

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

James R. Barber, III, Circuit Court Judge  
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**RECEIVED**

AUG 18 2014

**S.C. Supreme Court**

JESSE RAY LANE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE # 2013-002568  
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JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR judge err in refusing to find that the guilty plea was rendered involuntary by the fact the counsel misinformed Petitioner that DNA and fingerprint evidence linked Petitioner to the murder?

## STATEMENT

In July of 2010, the Richland County Grand Jury indicted Lane for murder and burglary first degree, indictments #2010-GS-40-2524, 2525. On April 15, 2011, Lane appeared before the Honorable G. Thomas Cooper, Jr. and pled guilty as charged. James D. Cooper, III and John Clark Newton represented Lane at the plea. Kathryn Luck Campbell and Dolly Justice Garfield prosecuted the case. Judge Cooper sentenced Lane to two concurrent fifty (50) year sentences. A timely notice of intent to appeal was filed but the appeal was dismissed in an order dated November 16, 2011.

On September 13, 2012, Lane filed an application for post conviction relief. On November 2, 2012, the State filed the return. On October 1, 2013, an evidentiary hearing was held before the Honorable James R. Barber, III. Tommy A. Thomas represented Lane at the PCR hearing. Mary S. Williams was present on behalf of the State. In a written order filed November 5, 2013, Judge Barber denied relief and dismissed the application. A timely notice of intent to appeal was served on November 21, 2013. This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred in refusing to find that the guilty plea was rendered involuntary by the fact the counsel misinformed Petitioner that DNA and fingerprint evidence linked Petitioner to the murder.

Petitioner Lane pled guilty to murder and burglary first degree. During the plea colloquy the prosecutor told the judge that a pipe that witnesses would testify was used by Petitioner as the murder weapon was never recovered. (App. p. 13, lines 21-23; p. 14, line 9 – p. 15, lines 1-14; p. 16, lines 17-19). Additionally, the prosecutor stated that there was no DNA evidence found on the clothing Petitioner was wearing on the night of the murder but recovered later by law enforcement after the clothing had been laundered. (App. p. 17, lines 4-8).

During the PCR hearing Petitioner testified that defense counsel told him that his fingerprints were found on the murder weapon. (App. p. 75, lines 24 – p. 76, lines 1-2). Petitioner testified that he only learned at the guilty plea that no fingerprints were found because the alleged murder weapon/pipe was never recovered. (App. p. 76, lines 3-11). Petitioner also testified that defense counsel told him that DNA blood evidence from the victim was found on his clothing. (App. p. 75, lines 6-23). Again, Petitioner testified that he only learned that there was no DNA evidence at the guilty plea. (App. p. 76, line 17 – p. 77, lines 1-2). Petitioner testified that his plea was not knowingly and intelligently made because he did not have the facts. (App. p. 83, lines 9-20).

At the time of the PCR hearing, lead counsel, James D. Cooper, III, was deceased. (App. p. 89, lines 9-12). John Clark Newton served as second seat and testified at the PCR hearing. (App. p. 88, line 23 – p. 89, lines 1-8). The State asked Newton, “Do you recall whether information was provided to him regarding evidence about, DNA, any of that?” (App. p. 90, lines 20-21). Newton answered, “That I was not a part of.” (app. p. 90, line 22). On cross examination Newton

confirmed that he was not present and did not know what conversations Petitioner and Cooper may have had in regard to forensic evidence. (App. p. 93, lines 16-22).

PCR counsel argued that the guilty plea was rendered involuntary by the fact that counsel misinformed Petitioner that DNA and fingerprint evidence linked Petitioner to the murder. (App. p. 96, lines 14-16). The PCR judge disagreed writing in the order of dismissal:

Newton was not privy to conversations between Cooper and applicant regarding any DNA or fingerprint evidence (or lack thereof). Nonetheless, I find that Applicant was aware that such evidence did not exist due to the solicitor's detailed factual rendition during his plea if not before. Moreover, this court notes the extensive evidence which would have been presented against Applicant in the absence of DNA or fingerprint evidence, evidence which surely would tend to make a guilty plea an appealing option for a defendant. This court also notes Applicant's admissions of guilt during his plea both before and after the solicitor's rendition of the facts. (Tr. p. 7, lines 19-25; p. 35, lines 3-7; p. 38, lines 7-11).

Based on the foregoing, I find any misapprehension Applicant may have had regarding the evidence against him was cured during the plea colloquy. Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011) (alleged deficiency by counsel can be cured by plea colloquy).

The PCR judge erred. The guilty plea was rendered involuntary by the fact the counsel misinformed Petitioner that DNA and fingerprint evidence linked Petitioner to the murder.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. "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 (quoting Strickland,

466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.' " Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "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, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

"The second, or 'prejudice,' requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. at 59, 106 S.Ct. 366. "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

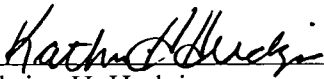
an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.” Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

Counsel was ineffective in misinforming Petitioner about the strength of the State’s evidence against him. There is a reasonable probability that but for counsel’s deficient performance, Petitioner would not have pled guilty, but would have insisted on going to trial. The PCR judge’s reliance on Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011) is misplaced as the allegation in Holden was that plea counsel was ineffective in not having adequate time to discuss the many charges and misinforming Holden about a sentence recommendation. While misinformation about the sentence was discussed at the PCR hearing in the present case, the issue on appeal involves counsel’s misinformation in regard to the strength of the State’s evidence. Unlike misinformation about sentencing, misleading information indicating the State’s case was stronger than it was could not be cured by the plea colloquy in this case.

**CONCLUSION**

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of August, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
JAMES R. BARBER, III, CIRCUIT COURT JUDGE

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JESSE RAY LANE,

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APPELLATE CASE # 2013-002568

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PETITION TO BE RELIEVED AS COUNSEL

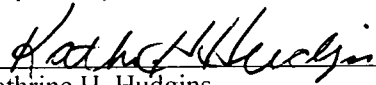
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Counsel for Jesse Ray Lane states:

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 October 1, 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 Jesse Ray Lane.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 18th day of August, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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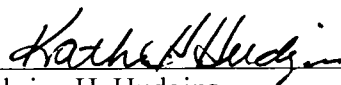
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CERTIFICATE OF SERVICE

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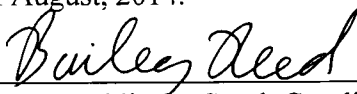
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Jesse Ray Lane, #345702, at Lee Correctional Institution this 18th day of August, 2014.



Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day  
of August, 2014.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 24, 2021.