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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Walton J. McLeod, IV, Circuit Court Judge

TIMMY L. DOUGLAS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001654

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred by refusing to find plea counsel ineffective for failing to conduct an adequate investigation into the facts of petitioner's case and where petitioner was prejudiced as a result of plea counsel's deficient performance?

STATEMENT

The February 2022 term of the Cherokee County grand jury indicted petitioner for attempted murder and possession of a weapon during commission of a violent crime. App. 27-28. On August 21, 2023, petitioner's case was called before the Honorable J. Mark Hayes, II. App. 1. Kim Leskanic represented the state and Chrsitopher Bain represented petitioner. App. 1. Petitioner pled guilty as indicted. App. 16, ll. 2-10. The court imposed a total sentence of 20 years imprisonment, comprised of 20 years as to attempted murder and 5 years as to the weapons offense, set to run concurrently. App. 24, ll. 14-20. On August 30, 2023, plea counsel filed a timely notice of appeal; however, his appeal was dismissed for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. App. 29; App. 103-105.

On March 19, 2024, petitioner filed an application for post-conviction relief (PCR). App. 30-36. On January 30, 2026, the state filed a return and partial motion to dismiss. App. 37-49.[1] On March 2, 2026, an evidentiary hearing was convened before the Honorable Walton J. McLeod, IV. App. 50-81. McConnell Harrison represented the state. App. 50. Rodney Wade Richey represented petitioner. App. 50. On July 27, 2026, Judge McLeod signed an order denying and dismissing petitioner's application with prejudice. App. 82-102.

This petition follows.

[1] The state indicated in its return that while petitioner's PCR application was filed on March 19, 2024, the state did not receive the application until February 24, 2025. App. 37, n. 1.

ARGUMENT

The PCR court erred by refusing to find plea counsel ineffective for failing to conduct an adequate investigation into the facts of petitioner's case and where petitioner was prejudiced as a result of plea counsel's deficient performance.

Relevant facts

Guilty plea

On August 21, 2023, a guilty plea hearing was held related to petitioner's charges for attempted murder and possession of a weapon during commission of a violent crime. App. 1. The state noted that the plea was without negotiation or recommendation. App. 4, ll. 20-23. Petitioner heard the trial court's recitation of the rights he would give up by entering a plea and agreed that he understood and wished to go forward with his plea. App. 8, ll. 6-8. Petitioner also heard the state's factual recitation and agreed that those facts were substantially correct. App. 14, ll. 18-21. Petitioner stated that he was guilty of both attempted murder and the weapons offense. App. 16, ll. 2-10.

Plea counsel provided mitigation to the plea court. Plea counsel outlined that petitioner met with him several times and assisted with his own defense by going through the evidence. App. 19, ll. 1-5. Plea counsel noted that the case was complex, involved the FBI, SLED, and involved different phone carriers. App. 20, ll. 12-17. Plea counsel also noted that "there was a gun recovered that could've been tied to this crime that was found on a totally different person, who's currently incarcerated in April." App. 20, ll. 18-20. Plea counsel requested a 10-year sentence nothing that petitioner was pleading straight-up with the understanding he would receive at least 5 years and could receive up to 30 years. App. 20, l. 24 – 21, l. 3. Plea counsel also requested credit for the entire 728 days that he was on house arrest. App. 21, ll. 19-24.

The plea court found that there was a substantial factual basis for the plea. App. 24, ll. 14-15. The plea court imposed a 20-year sentence as to attempted murder set to run concurrently with a 5-year sentence for the weapons offense. App. 24, ll. 15-20. The plea court also granted petitioner 728 days of time-served credit. App. 24, ll. 15-20.

Evidentiary hearing

At his evidentiary hearing, relating to the gun issue, petitioner testified that plea counsel told him that a detective talked to two college students. App. 73, ll. 6-10. He explained that plea counsel told him the college students were questioned about whether they knew petitioner. App. 73, ll. 10-12. He testified that he was told the college students did not know him. App. 73, ll. 11-13. Petitioner further testified that during his plea hearing he found out that someone in jail was in possession of the gun that was connected to his case. App. 73, ll. 13-15. He estimated he was told about law enforcement talking to the college students three to four months before his plea hearing. App. 73, l. 16 – 74, l. 4. He explained that he did not know that the person linked to the gun was in jail until his plea hearing. App. 74, ll. 5-11. He testified that had he known that someone else was caught with the gun he would not have pled guilty. App. 74, ll. 12-15. He stated that if he had known that someone else was caught with the gun that was another reason he would not have pleaded guilty. App. 74, l. 22 – 75, l. 4.

Plea counsel testified that he believed it was in petitioner's best interest to enter a guilty plea. App. 56, ll. 20-24. Plea counsel testified that he specifically recalled meeting with petitioner after he learned where the gun was recovered from. App. 62, ll. 10-13. He testified that law enforcement interviewed the individual in the jail where the gun was found and remembered speaking with petitioner about that prior to the plea. App. 62, ll. 13-15. He explained that was why he specifically brought up the gun issue during the plea hearing. App.

62, ll. 16-17. He explained that the gun was recovered by someone in jail and acknowledged that an investigation was not conducted to "go all the way back to track that gun." App. 65, ll. 15-18. He explained that he was not sure that even if an investigation were conducted it would have been beneficial to petitioner. App. 65, ll. 18-21. He continued that "we did track it, and I think the guy had said maybe some Limestone students had given him the gun that was used in the shooting." App. 65, ll. 22-24.

In summation, PCR counsel argued that an investigation should have been done as to who the other individual in the jail that the gun was associated with was. App. 78, ll. 7-17. He argued that "the guy with the gun in jail should have been investigated to determine who he was, whether he had a cell phone, or anything." App. 78, ll. 18-23. He argued that plea counsel was ineffective for failing to conduct an investigation and petitioner was prejudiced because "the gentleman did have the gun that shot the guy." App. 78, l. 23 – 79, l. 2. PCR counsel clarified that counsel should have determined what that individuals involvement was with the shooting. App. 79, ll. 8-17.

The PCR court's ruling

The PCR court addressed petitioner's allegation that plea counsel was ineffective for failing to investigate the facts of his case and inform him of critical information related to an incarcerated individual who had ties to the firearm used in this case. App. 90-91. The PCR court determined that plea counsel credibly testified that he investigated the facts of petitioner's case, pursued leads, and had extensive discussion with petitioner about the discovery throughout his representation of petitioner. App. 94. The PCR court determined that plea counsel's testimony showed he adequately investigated petitioner's case and crafted a defense to "rebut the strong evidence," should the case have proceeded to trial. App. 94. As to the gun issue, the PCR

court determined that plea counsel's credible testimony established that petitioner was informed of the issue months before entering his guilty plea. App. 94-95. The PCR court also noted that plea counsel placed the gun issue on the record during the plea hearing, and thus, petitioner was provided with an opportunity to raise anything he wanted the plea court to consider. App. 95. The PCR court found that a "combination of the record and Plea Counsel's testimony tends to show that [petitioner] was aware of the details surrounding the gun prior to the day of his plea." App. 95. The PCR court noted that because the issue was addressed on the record during his plea hearing, petitioner could have requested to speak with plea counsel or decided to move forward with trial. App. 95. The PCR court concluded that petitioner could not "establish that Plea Counsel was constitutionally ineffective in his representation for failing ot conduct an adequate investigation and inform him of the facts of his case, nor can he establish that he would have proceeded with trial but for this alleged deficiency." App. 95. The PCR court denied and dismissed the allegation. App. 95.

Discussion

"Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." *Lafler v. Cooper*, 1566 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).

A guilty plea may be collaterally attacked by a showing that (1) counsel's performance was deficient; and (2) applicant was prejudiced by the deficiency. *Stalk v. State*, 383 S.C. 559, 560-63, 681 S.E.2d 592, 593-595 (2009). "In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered." *Taylor v. State*, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013); *see also Hill v. Lockhart*, 474 U.S. 52,

56 (1985) (stating that "[t]he 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.") (internal quotations omitted). When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)).

Moreover, under the deficiency prong, "the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." *Strickland v. Washington*, 466 U.S. 668, 688 (1984). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, "strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation." *Id.* at 45, 661 S.E.2d at 360 (citing *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004) and quoting *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S. Ct. 2527 (2003)) (internal quotation marks omitted). Further, "at a minimum, counsel has the duty to interview potential witnesses and to make an *independent* investigation of the fact and circumstances of the case." *Lounds v. State*, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008) (emphasis in original). Moreover, "[c]ounsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). "Where counsel articulates a strategy, it is measured under an objective standard of reasonableness." *Id.* (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

The PCR court erred by refusing to find that plea counsel rendered ineffective assistance of counsel by failing to conduct a reasonable investigation into the facts of petitioner's case. Specifically, plea counsel acknowledged that an investigation related to the gun linked to an individual in jail was not conducted to "go all the way back to track that gun." App. 65, ll. 15-18. While plea counsel testified that it was his belief that even if he had investigated the issue it would not have been beneficial, such explanation cannot constitute a valid strategic decision. *See Wiggins*, 539 U.S. at 521-22 (quoting *Strickland*, 466 U.S. at 690-91) ("Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation."). Plea counsel's own testimony at the evidentiary hearing reveals that he failed to conduct an investigation into the gun issue which may have tended to rebut aggravating evidence presented by the state. App. 65, ll. 15-18, 22-24; *McKnight*, 378 S.C. at 46, 661 S.E.2d at 360. As PCR counsel argued, plea counsel had a duty to investigate who the individual in the jail associated with the gun was, *see* App. 78, ll. 7-23, and by failing to conduct an investigation into the facts and circumstances of petitioner's case, he rendered ineffective assistance of counsel, *Lounds*, 380 S.C. at 460, 670 S.E.2d at 649.

Further, the PCR court's determination that because plea counsel placed the gun issue on the record during petitioner's plea hearing, petitioner had the opportunity to speak with counsel or raise the issue with the plea court does not remove plea counsel's deficient performance. App. 95. Plea counsel raised the gun issue during his mitigation to the plea court and presented the gun issue as another reason petitioner's case was complex. App. 20, ll. 12-20. By this time in the proceeding, petitioner had already stated that he was guilty of the charges and agreed to the

state's factual recitation. App. 14, ll. 18-21; App. 16, ll. 2-10. Accordingly, the PCR court erred by finding that petitioner failed to establish deficiency to prove the first prong of *Strickland* where plea counsel failed to conduct an adequate investigation into the facts of petitioner's case. App. 95; *Strickland*, 466 U.S. at 688; *Stalk*, 383 S.C. at 560-63, 681 S.E.2d at 593-595.

Petitioner was also prejudiced by trial counsel's deficient performance. During his evidentiary hearing, petitioner testified that had he known that someone else was linked to the gun he would not have entered a guilty plea. App. 74, l. 12 – 75, l. 4. *See Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Hill*, 474 U.S. at 59) (internal quotation marks omitted) ("The prejudice requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process."). In fact, petitioner explained that he only learned of the gun issue during his plea hearing and that if he had known someone else was linked with the gun he would not have pleaded guilty. App. 74, l. 22 – 75, l. 4; *see also Davie v. State*, 381 S.C. 601, 613, 675 S.E.2d 416, 422 (2009) *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) ("However, it is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice."). Accordingly, the PCR court erred by concluding that petitioner could not establish that he would have proceeded to trial but for plea counsel's deficiency in light of petitioner's unequivocal testimony. App. 95.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issues.



Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of November, 2026.

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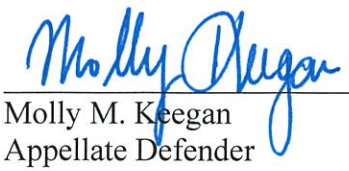
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timmy Douglas 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 Walton J. McLeod, IV, which was held on March 2, 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 Timmy Douglas.

Respectfully Submitted,



Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of November, 2026.

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S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

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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This 5th day of November, 2026.