

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 31 2026

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Jocelyn Newman, Circuit Court Judge

GARY NELSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000487

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred in denying post-conviction relief where counsel failed to ensure Petitioner understood that whether he received credit for time spent on monitored house arrest was discretionary with the court and that he was not guaranteed to receive credit for any of the 932 days he was on monitored house arrest, 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 OF THE CASE

On August 9, 2020, Officer Jesscia Decell of the North Charleston Police Department responded to the Target located on Rivers Avenue in Charleston County in reference to a shoplifting. Decell attempted to speak with the shoplifter, identified as Petitioner, but he pushed a shopping cart at her and fled on foot toward a Chuck E. Cheese restaurant where Starkeedra Simmons was unloading items from the trunk of her parked vehicle. The vehicle was running while Simmons unloaded items for a birthday party. Her two children, aged two and six, were inside the vehicle. Petitioner got into the driver's seat of Simmons' vehicle and began to drive off. App. 7, l. 18 – 8, l. 7.

Decell had caught up to Petitioner and opened the passenger door of Simmons's vehicle to attempt to place the car in park. However, Petitioner sped up, and Decell was thrown out of the vehicle. Petitioner fled in the stolen vehicle, along with Simmons's two children, and led police on a high-speed chase during which he sideswiped another vehicle. Petitioner eventually drove over a raised median on Meeting Street which disabled the vehicle. He again fled on foot and was eventually apprehended that day by a North Charleston K-9 unit as he attempted to scale a fence. App. 8, l. 8 – 9, l. 4.

A Charleston County grand jury indicted Petitioner for two counts of kidnapping, grand larceny, shoplifting (enhancement), child endangerment, failure to stop for a blue light, and leaving the scene of an accident with property damage during its August 2022 term. App. 78-79; App 81-82; App. 84-85; App. 87-88; App. 90-91; App. 94-95. On January 29, 2025, Petitioner appeared before the Honorable Roger M. Young, Sr., to enter guilty plea. The state was represented by Jordan A. Norvell. Petitioner was represented by Helen R. R. Dovell. App. 1. The state recommended a ten-year sentence on all the charges. App. 3, ll. 15-16. The state

explained that Petitioner had been on house arrest as part of his bond but had not complied with the program. The state asked that the court not give Petitioner credit for the time he spent on home detention. App. 10, ll. 10-14.

During the plea, Petitioner admitted his conduct, explained it was due to a drug problem, and asked for help. App. 5, ll. 8-11. Petitioner was under the influence of methamphetamine at the time of the incident. App. 9, ll. 6-8. Plea counsel informed the court that Petitioner had been in jail on the charges for 458 days before he posted bond and was placed on strict house arrest. Petitioner was on house arrest from November 9, 2021 to May 28, 2024, when he was picked up for electronic monitoring violations and placed back in jail. He was in the community on a monitor for 932 days. He spent an additional 274 days in custody prior to entering the guilty plea for a total of 1,637 days of either physical or house arrest custody. App. 11, l. 12 – 12, l. 3.

Plea counsel requested the court suspend any sentence, credit Petitioner for the time he served prior to his plea, and allow him to enter treatment at Mircale Hill. App. 12, ll. 8-17. Counsel informed the court that if it chose to not give credit for the time on house arrest, the total days of pre-trial detention was 705. App. 19, ll. 17-22. When asked about the monitored house arrest, counsel explained that Petitioner had not been rearrested on the monitor, he had kept up with his financial obligations, kept the monitor charged, and wore it. His only problem was moving violations such as when Petitioner was living in a hotel, got kicked out of the hotel, and went to a friend's house for shelter at four a.m. or when he took a job in a neighborhood that the monitoring company thought was a "drug area." App. 20, ll. 11-24.

The court accepted the recommendation of the state and sentence Petitioner to ten years' imprisonment on the kidnapping, grand larceny, and shoplifting enhancement, a year on the hit and run charge, three years on the failure to stop for a blue light, and eighteen months on the

child endangerment, all sentences to run concurrently. App. 30, ll. 5-9. The plea court did not give Petitioner any credit for the 932 days he spent on monitored house arrest stating, “you had the opportunity to be out and earn time while you were on electronic monitoring, and you didn’t do that correctly.” Petitioner was given 705 days of credit for the time he spent incarcerated in the local jail prior to pleading guilty. App. 30, ll. 10-17.

Petitioner did not file a direct appeal from his plea. He filed the instant application for post-conviction relief on April 28, 2025, raising a conflict of interest and ineffective assistance of counsel for failing to ask for credit for the time spent on house arrest. App. 32 – 38. The state filed a return on October 2, 2025. App. 39 – 44. On January 21, 2026, the parties appeared before the Honorable Jocelyn Newman for an evidentiary hearing. The state was represented by Kylee Kanealey. Petitioner was represented by Christopher L. Murphy. App. 45. At the start of the hearing, PCR counsel abandoned the conflict claim. App. 48, ll. 16-18.

Petitioner testified that he was on monitored house arrest and, after some time, was given permission to work while on house arrest. He was also able to attend treatment for his drug abuse at the Charleston Center. App. 49, l. 23 – 51, l. 7. He testified that his plea counsel had promised him he would get credit for the time he spent on house arrest, and that is why he accepted the plea deal, and he could not recall her asking that he be given that credit. App. 52, ll. 2-6; App. 54, ll. 11-22. While he told the judge “no” when asked if anyone promised him anything, he testified to the PCR court that he did not hear the question and if he had, he would have told the judge he was promised he would receive credit for the time spent on house arrest. App. 57, l. 15 – 61, l. 11.

Plea counsel testified that she did not ever promise Petitioner that he would get credit for the time on monitored house arrest and that she did request he be given credit for the time spent

on house arrest. App. 63, ll. 14-19. She testified that Petitioner had written to her many times after the plea about receiving the credit for house arrest after, and her response had been that it was in the judge's discretion. They had asked, but he said no. App. 65, ll. 4-8.

The court orally denied the application for post-conviction relief. App. 69, l. 22 – 71, l. 7. An order of dismissal was filed on February 11, 2026, finding that Petitioner had not shown that counsel was deficient or that he was prejudiced. Regarding the house arrest credit, the court found counsel was not deficient, as she did request Petitioner be given the house arrest credit, and that he could not show prejudice. App. 73 – 77.

ARGUMENT

The PCR court erred in denying post-conviction relief where counsel failed to ensure Petitioner understood that whether he received credit for time spent on monitored house arrest was discretionary with the court and that he was not guaranteed to receive credit for any of the 932 days he was on monitored house arrest, 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)).

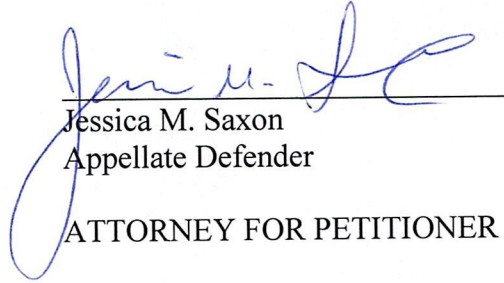
Pursuant to S.C. Code Ann. § 24-13-40 of the South Carolina Code of Laws a sentencing court may award credit against a sentence of incarceration for pretrial time not served in jail but

on “monitored house arrest” as a condition of bond. S.C. Code Ann. § 24-13-40. (“In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing and may be given for any time spent under monitored house arrest.”) The plain language of the statute shows that the award of credit for time spent on monitored house arrest is wholly discretionary with the sentencing judge. The evidence at the PCR hearing was that Petitioner took the plea because his understanding was that he *would* receive, not could receive, the house arrest credit. Counsel did not testify that she explained the award of such credit as discretionary *prior* to Petitioner entering his plea. In fact, the only testimony in the record is that she explained the house arrest credit was discretion *after* Petitioner was already in prison.

When Petitioner entered his plea, he was under the mistaken belief that he was entitled as a matter of law to 932 days of house arrest credit. This was a significant factor in his decision-making process as he believed the ten-year sentence he was pleading to would have been reduced by over two and a half years’ worth of credit. Because Petitioner pled without a full understanding of the consequences of his plea and without a full understanding of his sentencing exposure without the 932-day credit, his guilty plea was involuntary.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully request 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 31st day of August, 2026.

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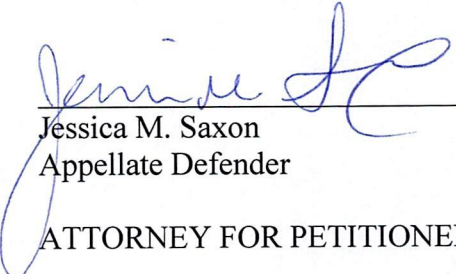
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gary Nelson 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 Jocelyn J. Newman, which was held on Jan. 21, 2026, 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 Gary Nelson.

Respectfully Submitted,


Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of August, 2026.

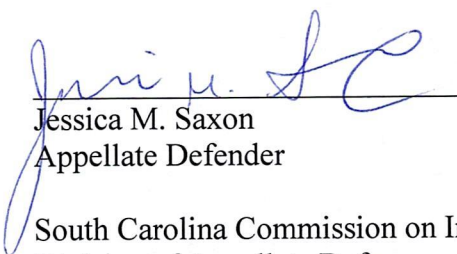
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CERTIFICATE OF COUNSEL

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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