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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Dale E. Van Slambrook, Circuit Court Judge

JIMMIE L. GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000320

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding that petitioner's plea was knowing and voluntary when he was told the State agreed not to seek life imprisonment, the State asked the plea judge to impose a life sentence, and trial counsel failed to move to withdraw the plea or reconsider the sentence?

STATEMENT

Petitioner Jimmie L. Green was indicted on multiple charges in Beaufort County and on May 8, 2023, appeared before the Honorable Craig Brown for a plea. App. 1. Duffie Stone and Sean Thornton represented the State. App. 2. Kenneth D. Snow and Freddy Woods represented Green. App. 2. The solicitor told the court that Green had been indicted on six charges: murder, two counts of attempted murder, and three counts of mob violence.[1] App. 5. Judge Brown accepted Green's plea. App. 20. Judge Brown sentenced Green to concurrent terms of imprisonment as follows: forty years for murder, thirty years on the attempted murder charges, thirty years for first-degree assault and battery by mob, twenty-five years for second-degree assault and battery by mob, and time-served for third-degree assault and battery by mob. App. 42-43. No appeal was filed on Green's behalf. App. 46.

On May 7, 2024, Green filed a PCR application. App. 45. On March 31, 2025, Green filed an amended application through counsel. App. 60. On November 12, 2025, the Honorable Dale E. Van Slambrook held a hearing on Green's PCR claims. App. 62. Chelsey F. Marto represented Green. App. 62. Kylee Kanealy represented the State. App. 62. Judge Van Slambrook took the matter under advisement at the end of the hearing. App. 94. On February 3, 2026, Judge Van Slambrook denied relief in a written Order of Dismissal. App. 96. This petition follows.

[1] The Beaufort County Public Index shows that Green was also charged with possession of a weapon during a violent crime and this charge was dismissed without indictment on May 11, 2023. State v. Jimmie Lewis Green, Case No. 2021A0720200044.

ARGUMENT

1.

The PCR court erred in finding that petitioner's plea was knowing and voluntary when he was told the State agreed not to seek life imprisonment, the State asked the plea judge to impose a life sentence, and trial counsel failed to move to withdraw the plea or move to reconsider the sentence.

After reciting the charges against Green, the solicitor told the plea judge his witnesses were "lined up," and he was prepared to go to trial. App. 6. He then said, "I have explained to the defense counsel, regardless of if the defendant pleads guilty or goes to trial, I will still be asking for a life sentence." App. 6. Defense counsel made no response as the solicitor handed up the sentencing sheets and the plea judge immediately swore Green and began the recitation of rights with Green. App. 6-7.

The solicitor's request for a life sentence was not what Green had been told would happen at the plea. App. 75. At the PCR hearing, Green testified:

> Q. What did you think the agreement was, if anything, when you went into court?
>
> A. When I went into court? When I went into court I was under the impression that I would be getting a 30-year sentence due to me pleading out and that the State was going to rest and not offer life on the table, which they did. When we went to court they asked for life. And he didn't object, which I think that he should have, or what he told me was a lie. So, I'm lost there too.

App. 75.

Green was only given between 24-48 hours between being told about the plea deal and the day of the plea. App. 75. Green thought they were preparing for trial. App. 75-76. When he asked his lawyers about going to trial, they told him he would "get life. No questions asked."

App. 76. PCR counsel asked Green, "Did counsel say that the State wouldn't ask for life if you pled?" App. 76. Green responded, "Right." App. 76.

Green was adamant that he would not have pled if he had known the State would seek life. App. 76. He testified, "that's the reason I pled." App. 76. If plea counsel had objected, "That would have took the plea off the table and we would go ahead and go to trial. Because they said they were ready that day." App. 76. The Attorney General asked Green on cross-examination if he heard the solicitor tell the judge the State would seek life. App. 78-79. Green acknowledged hearing the solicitor make that statement, but then, after the Attorney General asked if he still decided to proceed, explained "Yes, but my mother should have objected." App. 79. "Mother" in the this sentence likely should have been transcribed as "lawyer." App. 79.

Plea Counsel Woods testified at the PCR hearing via WebEx. App. 79. His firm's office is in Charlotte, North Carolina, and Woods described he or his law partner, Snow, driving from Charlotte to visit Green as "an all day event." App. 80-81. Woods said the State's main evidence against Green was information turned over to the State by a "jailhouse lawyer." App. 82.

Woods denied giving Green "any indication" he would get a thirty-year sentence. App. 83. Woods claimed telling Green that the judge had "wide discretion" on what to give. App. 83. Woods also described an in-chambers meeting with the judge and the solicitor where the judge supposedly said that if Green went to trial, he would sentence Green to life imprisonment, but would not do so if Green pled guilty.[2] App. 83.

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[2] Plea counsel's testimony regarding this in-chambers remark calls into question the PCR judge's finding that plea counsel was credible. The very experienced and respected trial judge undoubtedly knew that imposition of a "trial tax" is unconstitutional. See United States v. Jackson, 390 U.S. 570, 581-82 (1968) (striking down as unconstitutional a statute that penalized defendants for not pleading guilty); Davis v. State, 336 S.C. 329, 333, 520 S.E.2d 801, 803 (1999) ("We find these statements clearly revealed that the trial judge, in sentencing petitioner, improperly considered petitioner's decision to proceed with a jury trial.").

The Attorney General asked Woods if there was "ever any type of agreement" that if Green pled, the State would not seek life imprisonment. App. 83. Woods' response was confusing after his initial denial:

> No, ma'am. So, let me explain that. So there is a recommendation that a prosecutor can be able to provide. Where they, in any case, they can say, okay, the State will recommend 10 years or 20 years or 30 years or 40 or whatever. So, the State can make a recommendation to the court about how much time the State thinks should be given in a case. **In this case, the State said that they would not make a recommendation of a particular settlement about a time,** and therefore we were free to ask for whatever time they [sic] wanted. So, there wasn't an agreement. **There was the State saying that they would proceed without recommendation. That both parties, the State and the defense, were able to ask for whatever time they thought might be appropriate for the plea.** And the judge would make the decision.

App. 83-84 (emphasis added). The emphasized statements in Woods' response are contradictory and support Green's testimony that he was led to believe that the State would not ask for life.

Green testified that he asked plea counsel to move to reconsider the sentence. App. 73-74. He was not given a reason why it was not done. App. 74. Green remembered plea counsel calling Green's mother and asking for her answer on whether to move to reconsider the sentence. App. 74. Green was incredulous that his attorney would ask his mother this question instead of him. App. 74. Green also testified at PCR that his attorneys should have moved to withdraw the plea because the State asked for life. App. 77. Green reasoned, "What's the difference between me pleading, getting life, and going to trial and get life? It's the same thing to me." App. 77. Green said he would have taken his chances at trial if he knew the State would seek life. App. 77.

Plea counsel denied that Green asked him to move to withdraw the plea. App. 84. When asked if Green requested him to file a motion to reconsider the sentence, he replied, "No. Mr. Green asked would the Judge reconsider the sentence. Attorney Snow and I along with Duffy

Stone spoke to the Judge. The Judge said he was not inclined to give any reconsideration." App. 87. Plea counsel did admit discussing a motion to reconsider with Green's mother. App. 87. He said he spoke with Green's mother, "Not instead of him. In conjunction with both of them, I told them both that we would talk to the Judge which we did. And then I asked his parents if they required anything further with regard to that. And they were like, no." App. 87. When asked if the decision not to pursue a formal motion was Green's or his parents, Woods replied, "Either or. As I stated, we polled the Judge and the Judge said he was not inclined to reconsider, which we then communicated to Mr. Green and his parents." App. 87-88.

The PCR court denied relief on the grounds related to moving to withdraw the plea, objecting to the solicitor asking for a life sentence, reconsider the sentence, and whether Green's plea was knowing and voluntary. App. 104-08. The PCR judge found plea counsel's testimony credible and relied on that finding to deny relief. App. 104-08. As for prejudice, the PCR court made an error of fact, stating that Green received the minimum sentence of thirty years when he was actually sentenced to forty years' imprisonment. App. 104-08.

The PCR court erred in holding petitioner could not prove deficient performance or prejudice under the two-pronged approach of Strickland v. Washington, 466 U.S. 668 (1984). Petitioner's guilty plea was unknowing and unintelligent because he relied on either the misinformation from his attorney that the State would not seek life or his lawyers' failure to take any action to halt or undo the plea once the State asked for life. "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 v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 566 U.S. 156, 162 (2012). "Before deciding whether to

plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 559 U.S. 356, 364 (2010) (internal quotations omitted). The Supreme Court has "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under Strickland." Id. at 1481 (quoting Strickland v. Washington, 466 U.S. 668, 689 (1984).

The South Carolina Supreme Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant's trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. Hinson found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

This case is analogous to Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988). In Jordan, the defendant pled guilty based upon the expectation that the solicitor would neither recommend nor oppose a sentence of probation. Id. at 53, 374 S.E.2d at 684. At the plea, a different solicitor represented the State and vigorously opposed probation. Id. The Supreme Court found plea counsel's failure to move to withdraw the sentence constituted ineffective assistance of counsel and reversed. Id. at 54-55, 374 S.E.2d at 684-85.

The PCR court's credibility finding in favor of plea counsel was error. Plea counsel's explanation of how he understood the plea was, at best, confusing during the PCR hearing when he explained to judges and lawyers. Green's testimony about being told the State would not seek life is credible. If plea counsel could not adequately explain whether the State would seek life during the PCR hearing, then it is highly unlikely he explained it properly to Green, a very young

layman. Plea counsel's recollection of Judge Brown expressly stating he would impose an unconstitutional trial tax on Green further undermines plea counsel's credibility. Green's logic that if he knew the solicitor would seek life, he would have risked trial makes perfect sense and is consistent with the remainder of Green's testimony at the PCR hearing. Furthermore, the solicitor's statement at the beginning of the plea that his witnesses were "lined up" corroborates that the lawyers were uncertain about whether Green would plead guilty and buttresses Green's testimony that he wanted to go to trial.

Green hearing the solicitor say he would seek life at the beginning of the plea colloquy does not erase the deficient performance by plea counsel. The judge immediately began a recitation of rights. Green likely believed his attorneys would take proper action as the plea continued, but they failed to do so. Green testified that he asked plea counsel to file a motion, but the attorneys only conducted an informal meeting and made no attempt to rectify the deficient plea. Plea counsel's admission that he discussed all of these choices with Green's mother—"Either or"—further supports Green's recollection of events. The PCR court erred in finding no deficient performance.

The PCR court also erred in its prejudice analysis. First, the court made an error of fact in finding that Green got the thirty-year sentence he was expecting. Green got forty years. Ten extra years in prison is, to put it mildly, a long time. The PCR court's clear error requires reversal.

Furthermore, the PCR court did not use the proper prejudice standard. The correct standard is whether, but for plea counsel's deficient performance, the defendant would have gone to trial. In order to prove prejudice under Strickland in a plea context, "a defendant must show the outcome of the plea process would have been different with competent advice." Lafler, 566 U.S. at

163. "[A] petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla, 559 U.S. at 372. However, the primary focus remains on whether petitioner's plea was involuntary and that he would not have otherwise pled guilty. Lockhart, 474 U.S. at 56-57.

Green consistently testified that he would have gone to trial but for the misinformation about what the State would do at the plea. Green, a layman, did the best he could after the fact and asked his attorneys to move for reconsideration of the sentence, but the proper avenue would have been to move to withdraw the plea. See Rolen v. State, 384 S.C. 409, 414, 683 S.E.2d 471, 474 (2009) (finding prejudice from attorney's failure to move to withdraw a guilty plea even though it was likely the judge would not have allowed withdrawal because "the plea judge was not able to exercise his discretion"). Plea counsel admitted Green wanted the sentence reduced—that Green wanted the bargain he expected and relied upon—but abandoned any formal attempt to undo the plea or the sentence. Green's desire to proceed to trial was rational under these circumstances and is not a simple case of "buyer's remorse." This Court should grant certiorari, reverse the PCR court, and remand for a new trial.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, reverse petitioner's convictions, and remand for a new trial.

s/David Alexander___
David Alexander
Deputy Chief Attorney For Capital Appeals

ATTORNEY FOR PETITIONER

This 28th day of October, 2026.