. App. 1-20. Petitioner was represented by Public Defender Harry A. Dest, and the State was represented by Solicitor Kevin S. Brackett. App. 1.

The solicitor informed Judge Alford that the State had agreed to forbear from filing notice of intent to seek the death penalty in exchange for Petitioner's guilty plea to each of the charges and in exchange for her agreement to cooperate in the trial of her co-defendant, Pernell Thompson. App. 4, l. 23 – 5, l. 12. The State asked Judge Alford to only sentence Petitioner on the charge of criminal conspiracy at that time and to wait to sentence her on the remaining charges until after the conclusion of her co-defendant's trial. App. 5, ll. 13-23. At the March 6, 2009 hearing, Judge Alford sentenced Petitioner to a term of five years for the charge of criminal conspiracy. App. 19, ll. 21-25.

A second hearing for sentencing on the remaining charges was held on November 6, 2009 before Judge Alford. App. 22 – 66. At this hearing, Petitioner presented mitigation evidence in her behalf and evidence of her cooperation against her co-defendant which led

to his guilty plea. App. 26 – 47. Petitioner’s plea counsel asked that Judge Alford consider sentencing Petitioner to no more than thirty years. App. 47, ll. 1-18.

At the conclusion of the hearing, Judge Alford sentenced Petitioner to (1) life without parole for murder; (2) thirty years for kidnapping; (3) thirty years for armed robbery; and (4) five years for possession of a knife during the commission of a violent crime. All sentences were to run concurrently. App. 65, l. 21 – 66, l. 13.

### **Direct Appeal**

Appellate Defender Robert M. Pachak filed an appellant’s brief pursuant to Anders v. California, 386 U.S. 738 (1967) in the South Carolina Court of Appeals. App. 68 – 77. The Court of Appeals dismissed Petitioner’s direct appeal on June 17, 2011. App. 78.

### **PCR Application and Evidentiary Hearing**

Petitioner filed an application for post-conviction relief (“PCR”) on May 22, 2012. App. 79 – 86. The State filed its Return on September 26, 2012. App. 87 – 92.

An evidentiary hearing was held before the Honorable John C. Hayes, III on April 15, 2013. App. 93 – 112. Petitioner was represented by Elizabeth Patterson Wiygul. App. 93. The State was represented by Assistant Attorney General J. Rutledge Johnson. App. 93. Petitioner and her plea counsel both testified at the hearing. App. 97 – 111.

Petitioner testified that she was led to believe if she pled guilty to the charges against her that she would only receive thirty years. App. 99, l. 17 – 100, l. 14. She testified that her plea counsel specifically told her that if she pled guilty, he did not see her receiving any more than thirty years. App. 100, ll. 10-14. Had she known there was a possibility that she could have received life without parole after she pled guilty, Petitioner testified that she would have proceeded to trial. App. 100, ll. 15-22.

Plea counsel testified at the hearing that it was his goal for Petitioner to only receive thirty years. App. 107, ll. 19-22.

**Order of Dismissal**

Judge Hayes filed his Order of Dismissal on May 23, 2013, denying Petitioner's PCR application and dismissing her case with prejudice. App. 114 – 118.

This petition for writ of certiorari follows.

## ARGUMENT

**The PCR court erred in finding that plea counsel provided effective assistance of counsel where Petitioner asserts that she would have gone to trial if her plea counsel had not led her to believe that she would only receive thirty years if she pled guilty to murder and where Petitioner did not understand that she could receive life without parole upon pleading guilty.**

At the evidentiary hearing, Petitioner testified that based on plea counsel's sentencing advice, Petitioner believed she was going to receive a sentence of no more than thirty years if she pled guilty to murder. App. 99, l. 17 – 100, l. 14. Petitioner further testified that she would not have pled guilty and would have gone to trial if she had known she could be sentenced to life without parole. App. 100, ll. 15-18; see Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991) (finding ineffective assistance of counsel when plea counsel erroneously advised the defendant about his potential sentence prior to his guilty plea); see also Ray v. State, 303 S.C. 374, 376, 401 S.E.2d 151, 153 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made based on plea counsel's erroneous sentencing advice). Thus, the PCR court erred in finding that plea counsel provided effective assistance of counsel. App. 114 - 118; See Hill v. Lockhart, 474 U.S. 52 (1985) (applying the Strickland v. Washington, 466 U.S. 668 (1984) standard to guilty plea challenges based on ineffective assistance of counsel).

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, 89 S.Ct. 1709 (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).

Furthermore, “[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, 683 S.E.2d 471 (2009) (citing Hill, 474 U.S. at 57-59). “The defendant’s undisputed testimony that he would not have pled guilty to the charges but for trial counsel’s advice is sufficient to prove that defendant would not have pled guilty.” Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006).

In this case, an “unsound result” occurred because plea counsel’s erroneous sentencing advice created an unreasonable expectation which hindered Petitioner’s ability to fully understand the sentencing consequences of her guilty plea. See Boykin, 395 U.S. 238. Petitioner testified at the evidentiary hearing, “During conversation they [her plea counsel] told me that they didn’t see the death – If I didn’t take the plea, the open plea, they see me going to court for the death penalty and that it would be best in my interest if I take the plea which they don’t see me getting any more than thirty.” App. 100, ll. 10-14.

Petitioner was also prejudiced by plea counsel’s deficient performance because Petitioner did not knowingly, intelligently, and voluntarily plead guilty due to the unreasonable expectation plea counsel created as to her potential sentence. See Ray v.

State, 303 S.C. 374, 401 S.E.2d 151 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made in light of the erroneous advice given by plea counsel).

Accordingly, the PCR court erred in denying Petitioner relief where "there [wa]s a reasonable probability that, but for counsel's errors, [Petitioner] would not have pled guilty and would have insisted on going to trial." Hill, 474 U.S. at 57-59; see also Boykin, 395 U.S. 238.

**CONCLUSION**

Based on the foregoing reasons, Petitioner Yolanda D. Thompson respectfully requests that this Court grant her Petition for Writ of Certiorari and allow full briefing on the issue raised herein.

Respectfully submitted,



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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of December, 2013.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO UNION COUNTY  
JOHN C. HAYES, III, CIRCUIT COURT JUDGE

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YOLANDA D. THOMPSON,

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RESPONDENT.

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Yolanda D. Thompson 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 records and transcript of petitioner's post-conviction relief hearing which was held on April 15, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Yolanda D. Thompson.

Respectfully submitted,



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Carmen V. Ganjehsani  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 27th day of December, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Union County  
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YOLANDA D. THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-001224

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CERTIFICATE OF SERVICE

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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Ms. Yolanda D. Thompson #333520, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 27th day of December, 2013.

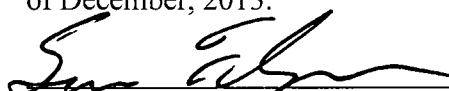


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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day  
of December, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.