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S.C. Supreme Court

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge  
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TERRY DOUGLAS CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001845  
\_\_\_\_\_

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

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ATTORNEY FOR PETITIONER

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### **ISSUE PRESENTED**

Whether evidence in the record supports the PCR court's conclusion that Petitioner did not establish ineffective assistance of plea counsel where plea counsel advised Petitioner that he could be found guilty of first-degree burglary and sentenced to life in prison although the undisputed facts only made him liable for second-degree burglary; where plea counsel only understood that Petitioner wanted to plead guilty because she received a phone call from his mother saying so; and where plea counsel admitted that Petitioner was shocked at the plea hearing when the plea judge informed Petitioner that the illegitimate indictment for first-degree burglary was still in effect.

## STATEMENT

On July 31, 2012, the Greenville County Grand Jury indicted Petitioner Terry Douglas Campbell for first degree burglary. App. 86-87. On January 16, 2013, Petitioner appeared at a plea hearing before The Honorable G. Edward Welmaker. Sarah Henry represented Petitioner and Jennifer Tessitore represented the State. App. 1.

The State alleged that on the morning of February 21, 2012, Petitioner broke into the back of a closed bar and loaded into his truck empty beer cans, copper wiring, some containers of alcohol, and cigarettes. App. 6, line 8—App. 7, line 17. Petitioner pled guilty to second degree burglary. App. 3, lines 5-7; App. 9, lines 10-13. Judge Welmaker sentenced Petitioner to one hundred months' incarceration. App. 24, lines 12-15.

On July 8, 2013, Petitioner filed an application for post-conviction relief (PCR) claiming ineffective assistance of counsel. App. 26-32. The State filed a return on December 3, 2013. App. 33-39. On June 19, 2014, Petitioner appeared at an evidentiary hearing before The Honorable Robin B. Stilwell. Mills Ariail represented Petitioner and Karen C. Ratigan represented the State. App. 42.

Petitioner testified about critical oversights plea counsel made in leading him to plead. First, she told him he could be charged with first-degree burglary and facing a life sentence. Petitioner had to correct her that the bar was not a dwelling, and therefore he could not be charged with first-degree burglary and face a life sentence. App. 49, lines 12-19. Moreover, plea counsel never discussed with him that the State had wrongly obtained against him a true-billed indictment for first-degree burglary. App. 50, line 23—App. 51, line 3.

Plea counsel testified and confirmed Petitioner's testimony:

And he is correct about the—our initial conversation about the burglary first. The initial offer that I received from Jennifer Tessitore

had him listed as a burglary first reduced to burglary second, non-violent on the plea offer. I guess indicating her beliefs that she would be able to get an effected indictment for burglary first.

App. 64, lines 18-24.

[H]e was surprised [at the plea hearing] when the judge read off the burglary first indictment. I think that shocked him. And I can understand that. He's out there believing that he's pleading guilty to the burglary second, violent. And he's in such a vulnerable position when he's doing all this. I think that just shocked him and made him a little uncomfortable.

App. 69, lines 12-18. She also testified that Petitioner explained to her he wanted substitute counsel, although the plea court never granted it. App. 67, lines 19-25. Finally, she stated that on the day after her last conversation with Petitioner prior to the plea hearing, she "got a phone call from [Petitioner's] mom saying that he did want to accept that. He did want to plead before the trial." App. 69, lines 1-8.

On August 11, 2014, the PCR court issued its order of dismissal concluding Petitioner failed to establish ineffective assistance of plea counsel. App. 78-85. Specifically, the court stated plea counsel adequately conferred with Petitioner and was thoroughly competent in representing him.

App. 82.

**THE RECORD DOES NOT SUPPORT THE PCR COURT'S DISMISSAL FOR FAILING TO SHOW INEFFECTIVE ASSISTANCE BECAUSE THE EVIDENCE SHOWS PETITIONER DID NOT KNOWINGLY AND VOLUNTARILY PLEAD GUILTY.**

The record does not support the PCR court's dismissal for failing to show ineffective assistance because the evidence shows Petitioner did not knowingly and voluntarily plead guilty. 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 incorrect or omitted 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 evidence plainly shows plea counsel made critical failures in advising Petitioner leading up to the plea hearing. First, plea counsel did not challenge the indictment for first-degree burglary, which plainly was unsupported and was wrongly true-billed. Second, she advised Petitioner based on her mistaken belief that the indictment was legitimate. The evidence also shows that based on these mistakes, Petitioner did not knowingly and voluntarily enter his guilty plea. Petitioner did not want plea counsel to represent him and sought substitute counsel. Plea counsel expressly stated that Petitioner was shocked and vulnerable during the plea colloquy. He did not understand why the plea judge was referring to an indictment for first-degree burglary. Plea counsel also stated that she only understood that Petitioner wanted to plead guilty because she received a phone call from his mother saying so. Nothing in the record shows Petitioner understandingly and willingly told plea counsel of a decision to plead.

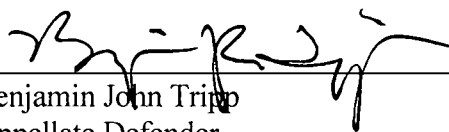
Thus, both plea counsel’s advice and her communication with Petitioner leading up to the plea hearing was deficient. The evidence shows these deficiencies put Petitioner in a plea hearing in

which he was surprised and unprepared, and the record does not support a conclusion that Petitioner pled knowingly and voluntarily upon effective assistance of counsel.

**CONCLUSION**

For the foregoing reasons, this Court should grant Petitioner Terry Douglas Campbell's 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 12th day of May, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
ROBIN B. STILWELL, CIRCUIT COURT JUDGE

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TERRY DOUGLAS CAMPBELL,

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001845

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PETITION TO BE RELIEVED AS COUNSEL


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Counsel for Terry Douglas Campbell 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 June 19, 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 Terry Douglas Campbell.

Respectfully submitted,

  
Benjamin John Tripp  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 12th day of May, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County  
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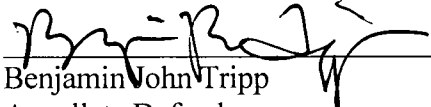
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CERTIFICATE OF SERVICE

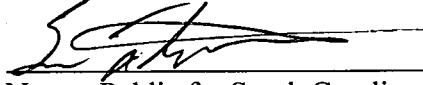
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire and Terry Douglas Campbell, #281286, at Livesay Pre-Release Center this 12th day of May, 2015.

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day  
of May, 2015.

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

My Commission Expires: October 30, 2022