STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Edgar W. Dickson, Circuit Court Judge

RAYMOND BRADLEY MCCARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000647

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where he pled guilty on the third day of his jury trial due to trial counsel's deficient performance during the trial which left Petitioner with no choice but to pled guilty and where trial counsel had repeatedly attempted to improperly influence Petitioner to plead guilty over the course of year?

STATEMENT

A York County Grand Jury indicted Petitioner at the March 25, 2010 term of General Sessions for assault and battery with intent to kill (ABIK). App. 442-443. His case was called to trial on August 23, 2011 before the Honorable John C. Hayes, and a jury. Assistant Solicitors Mindy Hervey Lipinski and Christopher Epting represented the state, and David Cook and Rosalee Davis represented Petitioner. App. 1.

On the morning of the third day of trial, Petitioner pled guilty as indicted. App. 283. He was sentenced by Judge Hayes to ten years imprisonment. App. 295, ll. 18-21. He did not appeal.

On April 11, 2012, Petitioner filed an application for post-conviction relief (PCR). App. 297-303. The state filed a return to this application dated July 26, 2012. App. 304-308. The matter proceeded to an evidentiary hearing on October 9, 2012 before the Honorable Edgar W. Dickson. App. 310. Assistant Attorney General J. Rutledge Johnson represented the state, and Sarah Difranco represented Petitioner. App. 310. By order dated June 17, 2013, Judge Dickson denied Petitioner relief. App. 416-425. On July 16, 2013, Petitioner filed a motion to alter or amend judgment pursuant to Rule 59(e). App. 426-429. The court subsequently filed an amended order of dismissal dated March 4, 2014. App. 430-441.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where he pled guilty on the third day of his jury trial due to trial counsel's deficient performance during the trial which left Petitioner with no choice but to pled guilty and where trial counsel had repeatedly attempted to improperly influence Petitioner to plead guilty over the course of year.

Jury Trial

Trial counsel moved pretrial to suppress a bloody shirt and a pair of bloody pants that law enforcement recovered from Petitioner's house after they entered his home without a warrant. Trial counsel also moved to suppress a videotaped statement Petitioner made while in the backseat of a patrol car and a written statement Petitioner gave law enforcement the night of his arrest. App. 34, l. 24 – 35, l. 3; App. 58, l. 7 – 60, l. 14. For reasons unknown, counsel ultimately withdrew his objection to the videotaped statement. App. 62, ll. 6-25. After hearing testimony from two law enforcement officers with the York County Sheriff's Office and Petitioner, the court denied Petitioner's motion to suppress the clothing finding the officers entered Petitioner home based upon exigent circumstances. App. 60, l. 15 – 62, l. 1; App. 88, ll. 1-17. The court also found that Petitioner's written statement was given freely and voluntarily after he had been read and waived his Miranda[1] rights. The court ruled the statement was admissible. App. 115, l. 8 – 116, l. 20.

Brenda Gourley, the first state witness, testified that she lived in the small community of Sharon, South Carolina. App. 144, ll. 3-20. She explained that on the night of February 5, 2010, she heard a knock at her front door and went to answer it. She said, when she got to the door, she saw the door knob turn like someone was trying to open the door. She eventually opened the door herself and saw a man standing outside. App. 150, ll. 3-25. She testified that the man "was quite

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

out of it" and "was demanding that I bring a Jamie Gilfillian to the door, and wanted to know if Jamie lived there, and I said no, he doesn't, and then he proceeds to argue yes, he does. You know, get him for me, and I said no, he doesn't, and the whole time he was talking to me he had his hand behind his back." App. 151, ll. 1-18. Gourley claimed this man was wearing a hearing aid. App. 15, l. 10.

Gourley said that she knew who Jamie Gilfillian was, that he lived in Sharon, and that "everyone knows Jamie." App. 152, ll. 18-24. She testified that she eventually told the man at her door where Gilfillian lived. She did not know his address, but she gave the man directions on how to get to Gilfillian's house. App. 153, l. 2 – 154, l. 7. Gourley explained that "when [the man] turned around to leave . . . I seen a hammer in his hand." This is what he allegedly had behind his back while he was speaking with her. App. 154, ll. 8-12. She said that when the man eventually left, he did not follow her directions and did not turn where she had told him to turn. App. 159, ll. 11-17.

The only question trial counsel asked Gourley was if she had called 911 after the man had left. Gourley said she had not. App. 160, ll. 7-16.

C.S., the victim's son, testified that on the night of February 5, 2010, he was home with his father and his minor sister when he saw "a truck at the end of the driveway." He said he went and told his father about the truck and then the two saw "someone walking up the driveway holding a hammer." App. 164, l. 3 – 165, l. 15. C.S. explained that the man "was saying something about he had got cut by a sword. He was hollering about that as he was walking up." App. 165, ll. 16-21. He testified that his father went out to meet the man who by then was standing at the end of their front porch. According to C.S., his father then grabbed the hammer from the man and the man threw a stepping stone at his father in return. App. 166, l. 12 – 167, l. 2.

C.S. testified that, after this exchange, his father walked the man to the end of their driveway, but the white truck which the man had arrived in was gone. As his father and the man were standing in the roadway, the truck came back and nearly stuck the two men who jumped out of the way. C.S. claimed that after the men moved to avoid the truck, he could no longer see them. He said he eventually saw his father "coming out of the woods" and "[h]e had blood running down his head." App. 167, l. 12 – 168, l. 15. He said the man also came out of the woods and he was "holding the hammer." App. 168, ll. 16-19. According to C.S., the man eventually left in the white truck. App. 168, ll. 20-23.

On cross-examination, C.S. testified that this happened around 10:30 or 10:45 at night and that he thought it was a Friday. App. 171, ll. 18-24. He could not remember if their porch light was on, but he claimed that the street light was on in the road. App. 173, ll. 4-23. According to C.S., he heard conversation between the man and his father, but he could not hear what they said. App. 174, ll. 5-12. Lastly, C.S. testified that his father and the man did not struggle over the hammer, his father simply took the hammer from the man. App. 176, ll. 3-15. However, defense counsel impeached C.S. with his prior written statement where he said, "[D]addy tried to get the hammer from the man, the guy lost the hammer to daddy. So, he picked up a stepping stone and threw it at daddy and missed." App. 177, l. 21 – 178, l. 9.

Dwayne Southard, the victim, testified that on the night of February 5, 2010, he was home with his two children while his wife was at work. He claimed that his son came to him and told him there was a truck parked at the end of the driveway and a man was walking up the driveway. App. 225, ll. 6-13. Southard testified that he walked outside and the man was standing right at the bottom of the porch. App. 225, ll. 13-17. He said the man "was hollering about Jamie Gilfillian, bring Jamie Gilfillian out, you're Jamie Gilfillian. I said I don't - - I ain't Jamie Gilfillian. I don't know

who you are. You know, he just kept on about Jamie Gilfillian." App. 232, ll. 5-9. Southard also said the man kept saying "Jamie Gilfillian, you cut me with a sword." App. 234, ll. 8-10. He testified that he told the man he needed to get off his property and asked him what he was doing with a hammer. App. 233, ll. 4-7.

According to Southard, the man "was definitely messed up on something." App. 234, ll. 2-7. He explained that because the man was "out of it," he eventually "eased down there and . . . grabbed the hammer from him." After Southard grabbed the hammer, he claimed the man picked up a stepping stone and threw it at him. App, 234, l. 23 – 235, l. 9. The man then started walking back down the driveway toward the truck and Southard followed. App. 235, ll. 18-23. When the man got to the truck, a woman inside the truck kept "hollering get in the truck, get in the truck . . . I ain't gonna sit there . . ." App. 237, ll. 17-20. Southard testified that the woman in the truck eventually took off in the vehicle and when she came back "[i]t was all I could do to get out of the way, and when I . . . jumped to get out of the way he [the man] lunged at me." App. 240, ll. 5-8.

He claimed that the two "landed in the ditch" and he somehow got on top of the man, and while they were lying on the ground, Southard claimed the woman "must of got out of the truck. She started kicking me." In response, Southard said he reached for the woman and that's when the man hit him several times with the hammer. App. 240, l. 5 – 242, l. 1. After he was finally able to get away, Southard said he ran back to his son and the man and woman left in their truck. App. 242, l. 7 – 244, l. 20.

On cross-examination, Southard testified that the man had laid the hammer down on the porch before Southard grabbed it. App. 249, ll. 19-24. Counsel also questioned him regarding why, after he had already picked up the hammer, he followed the man out of the driveway when the man was leaving on his own accord. Southard said he followed the man because he did not think the

man would actually leave until Southard walked him to his truck. App. 252, ll. 1-15. Counsel also asked Southard why he did not return to his house once the man made it to his truck. Southard said he did not want to leave the man out there and give him an opportunity to return to his house where his children were located. App. 252, l. 5 – 255, l. 2.

Despite asking Southard various questions about his account of events, trial counsel did not question him about any inconsistencies between his testimony and his written statement. Counsel also did not ask Southard about his injuries.

Jamie Gilfillian testified that he knows both Petitioner and Petitioner's girlfriend, Misty Montgomery. He explained that law enforcement showed up unannounced late at night on February 5, 2010 and told him "that a guy was looking for me to kill me." App. 267, l. 18 – 268, l. 19. Gilfillian said he told the officers that he could not recall whether he had had "any problems with anybody in the past recent month or two." App. 268, ll. 20-24. However, he claimed that while the officers were there he received a telephone call from a friend of his who told him that Petitioner was looking for him. He said he had his telephone on "speaker phone" so the officers could hear the conversation. App. 269, ll. 2-19. The friend also mentioned Misty Montgomery's name.

Gilfillian testified that he last saw Petitioner on New Year's Day when Petitioner "and two other guys had come to my house and was threatening to jump on me because I was talking to Misty over the phone." App. 271, l. 20 – 272, l. 6. He said that he and Petitioner "got into a scuffle in the yard and my mom ran out with a broom and they took off running and the car pulled off." App. 272, ll. 7-10.

Trial counsel did not ask Gilfillian any questions on cross-examination. App. 272, l. 16.

Tim Rumsey, the physician assistant who treated Southard at the Piedmont Medical Center emergency room, testified that Southard had abrasions, lacerations, and bruising to his face.

Rumsey also maintained that Southard had deep puncture wounds to his shoulder that required stitches. Because of the nature and location of these wounds, Rumsey conducted a "chest x-ray to rule out any lung injury." App. 204, l. 18 – 206, l. 10. Additionally, Rumsey said that Southard had "superficial" lacerations to his left arm that required bandaging. App. 206, ll. 14-15. Furthermore, Southard had a laceration to his right scalp area that required multiple staples. This wound had "bone fragments beneath the laceration," indicating a skull fracture. If left untreated, Rumsey said this injury could have caused a "subdural or epidural hematoma," which is bleeding between the skull and brain causing pressure, or a "subarachnoid hemorrhage." App. 206, l. 23 – 207, l. 23. He also maintained that due to this "open fracture," he had to administer antibiotics to prevent infection of the brain. App. 207, l. 25 – 208, l. 3.

On cross-examination, Rumsey testified that Southard was coherent and conscious when he arrived at the emergency room. Additionally, Rumsey explained that Southard was discharged after only five hours in the hospital and never had to return due to any complications from his injuries. App. 214, l. 8 – 215, l. 17.

Daniel Hamrick of the York County Sheriff's Office testified that he went to the victim's residence on February 6, 2010 and collected a brown hearing aid and a camouflaged hat. After he collected these items, Hamrick said that he brought them to the sheriff's office and placed them into evidence. App. 273, l. 16 – 276, l. 14.

Trial counsel did not ask Hamrick any questions on cross-examination. App. 276, l. 17.

Alex Wallace, a detective with the York County Sheriff's Office, testified that on the Tuesday after this incident happened, he discovered that a hearing aid was found at the victim's residence and entered into evidence. He explained that he collected the hearing aid from the evidence room and returned it to Petitioner at the detention center. According to Wallace, Petitioner

signed for the hearing aid and took it into his possession. Wallace claimed Petitioner never said the hearing aid did not belong to him. App. 277, l. 3 – 279, l. 7.

Trial counsel did not question Wallace on cross-examination. App. 279, l. 12.

Guilty Plea

At the beginning of the third day of trial, the solicitor told the court that Petitioner was pleading guilty to ABIK and that the state was recommending "a cap of ten with the understanding between the State and the defense, that the State will be arguing for that ten years, but the defense would have the opportunity to try to convince you to give him less [time]." App. 285, ll. 6-14. The solicitor also told the court that she was dismissing Petitioner's "charge of lynching in the second degree." App. 285, ll. 15-16.

After a standard plea colloquy where the court explained to Petitioner his constitutional rights, the direct consequences of his plea, and the sentencing range for ABIK, Petitioner indicated he was pleading guilty to the indictment. App. 286, l. 10 – 289, l. 8. The solicitor did not review with the court the facts of the case given that the facts were already presented during the partial trial, but she did state that it was her position Petitioner "deserve[d] the full ten years." App. 289, ll. 12-22.

The court then reviewed with Petitioner the victim's testimony from the day before and asked Petitioner whether he struck the victim with a hammer. When Petitioner hesitated and did not respond, the court indicated he thought it was best to "go through with the trial." However, Petitioner ultimately admitted, "Yeah, I hit him." He also answered affirmatively when the court asked him whether he "hit him [the victim] with a hammer." App. 290, l. 23 – 292, l. 9. The court ultimately accepted Petitioner's guilty plea and found the plea was "freely, voluntarily, knowingly, and intelligently entered." App. 292, ll. 10-12.

Despite trial counsel's request that the court sentence Petitioner to only eight years imprisonment, Judge Hayes sentenced him to ten years imprisonment with credit for time served. App. 295, ll. 18-21.

PCR Hearing

Petitioner, who is hearing impaired and has worn hearing aids since the fifth grade, testified that his father hired David Cook, to represent him on his ABIK charge about a year before he ultimately pled guilty on August 25, 2011. App. 318, ll. 20-25. He maintained that trial counsel told him during their first meeting that "he would try and get me five years probation and it [the charge] dropped down to assault and battery of [a] high and aggravated nature." App. 319, l. 11 – 320, l. 1. Petitioner explained that the next time they met, trial counsel told him that "he didn't know if he could do it [obtain a plea offer of five years probation] and he started back peddling [sic]. Started saying your [sic] probably going to do some time. Maybe three years." App. 320, l. 24 – 321, l. 4.

Petitioner testified that he met with trial counsel to discuss the state's evidence, but counsel only went over "bits and pieces" of it. He maintained that he "asked [trial counsel] for the whole motion for discovery," including any written statements, photographs, DNA results, and physical evidence, but only received parts of it. Petitioner said that trial counsel told him there were no written statements, but counsel did end up giving him some medical reports and photographs. App. 321, l. 7 – 322, l. 23.

Petitioner maintained that he later learned the victim and his son had given written statements. He said that trial counsel came to his holding cell at the end of the second day of trial and showed the statements to Petitioner. Petitioner testified that he noticed inconsistencies between what the two witnesses said in their written statements and what they testified to at trial, but counsel

had not questioned the two about the inconsistencies during their testimony. App. 323, l. 16 – 325, l. 19. Furthermore, Petitioner testified that trial counsel did not talk to him about the elements of ABIK or self-defense until the end of the second day of trial. App. 323, ll. 2-15; App. 327, l. 12 – 328, l. 12.

Moreover, Petitioner testified that there was a pretrial suppression hearing regarding the lack of an arrest warrant and a search warrant. App. 329, ll. 6-14. He maintained that trial counsel was unsuccessful at having certain items suppressed and he did not "think he [trial counsel] gave it his best shot." App. 329, l. 20.

Petitioner testified that he wanted to testify in his own defense, but trial counsel told him he should not testify because of his prior record. Despite counsel's advice that Petitioner should not testify, Petitioner maintained that trial counsel gave him a sheet of paper at the end of the second day of trial regarding his possible testimony. The document said, "These are the things I have to say in order to win." Petitioner explained that he "had trouble" with the paper regarding his possible testimony because some of the statements trial counsel told him he had to say were not true and he did not want to testify to "something that wasn't true." He said that trial counsel told him that "[i]f you can't testify your ass off and say these things I'm not going to put you on [the stand] then." App. 335, l. 2 – 337, l. 10. Petitioner maintained that, at the end of the second day of trial, counsel was confident that if Petitioner testified to what the paper indicated regarding self-defense Petitioner would be acquitted. App. 334, l. 24 – 335, l. 6; App. 336, ll. 3-7.

However, Petitioner explained that on the morning of the third day of trial, first thing, trial counsel met with him and "said you need to plead guilty. He said if you don't you'll get 20 years, but I think I can get you a deal. I tried to tell him I didn't want to plead guilty. How come you do[n't] think we're going to win it. Because you got to get on the stand and you can't get on the

stand. I said, well, I'll get on the stand and then he tried to back down, said well, your record. He tried to say my record and I am not going to put you on [the] stand because of your record. You need to plead. If you don't plead you're going to get 20." App. 338, ll. 2-13.

Petitioner maintained that he did not want to plead guilty. He said that he always wanted a jury trial from the very beginning and had already turned down an eight year plea offer from the state. App. 338, l. 20 – 339, l. 12. When trial counsel advised him on the morning of the third day of trial that he needed to plead guilty, Petitioner said counsel had told him "all the witnesses are against me . . . [and] he felt that I would get 20 years if I didn't go in there and plead. That's the bottom line, you need to plead." App. 340, l. 16 – 341, l. 1. Petitioner testified that "I was kind of dazed to tell you the truth. I didn't know what to do. I couldn't think of nothing to do." App. 341, ll. 2-6. He said he did not have enough time to think about his options at that stage and was pressured into pleading guilty by trial counsel. App. 341, ll. 10-23. Petitioner said he had no choice but to plead guilty. App. 341, l. 24 – 342, l. 2. He maintained that he ultimately went along with the guilty plea and told the court he was guilty "because I felt like if I didn't they were going to bring the 12 [jurors] out and give me a conviction and [I would] get the 20 years like he [trial counsel] said." App. 343, ll. 20-23.

Trial counsel, David Cook, testified that Petitioner's father hired him to represent his son. App. 375, ll. 4-10. Cook maintained that he met with Petitioner "[o]n numerous occasions over the course of a year" to discuss his charges and review the discovery materials. App. 374, ll. 16-18. He said that he "went over extensively with him" the discovery and "left copies with him of everything that he asked." Cook also said that there was "a police car, in-car video, that was very troubling for his case because it was essentially a confession where he and the co-defendant were in [the] back seat talking and I tried to get that video - - again there was a suppression hearing and . . . I tried to

get the video suppressed. It had to do with whether he was in custody at the time or not. I was unsuccessful in getting it suppressed." App. 374, l. 23 – 375, l. 6. However, Cook said that he "had transcribed the video" for Petitioner "because I knew he was hard of hearing and he couldn't read the lips and I told him in my opinion that video was very bad for his chances at trial." App. 375, ll. 7-14.

Cook testified that "at first his [Petitioner's] assertion was that he never hit the victim with a hammer. Later on after I showed him some of the pictures of the victim from the hospital it was obvious that the victim had been hit by something that looked like a hammer to me. There were claw marks, there were round impressions in his head and I think Brad [Petitioner] changed his memory and said, yes, I hit him but it was self-defense." App. 375, ll. 14-20. Cook said that Petitioner and his father wanted DNA testing done on the hammer because they maintained that the blood on the hammer came from a deer. However, Cook testified that he "explain[ed] to him [Petitioner] I can't make the solicitors do DNA testing on the hammer, but I could ask them to and I could bring out in the trial that it hadn't been [done]. But to be entirely honest [I] didn't want to know whose blood was on that hammer as his defense attorney." App. 375, l. 21 -376, l. 1.

Additionally, Cook testified that this was a trial where Petitioner was facing thirty years and he therefore took the case very seriously. He said, "I was very worried about his predicament and explained to him often that I can't tell him what to do. The decision is his, but my advice is to take the plea offer that is on the table of eight years at the time." App. 376, ll. 6-12. Cook maintained that "obviously I didn't try to get him [Petitioner] to take the plea by coercion. My advice was that he should take the plea the entire time. For the entire year that I represented him I was begging him to take the plea because I just frankly didn't think that he could convince a jury of [self] defense. I also would like to state for the record that I never contrived any evidence that would support a self-

defense claim. And the handout that was presented as evidence has the quote in it about the defendant [Petitioner] throwing a stepping stone toward the victim, that was the defendant's [Petitioner's] story the entire time. I never would put words in one of my client's mouth." App. 376, l. 22 – 377, l. 7.

Going back to the discovery issue, Cook testified, "I maintain I turned over all of the [written] statements and it is just standard operating procedure for me to send discovery to all of my clients . . . I went over and above the call of duty in making all of the discovery material available to him [Petitioner] and transcribing what he couldn't hear from the video recording to cater to his special needs with regard to hearing." App. 378, l. 23 – 379, l. 13.

Furthermore, with regard to Petitioner testifying, Cook explained, "I never told him you have to testify. I said that if you want to put forward self-defense you will need to take the stand to put forward self-defense, but the decision is entirely yours." App. 380, ll. 4-8. However, Cook said he did not think Petitioner was "going to win because his record is very impeachable and in talking with me his story changed often and so I was very worried that his story was going to change on the stand." App. 379, l. 24 – 380, l. 2.

On cross-examination by Petitioner's counsel, Cook testified that he put in a great deal of effort to convince the solicitor to extend another plea offer during the middle of the trial since the eight year offer had expired at the beginning of trial. He explained, "It's their [the solicitor's office's] policy in this county to never give you an offer mid trial, and I basically had to convince Mindy Harvey Lipinski [the solicitor] to go against her department policy and put an offer on the table halfway through the trial." Cook said that he ultimately convinced the solicitor to extend another plea offer because "under my analysis as his defense attorney I thought he was losing that

trial and about to go to jail for 18 years. When I got that offer back on the table I looked at it as saving him 18 years in prison. Still do."[2] App. 396, ll. 2-15.

When it came to the trial, Cook said that he was "fairly certain that I cross-examined everybody." He explained, "It's my standard operating procedure to cross witnesses against my client. If I didn't it would have been tactical." App. 400, ll. 10-22. He also said that he was "quite confident that the trial record will" show that he cross-examined the victim on the inconsistencies between his written statement and his testimony. App. 401, ll. 9-21.

Lastly, Cook said that it was "[e]ntirely" Petitioner's decision to plead guilty and he "absolutely" did not threaten him in any way to get him to plead guilty. App. 406, ll. 4-8.

Order of Dismissal

The PCR court found trial counsel "was competent and diligent in his representation of [Petitioner]" and that he "sufficiently advised [Petitioner] of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial." App. 436. The court further found that trial counsel "satisfactorily investigated this case based on the information supplied by [Petitioner] and the evidence available" and that he "engaged in plea negotiations which were beneficial to [Petitioner]." App. 436. Additionally, the court found that all of trial counsel's "strategies at trial and his advice that [Petitioner] eventually accept a plea offer from the State were reasonable professional decisions based upon Counsel's experience and the facts of the case." Consequently, the court found Petitioner could not show any resulting prejudice. App. 436-437.

Moreover, the PCR court found Petitioner's "testimony regarding the pressure [counsel counsel] alleged[ly] placed upon him to plead guilty" not credible, but found trial counsel's

[2] The new plea offer extended by the state on the morning of the third day of trial was a cap of ten years imprisonment. App. 396, ll. 18-24.

testimony credible. App. 439. Consequently, the court found Petitioner "pled guilty freely, voluntarily and without any coercion, threats, or promises." App. 439.

Discussion

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where he pled guilty on the third day of his jury trial due to trial counsel's deficient performance during the trial which left Petitioner with no choice but to pled guilty and where trial counsel had repeatedly attempted to improperly influence Petitioner to plead guilty over the course of year.

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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." Kolle v. State, 386 S.C. 578, 588-89, 690 S.E.2d 73, 78-79 (2010) (quoting Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)); see also Strickland v. Washington, 466 U.S. 668 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Kolle, 386 S.C. at 588-89, 690 S.E.2d at 78-79 (quoting Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997)).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Kolle, 386 S.C. at 588-89, 690 S.E.2d at 78-79 (quoting 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." Kolle, 386 S.C. at 588-89, 690 S.E.2d at 78-79 (quoting Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000)). "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) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

Additionally, "[t]he right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled." Strickland, 466 U.S. at 685 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275-276 (1942)).

In this case, trial counsel's performance was deficient, as it clearly fell below an objective standard of reasonableness. See Strickland, 466 U.S. at 687-688. Specifically, trial counsel failed to adequately represent Petitioner at trial. First, counsel withdrew his motion to suppress Petitioner's videotaped statement even though he admitted at the PCR hearing that this statement was very damaging to Petitioner's defense "because it was essentially a confession."[3] See App. 374, l. 23 – 375, l. 6. Also, trial counsel failed to adequately cross-examine the state's witnesses. For example, counsel did not ask Jamie Gilfillian, Daniel Hamrick, or Alex Wallace any questions whatsoever and failed to impeach C.S. and Southard with their prior inconsistent statements. Additionally, even though Petitioner was raising self-defense, trial counsel never mentioned self-defense in his opening statement to the jury. See App.134, l. 9 – 142, l. 25. Furthermore, counsel improperly pressured Petitioner into pleading guilty. Trial counsel testified that he "was begging [Petitioner] to plead guilty" from the day that he was hired. App. 380, ll. 12-13.

[3] Counsel withdrew his motion to suppress the videotaped statement after the statement was published to the court. Trial counsel told the court, "I know this seems a bit out of the ordinary, but at this point I'm gonna redraw [sic] my motion to suppress this video. And I apologize for wasting the Court's time, and if - - Your Honor, I've heard some things here that I couldn't pick up with my home speaker." App. 62, ll. 12-25.

Petitioner was prejudiced by trial counsel's deficient performance because he testified that he would not have pled guilty but for counsel's performance during the trial and the heavy pressure counsel put on him to get him to plead guilty. He testified that he had no alternative, but to plead guilty and that he did not have enough time to properly consider his options. App. 341, l. 10 – 342, l. 2. Therefore, the PCR court erred in denying Petitioner relief. See Kolle, 386 S.C. at 588-89, 690 S.E.2d at 78-79 (quoting Rolen, 384 S.C. at 413, 683 S.E.2d at 474); see also Strickland, 466 U.S. 668.

CONCLUSION

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

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY
EDGAR W. DICKSON, CIRCUIT COURT JUDGE

RAYMOND BRADLEY MCCARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000647

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Raymond Bradley McCarter 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 9, 2012. 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 Raymond Bradley McCarter.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender
ATTORNEY FOR PETITIONER

This 12th day of November, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Edgar W. Dickson, Circuit Court Judge

RAYMOND BRADLEY MCCARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000647

CERTIFICATE OF SERVICE

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 J. Rutledge Johnson, Esquire and Raymond Bradley McCarter, #314487, at Wateree River Correctional Institution this 12th day of November, 2014.

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day of November, 2014.

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