

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County

S.C. Supreme Court

G. Edward Welmaker, Circuit Court Judge  
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CRAIG ROLEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000677  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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**I N D E X**

INDEX.....1

ISSUE PRESENTED .....2

STATEMENT .....3

ARGUMENT

The PCR judge erred in refusing to find counsel ineffective when, the South Carolina Supreme Court found counsel ineffective for failing to move to withdraw the guilty plea and remanded to the trial court to allow Petitioner to move to withdraw the guilty plea, and during the motion to withdraw the guilty plea, which was denied by the plea judge, the same counsel, already found to have been ineffective, represented Petitioner again and failed to object when the assistant solicitor argued that the State would be severely prejudiced if the motion to withdraw the guilty plea was granted.....5

CONCLUSION .....8

PETITION TO BE RELIEVED AS COUNSEL.....9

## **ISSUE PRESENTED**

Did the PCR judge err in refusing to find counsel ineffective when, the South Carolina Supreme Court found counsel ineffective for failing to move to withdraw the guilty plea and remanded to the trial court to allow Petitioner to move to withdraw the guilty plea, and during the motion to withdraw the guilty plea, which was denied by the plea judge, the same counsel, already found to have been ineffective, represented Petitioner again and failed to object when the assistant solicitor argued that the State would be severely prejudiced if the motion to withdraw the guilty plea was granted?

## STATEMENT

In November of 2003, the Greenville County Grand Jury indicted Petitioner Craig Rolan for Murder, indictment #2003-GS-23-8222. On April 11, 2005, Rolan appeared before the Honorable C. Victor Pyle and pled guilty to voluntary manslaughter. Everett Godfrey, Jr. represented Rolan at the guilty plea. Kris Hodge prosecuted the case on behalf of the State. After Judge Pyle accepted the guilty plea but prior to the judge imposing sentence, Rolan proclaimed his innocence. (App .p. 13, line 18 – p. 14, lines 1-24). Judge Pyle sentenced Rolan to twenty five (25) years in prison.

On August 5, 2005, Rolan filed an application for post conviction relief. (2005-CP-23-4930). On April 19, 2006, an evidentiary hearing was held before the Honorable James E. Lockemy. Carolina Horlbeck represented Rolan at the PCR hearing. In an order dated July 6, 2006, Judge Lockemy denied relief and dismissed the application. A timely notice of intent to appeal was filed. Wanda Carter represented Rolan on appeal and filed a petition for writ of certiorari with the South Carolina Supreme Court. The Court the granted the petition and order further briefing. The following issues were presented in the brief of petitioner: 1. Was counsel ineffective in failing to move to withdraw petitioner's guilty plea after petitioner repeatedly asserted his innocence after the plea was accepted but before petitioner was sentenced?; and 2. Was counsel ineffective in failing to advise petitioner that he had a right to a direct appeal after petitioner repeatedly asserted his innocence during the guilty plea?

On June 29, 2009, the Supreme Court reversed Judge Lockemy's order, found counsel ineffective in failing to move to withdraw the guilty plea and remanded the case to allow Rolan to move to withdraw the guilty plea. Rolan v. State, 384 S.C. 409, 683 S.E.2d 471 (2009). On April 5, 2010, Rolan appeared before Judge Pyle and moved to withdraw the guilty plea. Everett Godfrey,

Jr., the same attorney found to be ineffective, represented Rolen at the motion to withdraw the guilty plea. Kris Hodge again represented the State. Judge Pyle denied the motion to withdraw the guilty plea.

A timely notice of intent to appeal was filed. LaNelle Durant represented Rolen on appeal. The South Carolina Court of Appeals affirmed Judge Pyle's denial of Rolen's motion to withdraw the guilty plea. State v. Rolen, Op. No. 2012-UP-085 (S.C.Ct.App. filed February 22, 2012).

On April 5, 2012, Rolen filed a second application for post conviction relief alleging that plea counsel was ineffective in his representation at the motion to withdraw the guilty plea. (2012-CP-23-2385). The State filed a return and partial motion to dismiss on August 10, 2012. On February 19, 2014, an evidentiary hearing was held before the Honorable Edward Welmaker. Mills Arial represented Rolen at the PCR hearing. Karen Ratigan was present on behalf of the State. In a written order signed March 19, 2014, Judge Welmaker denied relief and dismissed the application. A timely notice of intent to appeal was filed on \*\*\*\*. This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred in refusing to find counsel ineffective when, the South Carolina Supreme Court found counsel ineffective for failing to move to withdraw the guilty plea and remanded to the trial court to allow Petitioner to move to withdraw the guilty plea, and during the motion to withdraw the guilty plea, which was denied by the plea judge, the same counsel, already found to have been ineffective, represented Petitioner again and failed to object when the assistant solicitor argued that the State would be severely prejudiced if the motion to withdraw the guilty plea was granted.

After the plea judge had accepted the guilty plea but before he imposed sentence, Rolan proclaimed his innocence. (App. p. 13, line 18 – p. 14, lines 1-24). Rolan stated, “All right, this has went on far enough, I didn’t kill this man. This has went too far, I ain’t doing this. I didn’t kill your brother.” (App. p. 13, lines 18-20). A family member of the deceased then stated, “You just said it.” (App. p. 13, line 21 ). Rolan replied, “Yeah because I’m thinking I’m going to get a life sentence. I can’t do this. I can’t do it, Renee. I didn’t kill this man, I can’t do this.” (App. p. 13, lines 22-25). The judge then told Rolan, “Well, sir, you’ve already done it.” (App. p. 14, line 1). Rolan continued to proclaim his innocence. (App. p. 14, lines 2-24). Counsel failed to move to withdraw the guilty plea. The plea judge imposed a sentence of twenty five years.

On appeal from the denial of post conviction relief the South Carolina Supreme Court found that that counsel was deficient in failing to move to withdraw Petitioner's guilty plea. Rolan v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). The Court wrote:

While counsel was deficient in failing to move to withdraw Petitioner's guilty plea, we must determine whether Petitioner was prejudiced by counsel's performance. The plea judge had formally accepted the guilty plea prior to Petitioner's protestation of his innocence. Therefore, even if counsel had moved to withdraw the guilty plea, the plea judge may have denied this request, and Petitioner could not have proceeded to trial. See State v. Riddle, 278 S.C.148, 150, 292 S.E.2d 795, 796 (1982) (holding that the withdrawal of a guilty plea is generally within the sound discretion of the trial court). In this way, the prejudice analysis in this case does not fit squarely within the traditional guilty plea prejudice framework as set forth in Hill. Nonetheless, we hold that Petitioner was prejudiced by counsel's deficient performance because due to counsel's

failure to make such a motion, the plea judge was not able to exercise his discretion. Even if the plea judge had denied Petitioner's motion to withdraw his plea, Petitioner could have raised this issue on direct appeal. Moreover, Petitioner proved he would have insisted on going to trial had the plea judge granted the motion to withdraw.

Rolen v. State, 384 S.C. 409, 413-14, 683 S.E.2d 471, 474 (2009).

On remand Rolen moved to withdraw his guilty plea. Rolen was represented by the same lawyer who was found ineffective for failing to move to withdraw the guilty plea originally. The State argued against the motion to withdraw the guilty plea stating that the main witness may be difficult to locate, prejudicing the State's case. (App. p. 27, line 24 – p. 28, lines 1-10). Counsel for Rolen failed to object to the State's claim of prejudice. The judge denied the motion for new trial.

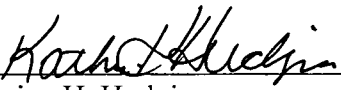
In the second PCR application Rolen alleged that plea counsel was ineffective in his representation at the motion to withdraw the guilty plea. In the order of dismissal, addressing counsel's performance during the motion to withdraw the guilty plea, the PCR judge wrote, "The Applicant stated counsel should have objected when the assistant solicitor told the judge that the case was too old to bring to trial." (App. p. 79). In denying relief, the PCR judge wrote, "This Court finds the Applicant failed to meet his burden of proving counsel should have objected to the assistant solicitor's comment during the April 5, 2010 hearing. The Applicant has failed to demonstrate that the assistant solicitor's comment was so improper that counsel was deficient in failing to object. Regardless, this Court also finds the applicant has failed to demonstrate the assistant solicitor's comment prejudiced his case." (App. pp. 79-80). While the PCR judge's order finds nothing in the record to suggest the judge took the solicitor's comment into consideration in denying the motion to withdraw the guilty plea (App. p. 80), there is also nothing in the record to suggest why the PCR judge denied the motion to withdraw the guilty plea. The judge gives no reason for denying the motion at the hearing or in the written order.

(App. p. 33). The motion could have been denied based on the State's objection. The PCR judge erred in refusing to find counsel ineffective for not objecting to the State's argument when the South Carolina Supreme Court had specifically remanded the case so that the motion to withdraw the guilty plea could be heard.

**CONCLUSION**

For the reasons set forth herein, Petitioner Craig Rolan respectfully requests this Court to grant his Petition for Writ of Certiorari with the ultimate relief of a new trial.

Respectfully submitted,

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of November, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
G. EDWARD WELMAKER, CIRCUIT COURT JUDGE

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CRAIG ROLEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000677

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PETITION TO BE RELIEVED AS COUNSEL


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Counsel for Craig Rolen 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 February 19, 2014. 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 Craig Rolen.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 24th day of November, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

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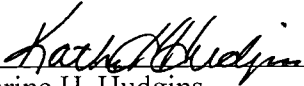
APPELLATE CASE NO. 2014-000677

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CERTIFICATE OF SERVICE

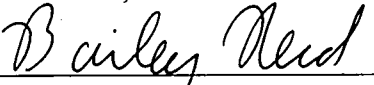
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Craig Rolen, #257993, at Lee Correctional Institution this 24th day of November, 2014.

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day  
of November, 2014.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: October 24, 2021.