

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Marlboro County

R. Ferrell Cothran, Jr., Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

MAY 23 2014

**S.C. Supreme Court**

MARCUS TOWNSEND,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-002270  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

CARMEN V. GANJEHSANI  
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ATTORNEY FOR PETITIONER

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The PCR court erred in finding that plea counsel provided effective assistance of counsel where Petitioner was not shown the videotaped statements of his co-defendants despite his requests to do so, thereby hindering Petitioner’s ability to enter his guilty plea intelligently and his ability to participate in his own defense.

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**ISSUE PRESENTED**

Whether the PCR court erred in finding that plea counsel provided effective assistance of counsel where Petitioner was not shown the videotaped statements of his co-defendants despite his requests to do so, thereby hindering Petitioner's ability to enter his guilty plea intelligently and his ability to participate in his own defense?

## STATEMENT

### **Indictments**

On July 1, 2010, Petitioner Marcus Townsend was indicted by the Marlboro County Grand Jury for (1) murder and (2) armed robbery. App. 99-100; 103-104.

### **Guilty Plea**

On October 31, 2011, Petitioner appeared before the Honorable Michael G. Nettles to plead guilty to voluntary manslaughter and armed robbery. App. 1; 4, ll. 6-12. Petitioner was represented by Emily M. Crayton, and the State was represented by Deputy Solicitor Mary Thomas Johnson-Lee. App. 1.

The State recommended a twenty-five (25) year cap. App. 4, ll. 24-25. The State then presented the factual basis for the plea. On May 10, 2010, the Bennettsville Police Department was dispatched to the Quick Stop convenience store on Marshall Street located in the city limits of Bennettsville. Upon arrival, law enforcement was told that a young man had been shot inside. When they went inside the store, they saw the store clerk lying on the floor. App. 6, l. 21 – 7, l. 3. The store clerk later passed away at the hospital. App. 8, ll. 2-3.

Later that day, law enforcement received information about the individuals involved in the incident. Two co-defendants gave statements indicating that Petitioner was the shooter. App. 7, ll. 4-10.

The State, however, acknowledged at the plea hearing that there was no forensic evidence tying Petitioner to the homicide. App. 7, ll. 14-15. There were a total of four co-defendants, including Petitioner. One of the co-defendants, Kadeem Ocean, drove the get-away vehicle. App. 7, ll. 15-17.

The three individuals who allegedly entered the store were Petitioner, who was seventeen years old at the time, Richard Jamal Davis, and Rashawn Baskins. Allegedly, while Davis went to the cash register to take the cash from the drawer, Baskins went up to the store clerk and began patting down his pockets to see if he had any monies on his person. App. 7, ll. 18-24.

When the store clerk knocked Baskins' hands away, Petitioner allegedly shot the store clerk, according to the statements of his co-defendants. App. 7, l. 25 – 8, l. 1.

Investigators at first believed that a gun brought to them by Petitioner was the weapon used, but it was later conclusively determined that the gun Petitioner had was not the weapon used in the crime. App. 8, ll. 3-19.

The Solicitor also stated Petitioner and his co-defendants retrieved about eighty dollars from the register with Petitioner allegedly getting the majority of the eighty dollars because he was the shooter. App. 9, ll. 3-12.

Petitioner's plea counsel informed the plea judge that Petitioner was only seventeen years old at the time of the incident and had no prior criminal record. App. 13, ll. 20-25.

Plea counsel also noted that the facts of the case were "very much in dispute" and there was "very much in dispute about who the shooter was." App. 14, ll. 4, 24-25. Petitioner, Davis, and Baskins all gave statements, but these statements were contradictory. Petitioner and Baskins gave initial statements indicating that Davis was the shooter, but then Baskins changed his statement to accuse Petitioner of being the shooter. App. 14, ll. 4-21.

There were also two independent eye witnesses in the store who said that the shorter of the men was the shooter. Plea counsel did not believe that Petitioner was the shortest of the three. App. 14, ll. 21-25.

After accepting Petitioner's guilty plea, Judge Nettles sentenced Petitioner to twenty-three (23) years for voluntary manslaughter and twenty-three (23) years for armed robbery, with the sentences to run concurrent. App. 21, ll. 11-21. Petitioner did not file a direct appeal.

### **Application for Post-Conviction Relief and Evidentiary Hearing**

Petitioner filed his application for post-conviction relief ("PCR") on September 27, 2012. App. 23 – 29. The State filed a Return on or about March 15, 2013. App. 30-34.

An evidentiary hearing was held before the Honorable R. Ferrell Cothran, Jr. on July 15, 2013. App. 35 – 89. Petitioner was represented by Tristan M. Shaffer, and the State was represented by Assistant Attorney General Karen C. Ratigan. App. 25. Both Petitioner and his plea counsel testified at the hearing. App. 41-85.

Plea counsel agreed that Petitioner's co-defendants had given conflicting statements on who was the actual shooter and even changed their statements to later claim that Petitioner, not Davis, was the shooter. App. 42, l. 15 – 43, l. 9. Plea counsel said the co-defendants had all given videotaped confessions and while none claimed to be the shooter, all confessed that they robbed the store and the clerk ended up dead. App. 44, ll. 6-10. Plea counsel said while she had watched these videos, she was not sure if she had shown Petitioner all of the videos of his co-defendants' statements. App. 50, l. 22 – 59, l. 10. Plea counsel's notes indicated that Petitioner had informed her that he wanted to watch all of the videos. App. 56, l. 11 – 57, l. 14. Plea counsel, however, could not say that she complied with his request and showed him every single video that she was provided by the State in discovery. App. 70, l. 23 – 71, l. 10.

Plea counsel testified that at some point in the case she was concerned about Petitioner's competency or criminal responsibility because when she would visit Petitioner, his responses were just automatic "uh-huh, uh-huh" and she was not sure if Petitioner was really understanding her conversations with him. Therefore, she requested Judge King to send Petitioner for an evaluation. Judge King decided to send Petitioner for a "mini evaluation" which was conducted locally in a facility in Florence. That facility determined that Petitioner was competent, and Petitioner was never sent to the Department of Mental Health for a full evaluation. App. 44, l. 11 – 45, l. 16.

Plea counsel's notes indicated that Petitioner was reluctant to plead guilty. He was offered a negotiated plea of twenty-five (25) years which he did not want to accept, although he eventually accepted the plea with a cap of twenty-five (25) years. App. 58, ll. 16-25; 68, ll. 7-25.

Petitioner was adamant that he was not the shooter. App. 77, l. 10 – 78, l. 4. He did not want to receive a twenty-five (25) year sentence and did not believe that his plea counsel did all she could to argue for a sentence much less than twenty-five years. App. 78, l. 14 – 79, l. 16.

Petitioner testified that he did not view the videotaped statements of his co-defendants, Davis and Baskins, even though he informed his plea counsel that he wanted to see these videotaped statements. App. 80, l. 17 – 81, l. 23; 83, ll. 5-7.

Petitioner stated he only pled guilty even though he was not the shooter because he was afraid of receiving a life sentence. App. 84, l. 25 – 85, l. 8.

Petitioner's PCR counsel argued to Judge Cothran that Petitioner was entitled to relief for four separate reasons. First, Petitioner was not afforded the opportunity to view

all of the video statements and was denied his constitutional right to participate in his defense. Second, Petitioner's plea counsel could have presented more mitigating factors to the plea judge so that Petitioner would have received a sentence less than twenty-three years. Third, Petitioner only pled guilty because he was afraid of a life sentence. Fourth, Petitioner's plea counsel was ineffective in failing to have Petitioner undergo a full mental evaluation at the Department of Mental Health. App. 85, l. 18 – 86, l. 21.

### **Order of Dismissal**

Judge Cothran filed his Order of Dismissal on September 6, 2013 and denied Petitioner's PCR application. App. 90-97. In this Order, Judge Cothran found that plea counsel "adequately conferred" with Petitioner, "conducted a proper investigation, and was thoroughly competent in her representation." Judge Cothran further found that there was no evidence that Petitioner was coerced or pressured into entering a guilty plea. Judge Cothran additionally rejected Petitioner's assertion that he was not shown all of the videotaped statements of his co-defendants. App. 93-94.

This petitioner for writ of certiorari follows.

## ARGUMENT

**The PCR court erred in finding that plea counsel provided effective assistance of counsel where Petitioner was not shown the videotaped statements of his co-defendants despite his requests to do so, thereby hindering Petitioner's ability to enter his guilty plea intelligently and his ability to participate in his own defense.**

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758, 90 S.Ct. 1463, 1474 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him).

“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Specifically, “the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Holden v. State, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

Furthermore, “[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, 683 S.E.2d 471 (2009) (citing Hill v. Lockhart, 474 U.S. 52, 57-58 (1985)); see Ray v. State, 303 S.C.

374, 401 S.E.2d 151 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made in light of the erroneous advice given by plea counsel).

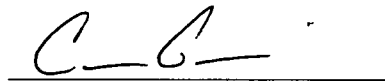
In this case, plea counsel's performance was deficient, as it fell below an objective standard of reasonableness. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). Specifically, Petitioner testified that despite informing plea counsel that he wanted to view the videotaped statements of his co-defendants, his plea counsel never showed him these videotapes. App. 80, l. 17 – 81, l. 23; 83, ll. 5-7. Plea counsel conceded that she could not recall showing Petitioner all of the videotapes. App. 50, l. 22 – 59, l. 10; 70, l. 23 – 71, l. 10.

Petitioner therefore entered his guilty plea without full knowledge of the facts of the case, rendering his guilty plea involuntary. Petitioner was moreover denied his right to participate in his defense. Accordingly, the PCR court erred in finding that plea counsel provided effective assistance of counsel and that Petitioner's guilty plea was knowing and voluntary. Petitioner is entitled to relief and to a new trial.

**CONCLUSION**

Based on the foregoing reasons, Petitioner Marcus Townsend requests this Court to grant his Petition for Writ of Certiorari and allow full briefing on the issue.

Respectfully submitted,



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Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER

This 23<sup>rd</sup> day of May, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO MARLBORO COUNTY  
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

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MARCUS TOWNSEND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-002270

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Marcus Townsend states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on July 15, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Marcus Townsend.

Respectfully submitted,



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Carmen V. Ganjehsani  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 23<sup>rd</sup> day of May, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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R. Ferrell Cothran, Jr., Circuit Court Judge

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MARCUS TOWNSEND,

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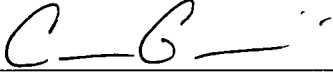
APPELLATE CASE NO. 2013-002270

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CERTIFICATE OF SERVICE


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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Marcus Townsend, #348435, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 23<sup>rd</sup> day of May, 2014.

  
Carmen V. Ganjehsani  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23<sup>rd</sup> day  
of May, 2014.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.