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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Abbeville County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

LAMARCUS A. STEWART, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000777

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did plea counsel's failure to understand a challenge to a suggestive identification procedure and failure to explain a potential motion to suppress render petitioner's guilty plea unknowing and involuntary?

STATEMENT

On November 30, 2021, petitioner appeared before the Honorable Frank R. Addy in Abbeville County and pled guilty to three counts of ABHAN. App. 1-3. The State dismissed other pending charges, including indictments for attempted murder. App. 2-3. David M. Stumbo represented the State and Steven M. Hisker represented petitioner. App. 1. The plea agreement was for a negotiated cap of fifteen years. App. 2. Judge Addy accepted the plea. App. 18. The court sentenced petitioner to thirteen years' imprisonment. App. 30. Petitioner's appeal was dismissed for failing to provide a sufficient guilty plea explanation. App. 159.

On January 20, 2023, petitioner filed a PCR application. App. 33. Petitioner filed pro se amendments and an amended application through counsel. App. 67, 103, 113. On July 8, 2025, the Honorable Courtney Clyburn Pope held a hearing on petitioner's application. App. 115. Ashley A. McMahan represented petitioner. App. 115. Zachary W. Jones represented the State. App. 115. On March 20, 2026, Judge Pope denied relief. App. 158. This petition for certiorari follows.

ARGUMENT

Plea counsel's failure to understand a challenge to a suggestive identification procedure and failure to explain a potential motion to suppress render petitioner's guilty plea unknowing and involuntary.

At the PCR hearing, plea counsel testified he did not remember discussing with petitioner a suggestive identification procedure used by the police. App. 154-55. After saying he did not remember, he added, referring to the complainants, "I think the biggest issue was that he knew them, and he knew them by name and sight." App. 154-55. Petitioner testified that he saw a police report indicating an officer asked the complainants to come to the station and showed them a single picture of petitioner. App. 121, 131. The officer asked them, "'Was this the guy?'" App. 121. The complainants identified petitioner in the photo. App. 121. It was not until the next day that the police presented the complainants with a photo lineup. App. 121, 131.

Petitioner testified that plea counsel never discussed with him that the identification from the suggestive photo lineup could be suppressed. App. 121. Petitioner knew by the tile of the PCR hearing that the identification was tainted because it was suggestive. App. 123. Had he known that the identification could have been suppressed, he "would've went to trial instead of taking a plea." App. 122.

Petitioner was correct that the complainants' identification was not unassailable because in their initial statements both said their attacker was wearing a green mask. App. 122-23. Petitioner included the witness statements from the scene in his PCR filings. App. 105-06.

Cunningham's statement said, "**Think** it was Marcus Stewart." App. 105 (emphasis added). It then added, "Blue jeans black shirt green mask." App, 105. Durbin's statement was more extensive than Cunningham's. App. 106. She said she saw Stewart "walking on the

side walk towards the dollar general." App. 106. She claimed Stewart shot at their car. App. 106. But she also agreed with Cunningham that the assailant was wearing "a green face mask." App. 106.

Showing Cunningham and Durbin a single photo of Stewart before giving them a six-pack lineup is the equivalent of a single person show-up identification. Single person show-ups are particularly disfavored in the law. Stovall v. Denno, 388 U.S. 293 (1967) (practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned); State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000).

A criminal defendant may be deprived of due process of law by an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. State v. Mansfield, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000). See also State v. Wyatt, 421 S.C. 306, 310-11, 806 S.E.2d 708, 710 (2017). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. Manson v. Brathwaite, 432 U.S. 98 (1977).

The United States Supreme Court has developed a two-prong inquiry to determine the admissibility of an out-of-court identification. Biggers, 409 U.S. 188. First, "[a] court must first determine whether the identification process was unduly suggestive." Id., 409 U.S. at 198; Moore 343 S.C. at 286-287, 540 S.E.2d at 447. The court must next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed ... only if [the procedure] was suggestive need the court consider the second question-whether there was a substantial likelihood of irreparable misidentification. Id.

In considering whether an identification is reliable, based on the totality of the circumstances and despite the use of an unduly suggestive process, the court should consider the

following factors: (1) the opportunity of the witness to view the offender at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Moore, 343 S.C. at 289, 540 S.E.2d at 448-449.

None of these legal avenues of challenging the suggestive identification procedure were properly explained to petitioner. Had they been explained, petitioner would not have pled guilty and would have gone to trial. 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).

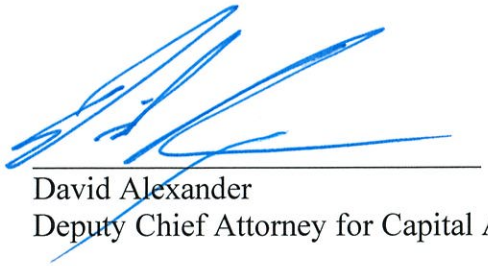
The South Carolina Supreme Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant's trial attorney told him he would be eligible for parole after serving ten years when, in reality, 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).

Plea counsel's failure to explain that petitioner could have challenged the complainants' identification because of the suggestive procedures used by the police rendered his guilty plea unknowing and involuntary. 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. Petitioner unambiguously testified that he would have gone to trial but for the deficient advice of plea counsel. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 9th day of November, 2026.

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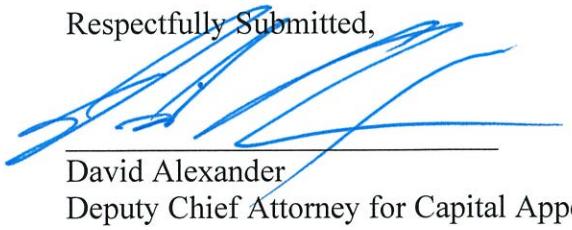
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lamarcus Stewart states:

1. He is Deputy Chief Attorney for Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Courtney Clyburn-Pope, which was held on July 8, 2026, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Lamarcus Stewart.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 9th day of November, 2026.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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 9th day of November, 2026.