

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County

S.C. Supreme Court

J. Michael Baxley, Circuit Court Judge  
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STEVEN R. TIMMONS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000704  
\_\_\_\_\_

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

BENJAMIN JOHN TRIPP  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

# INDEX

INDEX.....	1
ISSUE PRESENTED.....	2
STATEMENT.....	3
ARGUMENT.....	5
CONCLUSION.....	7
PETITION TO BE RELIEVED AS COUNSEL.....	8

**ISSUE PRESENTED**

Did the record support the PCR court's conclusion that Petitioner voluntarily pled guilty in accordance with his best interests to a second degree burglary charge where Petitioner testified at the PCR hearing that although he took the furniture from a mobile home, he had permission and did not burglarize it and where both his sister and father appeared and testified that Petitioner had permission to be in the trailer and remove the furniture?

## STATEMENT

In June and July of 2012, the York County Grand Jury indicted Petitioner Steven R. Timmons on five counts of breaking into a motor vehicle; four counts of petit larceny; one count of third degree burglary; and two counts of first degree burglary. App. 118-141. On July 9, 2012, Petitioner appeared at a plea hearing before The Honorable John C. Hayes. Michael Matthews represented Petitioner and E.B. Springs represented the State. App. 1.

The State alleged that on January 14, 2012, Petitioner broke into a mobile home close to his own home, took furniture, and moved it into his home. Additionally, during the night of April 15 to April 16, 2012, Petitioner broke into a house in the area and took property; broke into a shed in the curtilage of another residence; and broke into a number of vehicles in the area and took items left inside. App. 15, line 12—App. 17, line 22. Based on a plea deal with the State, Petitioner pled guilty to two counts of second degree burglary and no contest to the remaining counts. App. 7, line 16—App. 15, line 8. The plea judge accepted the pleas and sentenced Petitioner to ten years' incarceration for each of the second degree burglary charges to run concurrent and time served for the remaining charges. App. 18, lines 14-18; App. 27, lines 12-21.

On June 5, 2013, Petitioner filed an application for post-conviction relief alleging ineffective assistance of counsel. App. 29—App. 34. The State filed a return on August 28, 2013. App. 35—App. 39. On January 21, 2014, Petitioner appeared at an evidentiary hearing before The Honorable J. Michael Baxley. Leah Moody represented Petitioner and James Rutledge Johnson represented the State. App. 43.

Petitioner testified that he explained to plea counsel that although he took the furniture from the mobile home, he had permission and did not burglarize it. App. 53, line 22—App. 54, line 3. To support this defense, Petitioner called his sister, Samantha Timmons, to testify. App. 68, lines 1-

15. She testified that she had an agreement with the homeowner to move into the house as soon as the homeowner could make some repairs. As part of the agreement, Samantha was allowed to take the furniture out of the home and move it to Petitioner's home. App. 69, line 6—App. 70, line 9. Petitioner then called his father, Samuel Timmons. App. 72, lines 17-23. He also backed up Petitioner's story:

[M]y daughter was planning on renting the trailer behind me. . . . [Petitioner] . . . lived in the trailer above me. All three trailers are on the same section on the piece of land, and the building my daughter is talking about . . . I lived there for well over 15, 16 years and I done all types of work there. I've always done work for [the owner]. That's who I rented from. . . . She never did require [a lease] living there.

...

. . . I came home and the furniture that my daughter had they put it on the front porch and my son he asked me if he could turn around and get the furniture that was over there and moved it over there to the other trailer. I didn't see a reason at all why he couldn't or shouldn't because you know, I took furniture out of one trailer and moved into another trailer, back and forth the whole time I've been there.

App. 74, line 6—App. 75, line 25.

Petitioner testified that on the day of his plea, he was in "a real daze" because it was also his son's birthday. He was not clear-minded and felt pressured into giving plea counsel an answer. App. 61, lines 3-13. He "didn't want to plea" and he "[felt] like [his] due rights were violated." Counsel never reviewed the evidence in his defense or the State's discovery with him. He further stated he was prejudiced because he wanted to call witnesses into court to exonerate him, but plea counsel never realistically pursued that option. App. 56, lines 8-18; App. 59, lines 7-23.

On March 14, 2014, the PCR court issued its order of dismissal concluding Petitioner failed to establish ineffective assistance of counsel. App. 109—App. 117. Specifically, the order stated

that Petitioner knowingly and voluntarily pled guilty and that the decision was in his best interests.

App. 116.

### ARGUMENT

**The evidence in the record does not support the PCR court's conclusion that Petitioner voluntarily pled guilty in accordance with his best interests because Petitioner testified without contradiction that he did not want to plead guilty to a burglary that he did not commit.**

The evidence in the record does not support the PCR court's conclusion that Petitioner voluntarily pled guilty in accordance with his best interests because Petitioner testified without contradiction that he did not want to plead guilty to a burglary that he did not commit. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. The two-part test adopted in *Strickland* "applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985); *see generally Brady v. United States*, 397 U.S. 742, 758 (1970) ("Guilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.").

Specifically, 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," a defendant sufficiently undermines the required voluntary and intelligent character of a plea. *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009); *accord State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (holding record must reflect that defendant freely and intelligently waived constitutional trial rights and had full

understanding of the consequences of the plea); *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) (holding the difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea”). It follows that deficient advice may deprive a defendant of his Constitutional right “to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal.” *Jones v. Barnes*, 463 U.S. 745, 751 (1983).

“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.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

In this case, the record shows Petitioner did not want to plead guilty to the alleged burglary of the trailer home because he did not commit it. Petitioner testified that he explained to plea counsel that although he took the furniture from the mobile home, he had permission and did not burglarize it. The evidence he adduced at the PCR hearing establishes that he was actually innocent. His sister, Samantha, and his father, Samuel, explained that Samantha had permission to be in the trailer and remove the furniture, and therefore Petitioner had permission by extension. Because he was innocent, Petitioner stated he wanted to call witnesses into court to exonerate himself. He did not want to plead guilty. However, plea counsel never reviewed the evidence in his defense or the State’s discovery with him. Additionally, on the day of his plea, Petitioner was not thinking clearly because it was also his son’s birthday. Accordingly, the record shows he pled

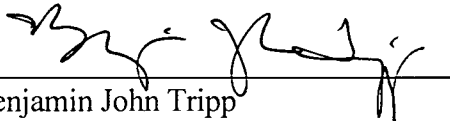
guilty because of pressure, stress, and lack of an alternative, and he did not do so freely and voluntarily.

In the order of dismissal, the PCR court cited evidence that the plea was in Petitioner's best interest as support for the finding that the plea was voluntary. However, the record does not support the proposition that the plea was in his best interest. Petitioner showed that he was innocent and averred that he wanted to exonerate himself. In losing that opportunity, he felt that his closely-held right was violated. Thus, the PCR court wrongly assumed that Petitioner's best interests consisted of avoiding the risk of lengthy incarceration. Plainly, Petitioner's interests were in fighting on the merits of his case, which by his testimony he wanted to consider separately from the sentencing aspects of the case. Accordingly, the PCR court erred in finding that trial counsel's deficient performance did not prejudice Petitioner.

#### CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Steven R. Timmons' petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,

  
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Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of December, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO YORK COUNTY  
J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE

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STEVEN R. TIMMONS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000704

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PETITION TO BE RELIEVED AS COUNSEL


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Counsel for Steven R. Timmons states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on January 21, 2014. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He 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 him as counsel for Steven R. Timmons.

Respectfully submitted,

  
Benjamin Joan Tripp  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 5th day of December, 2014

STATE OF SOUTH CAROLINA  
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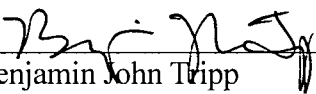
RESPONDENT

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CERTIFICATE OF SERVICE

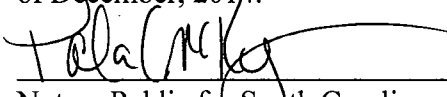
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Steven R. Timmons, #351564, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 5th day of December, 2014.

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 5th day  
of December, 2014.

  
\_\_\_\_\_  
(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.