ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Kershaw County

James R. Barber, III, Circuit Court Judge

HENRY R. WOODS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001679

PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUES PRESENTED

1.

Did plea counsel's failure to investigate Vincent Bracey as a defense witness before advising Petitioner to plead guilty violate Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel where Petitioner had informed plea counsel before his guilty plea that Bracey, a witness to the altercation, had told Maurice Chisholm that Petitioner was innocent and was not the shooter?

2.

Did plea counsel's failure to even minimally communicate with Petitioner and inform him of exculpatory gunshot residue evidence along with the non-inculpatory testimony of his seven co-defendants before advising Petitioner to plead guilty violate Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel where Petitioner testified that he would not have pled guilty if he would have been properly apprised of this evidence?

STATEMENT

A Kershaw County Grand Jury indicted Petitioner at the November 2006 term and March 2009 term of General Sessions for murder and second degree lynching. App. 166-169. On July 26, 2010, Petitioner pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to voluntary manslaughter and second degree lynching before the Honorable J. Ernest Kinard, Jr. Assistant Solicitor Ronald W. Moak represented the state, and Cornelius J. Riley represented Petitioner. App. 1.

Petitioner was sentenced by Judge Kinard to twenty-two years imprisonment for voluntary manslaughter and twenty years concurrent for second degree lynching. App. 25, ll. 20-25. On August 26, 2010, a hearing was held on Petitioner's motion to reconsider the sentence before Judge Kinard. App. 34. Judge Kinard refused to alter the original sentence imposed. App. 38, l. 20.

The South Carolina Court of Appeals affirmed Petitioner's convictions. State v. Woods, Op. No. 2012-UP-102 (S.C. Ct. App. Filed February 22, 2012).

On September 24, 2012, Petitioner filed an application for post-conviction relief (PCR). App. 42-48. The state filed a return to this application on November 29, 2012. App. 53-59. On April 23, 2013, Petitioner filed an amended application for post-conviction relief. On May 1, 2005, Petitioner filed a second amended application for post-conviction relief. Supp. App. 1-3. The matter proceeded to an evidentiary hearing on June 4, 2013 before the Honorable James R. Barber, III. App. 60. Assistant Attorney General Megan E. Harrigan represented the state, and Kristy G. Goldberg represented Petitioner. Id. By order dated July 9, 2013, Judge Barber denied Petitioner relief. App. 151-165.

This petition for writ of certiorari follows.

ARGUMENT

1.

Plea counsel's failure to investigate Vincent Bracey as a defense witness before advising Petitioner to plead guilty violated Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel where Petitioner had informed plea counsel before his guilty plea that Bracey, a witness to the altercation, had told Maurice Chisholm that Petitioner was innocent and was not the shooter.

Guilty Plea

Petitioner pled guilty on July 26, 2010 pursuant to North Carolina v. Alford, 400 U.S. 25, to voluntary manslaughter and second degree lynching. App. 3, ll. 1-23. The facts established at the guilty plea were as follows. Petitioner was concerned after hearing rumors that his child, who he had not seen in some time, was being abused and neglected. On the night of March 7, 2006, he telephoned his child's mother, Ebony Danzy, and asked to see his child. The mother put her boyfriend, DeMont Hough, on the phone, and Petitioner and Hough apparently got into an argument. Out of concern for his child, Petitioner decided to travel to the mother's home in Bethune. Seven family members travelled with him. The group parked its pickup truck down the street from the mother's mobile home and walked to the residence. Once there, a chaotic altercation occurred in the front yard involving more than a dozen people. During the altercation, the decedent was shot. App. 12, l. 10 – 13, 12; App. 21, 1. 2 – 22, l. 1.

The solicitor stated that the seven co-defendants "allocated that there was a fight where multiple people were involved and a gun went off." App. 13, ll. 13-21. He claimed, however, that the state had four witnesses – Ebony Danzy, Shanasia Danzy, DeMont Hough, and Vincent Bracey – who would testify that Petitioner shot the decedent in the neck while he was on the ground. The

solicitor also claimed that one of Petitioner's co-defendants, Jeanette Haile, would testify that she saw Petitioner shooting a firearm. App. 14, l. 2 – 15, l. 13. The state's theory was that Petitioner meant to shoot the mother's boyfriend, DeMont Hough, due to their argument on the telephone, but mistakenly killed the decedent, who was DeMont Hough's brother. App. 13, ll. 1-12.

Plea counsel argued during the plea, "It was after nightfall. There was a lot of people scuffling around. And it was hard to tell who did what to who." App. 21, l. 24 – 22, l. 1.

After accepting Petitioner's plea, the judge sentenced Petitioner to twenty-two years imprisonment. App. 25, ll. 20-25.

Testimony of Co-Defendants

On July 19, 2010, a week before Petitioner's anticipated trial, all seven co-defendants pled guilty to two counts of third degree assault by mob, which carries up to a year imprisonment. Supp. App. 4; see also Supp. App. 10, ll. 4-8. Each defendant provided testimony at their guilty plea proceeding and agreed to testify truthfully at Petitioner's trial if it went forward. Supp. App. 6, l. 1 – 4, l. 3. Their sentencing was deferred to ensure that they cooperated at Petitioner's trial. As seen, of the seven co-defendants, **only one** allegedly saw Petitioner with a gun. The other six co-defendant's testified that they travelled with Petitioner to the mother's residence that night, but **did not see the shooting and never saw Petitioner with a gun.** Bracey was not present at this proceeding.

During his guilty plea, Chad Burris testified that the group travelled to Ebony Danzy's residence that night because Petitioner "wanted to see his son." Supp. App. 14, ll. 1-3. They parked around the corner from Danzy's house on a dirt road and walked to the residence. Burris claimed that he never made it all the way to the yard, but hung back in a wooded area. He heard yelling and a lot of commotion and then saw everyone fighting. Upon hearing the commotion, Burris testified

he ran back to the pickup truck "and that is when . . . [he] heard the gunfire." Supp. App. 19, l. 21 – 122, l. 7. **Burris did not see the shooting and "never saw a gun" that night**. Supp. App. 29, l. 25 – 230, l. 1 (emphasis added). He testified that Petitioner never told him that he shot anyone, but Petitioner "said if he have to, he would [take the rap for it]." Supp. App. 25, l. 10 – 26, l. 6.

Maurice Haile was the next to testify. Supp. App. 33, ll. 7-16. He explained that on the night of March 7, 2006, he travelled with the group to Bethune to talk to Ebony Danzy about seeing Petitioner's son. Maurice said that he thought "there might be some trouble up there" because Petitioner had already argued with Ebony Danzy on the telephone. Supp. App. 38, l. 24 – 40, l. 8. They parked behind some trees. Maurice hung back and smoked a cigarette with James Drakeford, another co-defendant. Maurice testified, "We heard the arguing and everything. They were fighting, you know what I'm saying, and we started running [towards the fighting]." However, Maurice explained that he and James never made it all the way to the fighting because they heard a gunshot and "ducked down and ran back the opposite direction." Maurice never got close enough to the yard to see who was fighting and **did not see the shooting**. He also testified that **he never saw a gun that night**. Maurice explained that Petitioner "said he didn't do it." Supp. App. 41, l. 19 – 46, l. 22 (emphasis added).

James Drakeford testified that the group travelled to Ebony Danzy's home in Bethune that night because she would not let Petitioner see his son and they wanted to "make sure nothing got out of hand." They parked the pickup truck away from the residence and walked up the dirt road towards the home. James testified that he and Maurice lagged behind and smoked a cigarette. As they were walking, James explained they heard a commotion ahead and eventually heard gunshots. Upon hearing the gunshots, the two ran in the opposite direction and hid in the woods. Supp. App. 55, l. 1 – 57, l. 20. James testified that **he did not get close enough to see who was fighting or**

who fired the gunshots. Supp. App. 59, l. 25 – 60, l. 2 (emphasis added). **He also denied ever seeing a gun that night**. He stated Petitioner never made any statements to him about "taking the rap for this." Supp. App. 58, ll. 16-25 (emphasis added).

Corey Haile was the next to testify. Supp. App. 65, ll. 13-18. He explained that Petitioner wanted the group to come with him because he "expected troubled" at Ebony Danzy's house. Supp. App. 66, l. 21 – 67, l. 6. He confirmed that they parked the pickup truck away from the residence and walked up the dirt road towards the house. Petitioner was in the lead. Once they reached the yard, everyone started fighting. There were people fighting everywhere. During all the fighting, Corey explained that he heard one or two gunshots go off and that once the shots were fired, "everybody ran." Supp. App. 69, l. 23 – 72, l. 14. Corey testified that **he did not see a gun that night and he did not see Petitioner shoot anyone**. Supp. App. 73, l. 7 – 74, l. 13 (emphasis added).

Jerry Haile testified that the group travelled to Bethune so Petitioner could talk to Ebony Danzy about seeing his son. Supp. App. 81, l. 5 – 82, l. 7. When they arrived, the group walked to the house up a dirt road. Once they reached the yard, fighting broke out. Jerry explained that there were a lot of people standing around "like in school fights." As he was attempting to pull someone off of Chad Burris, he heard a gunshot and everyone ran. Supp. App. 83, l. 8 – 85, l. 10. Jerry testified that **he did not see who fired the shots** because "[t]here were too many people like gathered around." He also said that **he did not see anyone with a gun** before or after the shooting. Supp. App. 88, ll. 7-16 (emphasis added). Jerry denied that Petitioner ever said he would "take the rap for this." Supp. App. 90, ll. 15-23.

Dale Drakeford testified that Petitioner was upset because Ebony Danzy would not allow him to see his son. She explained that Petitioner was "worried that they were trying to trick him to

get him up there." The group travelled to Bethune because everyone "want[ed] to have [Petitioner's] back." Supp. App. 103, l. 3 – 104, l. 20. Once there, everyone got out of the truck and headed towards Ebony Danzy's house. As they reached the yard, people started coming out of the trailer and fighting broke out in the middle of the yard. Dale admitted that she had a bat. She explained, "It was dark. I couldn't see. The only thing I know everybody went and piled up on everybody." In the midst of the fighting, she heard someone yell, "get the gun." After hearing someone yell, "get the gun," Dale testified she started running back towards the truck. As she was running, she heard three or four gunshots go off. Dale said that **she did not see anyone in her group with a gun nor did she see anyone in her group shoot anyone**. Supp. App. 105, l. 5 – 108, l. 17 (emphasis added). However, Dale testified that Petitioner later told her he did not want her "to go down like that and he would take the rap." Supp. App. 110, l. 24 – 111, l. 7.

Jeanette Hail was the last to testify. During her testimony, she read aloud a written statement she had previously given to law enforcement. In the statement, Jeanette said that the group travelled to "Bethune to fight Ebony's boyfriend." She said that Petitioner was "fighting Ebony's boyfriend" and the "rest were fighting the other boys that was there with Ebony and them." During the fighting, she heard someone from the other group yell "go get the burner" and then she eventually heard about four gunshots. After the shots went off, everyone ran back to the truck. In her statement, she wrote, "But [Petitioner] did have a gun too and when everybody got on the truck [Petitioner] was still shooting at them and they were shooting at [Petitioner] too. So therefore both of them had guns. [Petitioner] and Ebony's boyfriend or another boy that was there with Ebony's boyfriend. When we was leaving, [Petitioner] was still shooting back at them and they were shooting too." Jeanette confirmed that what she wrote in the written statement was true. Supp. App. 119, l. 8 – 121, l. 22.

PCR Hearing

Vincent Bracey testified that on March 7, 2006, he was present when the altercation that led to Petitioner's convictions occurred. Before the altercation began, Bracey was with the decedent and the decedent's brother. He claimed that he did not know why the fight started between his group and Petitioner's group, but admitted to being part of the fight. Despite being "out there in the midst of fighting," Bracey claimed that he did not see a gun. He explained, "I never seen a gun. I'm saying I never seen a gun, but I'm saying I heard the shots." Bracey testified that the individual who shot the decedent had his back to Bracey and thus Bracey was unable to see the shooter's face or conclusively identify the shooter. However, Bracey explained that "from the looks of it" **Petitioner was not the shooter**. App. 71, l. 9 – 73, l. 23 (emphasis added). He stated, "[T]he fellow that had his back to [me] was a much bigger fellow than [Petitioner], I'm saying taller wise." App. 80, l. 23 – 81, l. 16.

Bracey denied both speaking to law enforcement about the incident and giving a written statement. When shown a written statement allegedly written by Bracey on March 7, 2006, Bracey denied writing the statement. App. 69, ll. 1-24. This statement identified Petitioner as the shooter. See App. 149-150. The statement referred to Petitioner by his nickname "Smurf." Bracey denied ever knowing Petitioner to go by the name "Smurf." App. 74, l. 22 – 75, l. 14.

Bracey further testified that he was asked by the solicitor to testify against Petitioner at trial. However, Bracey explained, "I told him I couldn't testify to what he was asking me to testify to . . . He asked me was Mr. Woods the shooter, and I told him I didn't know. I never seen -- I couldn't say that he was the shooter, so I couldn't testify and say, yeah, that I seen him shoot." App. 74, ll. 5-17.

Bracey testified that he entered the South Carolina Department of Corrections in February 2007 after he was convicted of voluntary manslaughter. He acknowledged that he was housed within the department of corrections at the time of Petitioner's guilty plea in July 2010. However, Bracey stated that he was never contacted by Petitioner's plea counsel and that he "[d]on't know who that is." App. 68, ll. 22-25; App. 78, l. 3-13; App. 80, ll. 15-20.

Maurice Chisholm was the next to testify. He explained that he was incarcerated in 2006 and thus was not present during the altercation that led to the decedent's death. Chisholm testified that Vincent Bracey told him Petitioner "didn't kill no one" and "wasn't the shooter." This conversation took place in prison shortly after Bracey entered the department of corrections around late 2006 or early 2007. Chisholm stated that no one came to speak to him about what he knew about the case, but he was aware that he was listed as a defense witness at Petitioner's trial and was subpoenaed to testify. Chisholm confirmed that Bracey never refer to Petitioner as "Smurf." App. 82, l. 15 – 87, l. 1.

Petitioner testified that shortly after he was arrested he was appointed an attorney. After this first attorney was relieved as counsel, plea counsel, Neil Riley, was appointed to represent him. Petitioner explained that he posted bond about six months after he was charged and remained out on bond until his guilty plea in 2010. App. 92, ll. 1-25. During the nearly four years Petitioner was out on bond, he only met with plea counsel once. This meeting took place about a week before his case was to be tried. Petitioner explained that he was supposed to meet with plea counsel a second time the Friday before his trial was to begin, but plea counsel cancelled the meeting. App. 93, ll. 1-12. Petitioner testified that he first learned that the state was going to call his case for trial from his bondsman and that it was only after learning this information that Petitioner met with plea counsel. App. 93, l. 15 – 94, l. 4.

Petitioner explained that plea counsel, Neil Riley, never reviewed the discovery materials with him and that he never saw any written statements, police reports, or forensic reports pertaining to his case. Specifically, Petitioner never saw the results of the gunshot residue tests which indicated that the decedent had gunshot residue on his hands, but Petitioner did not. App. 94, l. 5 – 96, l. 11; see also Supp. App. 164-165. Petitioner testified that if he had been aware of the gunshot residue results prior to his guilty plea, he would not have pled guilty. App. 99, ll. 18-20.

Petitioner also stated that Riley never discussed with him any possible defenses and therefore, at the time he pled guilty, he was unaware of what defenses he may have had if he would have proceeded to trial. However, Petitioner testified that Riley did tell him what witnesses would be testifying against him at trial. These witnesses included Ebony Danzy, who was the mother of Petitioner's child, Shanasia Danzy, and Vincent Bracey. App. 96, l. 19 – 97, l. 9.

Petitioner testified that he told Riley about Maurice Chisholm and that Bracey, who was allegedly going to testify against Petitioner, had told Chisholm that Petitioner was not the shooter. He asked Riley to speak to both Chisholm and Bracey and to call them as witnesses at trial in his defense. Petitioner was told that Bracey was already going to be called as a state witness at trial. App. 97, l. 10 – 98, l. 6.

Additionally, Petitioner explained that he had seven co-defendants. All of his co-defendants had proffered testimony of what they would testify to if the case was called to trial. This was required of each of them by the state in exchange for an extremely generous plea offer. Petitioner testified he was not allowed to attend this hearing and said Riley never reviewed with him what his co-defendants claimed during their proffered testimony. Petitioner explained he has since received a copy of the transcript of this hearing and learned that none of his co-defendants testified that he

was the shooter. Petitioner said if he had known what his co-defendants' testimony was prior to his guilty plea he would not have pled guilty. App. 98, l. 7 – 99, l. 16.

Plea counsel Riley testified that he was appointed to represent Petitioner in December 2007. He explained that another public defender, Glenn Rogers, was initially appointed, but he later took over the case. App. 118, l. 19 – 119, l. 10. Riley maintained he had difficulty communicating with Petitioner and getting in contact with him since all the addresses and telephone numbers he had for Petitioner were no longer correct. He explained that after being served with a notice of trial, he filed a motion to be relieved as counsel or, in the alternative, for a continuance due to his difficulty in contacting Petitioner. After filing this motion, Riley said that he was able to meet with Petitioner at his office. App. 119, l. 14 – 120, l. 10. This meeting took place the week before the trial was scheduled to begin and was the only meeting plea counsel had with Petitioner outside of court. App. 132, l. 19-22.

Riley said that during this single meeting he reviewed with Petitioner the indictments charging him with murder and second degree lynching and the elements of each charge. App. 120, l. 24 – 121, l. 6. He also maintained that the two discussed Petitioner's version of the facts and reviewed all the discovery materials, including the gunshot residue report. Part of the discovery he reviewed with Petitioner were the written statements of Vincent Bracey, Ebony Danzy, and Shanasia Danzy. All three of these statements implicated Petitioner as the shooter. App. 121, l. 24 – 125, l. 2. Additionally, Riley explained that Petitioner's seven co-defendants pled guilty on July 19, 2010 and proffered testimony. Riley was present during this hearing and took notes. Riley maintained that he reviewed his notes of this testimony with Petitioner during their single meeting. App. 125, l. 3 – 126, l. 16; 140, l. 19 – 141, l. 7.

Furthermore, Riley testified that he subpoenaed Maurice Chisholm as a defense witness for the anticipated trial, but did not subpoena Vincent Bracey. App. 127, l. 17-23; App. 134, ll. 19-22; see also Supp. App. 166. Why he did not also subpoena Bracey, Riley said he could not explain. However, Riley recognized that "without Bracey's testimony, Chisholm's testimony may have been inadmissible hearsay." App. 134, l. 23 – 135, l. 4. He admitted that **he did not speak with either potential witness**. App. 133, l. 25 – 134, l. 1; App. 134, l. 19-22. Riley testified, I was at that point under the conviction that Vincent Bracey was going to testify that he saw - - not only saw Mr. Woods shoot, but he saw Mr. Woods shoot [the decedent] twice in the chest." App. 137, ll. 11-14.

Riley stated he did not hire an investigator to assist with the case claiming he "felt very confident [he] had a grasp of the facts of the situation without the need for further investigative work." App. 128, ll. 5-13.

Order of Dismissal

The PCR court held plea counsel was not ineffective for failing to adequately prepare Petitioner for trial, failing to provide Petitioner with information regarding exculpatory evidence, including the existence of gunshot residue on the decedent, and failing to adequately discuss available defenses with Petitioner because the court found Petitioner refused to contact plea counsel to participate in his defense. The court noted that plea counsel testified that when he and Petitioner finally met, he reviewed with Petitioner the indictments, the elements of each offense, possible defenses, and all of the discovery materials, including the SLED Gunshot Residue Report. The court thus found that plea counsel's performance did not fall below professional norms and that Petitioner failed to show actual prejudice from this alleged deficiency. App. 160-162.

The PCR court also found plea counsel was not ineffective for failing to investigate Vincent Bracey as a witness and for failing to subpoena him to testify at trial. The court stated both plea

counsel and Petitioner testified that plea counsel reviewed potential defense witnesses with Petitioner, including Maurice Chisholm and Vincent Bracey. The court noted that Vincent Bracey was subpoenaed to testify at trial by the state, and could have been called as a defense witness. The court further said, "As Maurice Chisholm's testimony centered around Vincent Bracey's statement being inaccurate, [plea counsel] was clearly aware of Vincent Bracey's potential testimony on behalf of the defense at trial." The court thus found that plea counsel's performance was not deficient and that Petitioner failed to show actual prejudice. App. 162.

Discussion

Despite knowledge that Vincent Bracey could possibly be an exculpatory witness, plea counsel failed to investigate Bracey as a defense witness. Both Petitioner and plea counsel testified at the PCR hearing that Petitioner had informed plea counsel that Maurice Chisholm said Bracey told him that Petitioner was **not** the shooter. Nonetheless, before advising Petitioner to plead guilty, plea counsel did not interview Bracey even though Bracey was in the custody of the South Carolina Department of Corrections and would have been easy to locate and interview. If plea counsel would have interviewed Bracey before advising Petitioner, plea counsel would have learned that Bracey was prepared to testify that he had seen the back of the shooter and Petitioner was not the shooter. See App. 72, l. 17 – 73, l. 23; App. 80, l. 21 – 81, l. 16. Plea counsel would have also discovered that Bracey denied writing the written statement provided to plea counsel by the state that implicated Petitioner in the murder. See App. 69, ll. 1-24; App. 79, l. 21-23.

If Petitioner had known about Bracey's testimony he would not have pled guilty and would have insisted on going to trial.

To establish ineffective assistance of counsel, Petitioner must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984). "First, a defendant must show that

counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (internal citations omitted). "The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The defendant is required to overcome the presumption that counsel was effective in order to receive relief." Id. at 117-18, 386 S.E.2d at 625 (internal citations omitted).

Where a defendant challenges a guilty plea, the defendant must show that there is a reasonably probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58 (1985).

The United States Supreme Court has held that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691. This includes a duty to investigate possible defenses even in a case where the defendant ultimately pleads guilty. Cobbs v. State, 305 S.C. 299, 302 408 S.E.2d 223, 225 (1991) (provides that failure to investigate possible defenses constitutes ineffective assistance of counsel). "Because a guilty plea is valid only if it represents a knowing and voluntary choice among alternatives, . . . a client's expressed intention to plead guilty does not relieve counsel of their duty to investigate possible defenses and to advise the defendant so that he can make an informed decision." Savino v. Murray, 82 F.3d 593, 599 (4th Cir. 1996).

"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, 474 U.S. at 56.

Without a complete investigation by counsel, Petitioner could not have made a knowing and voluntary plea because he did not know the available alternatives. Specifically, he did not know that if he had gone to trial, Bracey would have testified in his defense that Petitioner was not the shooter. Thus, this Court should find plea counsel ineffective for failing to properly investigate Bracey as a defense witness and remand for a new trial.

2.

Plea counsel's failure to even minimally communicate with Petitioner and inform him of the exculpatory gunshot residue evidence along with the non-inculpatory testimony of his seven co-defendants before advising Petitioner violated Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel where Petitioner testified that he would not have pled guilty if he would have been properly apprised of this evidence.

To establish ineffective assistance of counsel, Petitioner must satisfy the two-prong test set forth in Strickland, 466 U.S. 668. "First, a defendant must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Cherry, 300 S.C.at 117, 386 S.E.2d at 625 (internal citations omitted). "The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The defendant is required to overcome the presumption that counsel was effective in order to receive relief." Id. at 117-18, 386 S.E.2d at 625 (internal citations omitted).

Where a defendant challenges a guilty plea, the defendant must show that there is a reasonably probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 58. "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." Id. at 56.

Without a complete understanding of the state's evidence against him, Petitioner was unable to make a knowing and voluntary plea because he did not know the available alternatives. Specifically, he did not know that the results of the gunshot residue tests indicated that while the

decedent had gunshot residue on his hands, Petitioner did not. See App. 95, l. 16 – 96, l. 11. Petitioner testified that if he had been aware of the gunshot residue results prior to his guilty plea, he would not have pled guilty. App. 99, ll. 18-20.

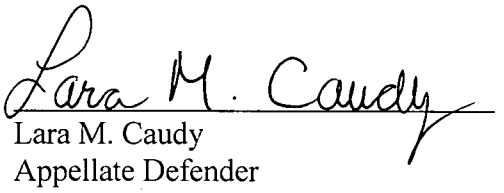
Furthermore, Petitioner testified he was not allowed to attend the hearing in which his seven co-defendant proffered testimony and plea counsel never reviewed with him what his co-defendants claimed during their testimony. Petitioner explained he has since received a copy of the transcript of this hearing and learned that none of his co-defendants testified that he was the shooter. Petitioner said if he had known what his co-defendants' testimony was prior to his guilty plea he would not have pled guilty. App. 98, l. 7 – 99, l. 16.

Thus, this Court should find plea counsel ineffective for failing adequately communicate with Petitioner and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issues presented.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Kershaw County
James R. Barber, III, Circuit Court Judge

HENRY R. WOODS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari, a copy of the appendix, and a copy of the supplemental appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of March, 2014.

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 21st day of March, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.