

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Georgetown County  
Benjamin H. Culbertson, Circuit Court Judge

**S.C. Supreme Court**

JAMES GLISSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002163

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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 by finding counsel provided effective representation where Petitioner wanted a plea bargain of a concurrent ten-year sentence in exchange for pleading to all of his second degree burglary charges, but counsel advised Petitioner to plead guilty to only one burglary charge, since Petitioner was sentenced to four years' imprisonment, and the State used that burglary conviction to enhance some of the remaining burglaries to first degree, which were still pending at the time of the guilty plea?

## STATEMENT OF THE FACTS

On May 18, 2011, a Georgetown County Grand Jury indicted Petitioner for first degree burglary. App. 77 – 78. On October 24, 2012, Petitioner pled guilty to second degree burglary, a lesser-included offense, before the Honorable Edward B. Cottingham. App. 1. Bobby G. Frederick and Matthew Swilley represented Petitioner. Scott Hixson represented the State. App. 1.

Judge Cottingham sentenced Petitioner to four years' imprisonment. App. 10. Petitioner did not appeal his guilty plea and sentence. App. 19.

Petitioner filed a PCR application on February 5, 2013. App. 12 – 18. On April 16, 2013, Respondent filed its return requesting an evidentiary hearing. App. 19 – 23. On June 20, 2014, a PCR hearing was held before the Honorable Benjamin H. Culbertson. App. 24. Tristan Shaffer represented Petitioner. Joshua Thomas represented the State. App. 24.

On August 1, 2014, Judge Culbertson issued an order of dismissal. Petitioner appealed the judge's order. This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred by finding counsel provided effective representation where Petitioner wanted a plea bargain of a concurrent ten-year sentence in exchange for pleading to all of his second degree burglary charges, but counsel advised Petitioner to plead guilty to only one burglary charge, since Petitioner was sentenced to four years' imprisonment, and the State used that burglary conviction to enhance some of the remaining burglaries to first degree, which were still pending at the time of the guilty plea.

### **Guilty Plea**

According to the State, between the dates of March 23, 2011 and March 24, 2011, Petitioner broke into an unoccupied beach house in the Litchfield Beach Section of Georgetown County. The house was owned by the Neely Family. App. 3, line 25 – App. 4, line 3. While no one was home at the time of the burglary, the beach house was “lived in.” App. 4, lines 4 – 5. Between 2:00 a.m. and 7:00 a.m. on March 24, 2011, Emma Williams, the next-door-neighbor, noticed that the doors and back beachfront window had been pried open. App. 4, lines 6 – 10. Williams called the police. App. 4, lines 10.

Officers from the Georgetown County Sheriff's Department responded to the beach house and processed the scene. App. 4, lines 10 – 18. Officers found fingerprints “on the inside door, on the inside of the house on the entry window doorframe.” App. 4, lines 15 – 16. The fingerprints found at the scene matched Petitioner's prints. App. 4, lines 19 – 23.

The solicitor explained to the judge that Petitioner was indicted for first degree burglary because Williams the neighbor, was awakened by her dog and what she thought was “a wooden screen door closing” at about 1:40 a.m. App. 4, line 23 – App. 5, line 5. However, because Williams was “recalcitrant to testify,” the State planned to proceed to trial with second degree

burglary. App. 5, lines 5 – 9. Petitioner’s other burglary charges were still pending at the time of the plea. App. 10, lines 1 – 9.

### **PCR Hearing**

Defense counsel testified at the PCR hearing. According to counsel, Petitioner hired him to represent him on sixteen pending burglary charges. App. 31, lines 4 – 11. Counsel stated that Petitioner requested he “work out a plea to burglary second, if the recommendation was ten years and if that took care of all the rest of his charges.” App. 36, lines 2 – 5. After Petitioner rejected an offer of fifteen years in exchange for pleading to a second-degree burglary, non-violent, counsel told the solicitor to add the case to the trial roster. App. 36, lines 13 – 20.

On the day of trial, the State had an offer of twelve years on the table. App. 36, lines 21 – 25. Defense counsel and the solicitor met with Judge Cottingham in chambers. App. 36, line 25 – App. 37, line 1. According to counsel, the solicitor told the judge that the State was not going forward on the first degree burglary charge, which would likely result in a directed verdict. Judge Cottingham said he would sentence Petitioner to four years imprisonment if he pled guilty to second degree burglary. App. 37, lines 14 – 20. The solicitor stated that if the judge sentenced Petitioner to four years, the State would not dismiss the rest of the pending burglary charges. App. 37, lines 20 – 22.

Defense counsel stated he informed Petitioner that if he pled guilty to the second-degree burglary, that conviction could enhance the remaining burglary charges pending. App. 38, lines 24 – 25. Counsel agreed he told Petitioner that the State “[was] not necessarily going to enhance the charges.” Counsel explained that he told Petitioner the solicitor handling his case was leaving Georgetown, but he did not know who would pick up the case or whether the State would enhance the remaining charges. App. 39, lines 1 – 8.

However, when PCR counsel asked defense counsel whether he told Petitioner he “thought it was a trap,” defense counsel stated:

“No. No. Well, maybe, I mean, because it was kind of was, but so I guess the answer is I don’t know.”

App. 39, lines 13 – 16.

Defense counsel also asserted that he was prepared to go to trial and had witnesses who would have testified that Petitioner had performed construction work on the Neely’s beach house, which explained why the fingerprints were found there. App. 39, line 21 – App. 40, line 3.

Petitioner testified during the PCR hearing as well. Petitioner stated that his burglary charges were still pending. App. 46, lines 6 – 17. He stated that when he pled guilty to the second degree burglary for breaking into the Neely’s beach house, he was under the impression defense counsel would handle the remaining burglary charges after he was sent to SCDC. App. 48, line 25 – App. 49, lines 5.

Petitioner did not hear anything about his other charges being enhanced until after the Judge said so during the guilty plea. Petitioner stated he “bumped” counsel to ask him a question about the enhancement, but counsel “kept shooing” him. App. 48, lines 5 – 10. Petitioner also stated that counsel told him that “he was going to handle them when [Petitioner] [went] to prison.” App. 48, line 25. Counsel never told him that the State would use the burglary conviction to enhance the other burglaries that were pending. App. 54, lines 18 – 20.

If Petitioner had known the pending burglary charges would be enhanced and not taken care of, as defense counsel had assured him, he would have gone to trial on the second-degree burglary. App. 52, lines 10 – 18.

## Order of Dismissal

The PCR judge dismissed Petitioner's PCR application. App. 76. The judge stated that counsel "adequately conferred with [Petitioner], conducted a proper investigation, and was thoroughly competent in his representation." App. 74. The judge found that the record reflected Petitioner was informed at the guilty plea that the remaining charges "could be enhanced to first degree burglaries." App. 74.

## Discussion

The PCR judge erred by finding counsel provided effective representation. Petitioner requested a plea bargain of ten years in exchange for pleading guilty to all of his pending burglary charges. However, counsel advised Petitioner plead guilty to only **one** second-degree burglary charge, where he was sentenced to four years' imprisonment. Consequently, the State used the burglary conviction to enhance some of the remaining burglaries to first degree, which were still pending at the time of the guilty plea. See App. 29, lines 10 – 16.

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). In the context of a guilty plea, a court will conduct a two-prong test when determining whether defense counsel's assistance was ineffective. Hill v. Lockhart, 474 U.S. 52, 58 (1985) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel's performance was deficient. Hill, 474 U.S. at 58 – 59. Whether counsel was "deficient" turns on whether the guilty plea was entered voluntarily, knowingly, and intelligently. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). See Hill, 474 U.S. at 56 (1985) ("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.”” (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

Second, the applicant must show that he was prejudiced by counsel’s deficient performance during the guilty plea process. Hill, 474 U.S. at 59. Specifically, the applicant must show 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.” Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). When a court is evaluating 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); Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Here, defense counsel was ineffective. Counsel was aware that Petitioner was seeking to dispose of all of his pending charges and to receive a concurrent prison sentence. In fact, Petitioner believed that counsel was negotiating a plea bargain in which Petitioner would be pleading to all of his charges.

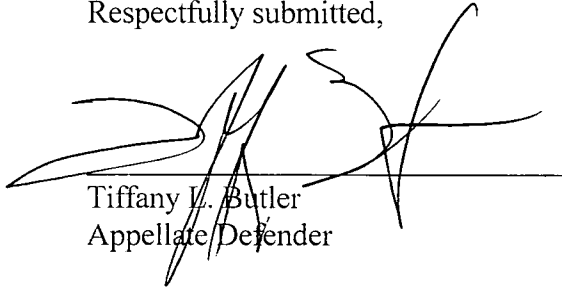
Despite the fact that Petitioner had a defense to the second degree burglary charge, to which he pled, he was willing to plead guilty to all of his pending burglary charges. Petitioner pled guilty to the burglary **only** because counsel advised him that the judge would sentence him to four years’ imprisonment and counsel would “handle” the remaining burglary charges while Petitioner was incarcerated. In fact, Petitioner testified that he did not know his charges were still pending until **after** he served his time in prison and was transported back to the Georgetown County Jail because of a “hold” placed on him.

But for defense counsel’s ineffective representation and communication, Petitioner would not have pled guilty and would have proceeded to trial on the second degree burglary.

CONCLUSION

For the reasons argued above, Petitioner James Glisson respectfully requests this Court to grant his petition for writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tiffany L. Butler', is written over a horizontal line. The signature is stylized and somewhat abstract.

Tiffany L. Butler  
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of May, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GEORGETOWN COUNTY  
BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

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JAMES GLISSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

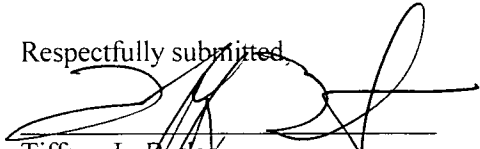
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Counsel for James Glisson states:

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 June 20, 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 James Glisson.

Respectfully submitted,



Tiffany L. Butler  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 14th day of May, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

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JAMES GLISSON,

PETITIONER,

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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 Joshua L. Thomas, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and James Glisson, #285319, at Walden Correctional Institution, 4340 Broad River Road, Columbia, SC 29210, this 14th day of May, 2015.

  
\_\_\_\_\_  
Tiffany L. Butler  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day  
of May, 2015.

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

Notary Public for South Carolina

My Commission Expires: October 30, 2022.