

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County

S.C. Supreme Court

R. Markley Dennis, Jr., Circuit Court Judge  
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ADRIAN BEATON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002024  
\_\_\_\_\_

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

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**ISSUE PRESENTED**

Did the PCR judge err in refusing to find counsel ineffective in failing to hire an expert to evaluate Petitioner and establish that, due to certain deficiencies, Petitioner was more likely to be manipulated, the focus of the mitigation presented at the guilty plea?

## STATEMENT

In August of 2010, the Charleston County Grand Jury indicted Petitioner Beaton for burglary first degree, kidnapping, assault and battery with intent to kill and murder, indictments #2010-GS-10-5325, 5326, 5327, 5328. On January 26, 2012, Petitioner appeared before the Honorable Thomas Hughston and pled guilty as charged. Ashley Pennington represented Petitioner at the guilty plea. Jennifer Shealy prosecuted the case. Judge Hughston sentenced Petitioner to thirty (30) years for burglary first degree, thirty (30) years for kidnapping, twenty (20) years for assault and battery with intent to kill and thirty five (35) years for murder, all sentences to run concurrently. Petitioner did not appeal his convictions and sentences.

On November 26, 2012, Petitioner filed an application for post conviction relief. The State filed a return on April 16, 2013. On April 15, 2014, an evidentiary hearing was held before the Honorable R. Markley Dennis. J. Michael Bosnak represented the Petitioner. Ashleigh Wilson represented the State. In a written order signed July 21, 2014, Judge Dennis denied relief and dismissed the application. A timely notice of intent to appeal was filed. This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred in refusing to find counsel ineffective in failing to hire an expert to evaluate Petitioner and establish that, due to certain deficiencies, Petitioner was more likely to be manipulated, the focus of the mitigation presented at the guilty plea.

During the guilty plea counsel, in mitigation, told the judge, “The second major theme is you’re going to see that he was young and then groomed at a very young age by an older man, who he has not been willing to name for fear of danger to himself and his family, who was the architect of this and who manipulated him because of his suggestibility, his learning problems, and put him in this very dangerous position that resulted in this impulsive, horrible crime.” (App .p. 19, line 21 – p. 20, lines 1-3).

During the PCR hearing Petitioner testified that he had attention deficit disorder but plea counsel never had him evaluated by a doctor. (App. p. 62, lines 12-21). Pleas counsel testified at the PCR hearing, “As far as one about mitigation, whether or not he could have been suggestible or easier to manipulate, that certainly was our theory of the case, and you’re correct. I did not get a psychologist, a psychiatrist to do an evaluation to establish that he had deficiencies that would have made him more likely to be manipulated.” (App. p. 103, lines 16-23). Plea counsel was ineffective in failing to hire an expert to evaluate Petitioner and establish that, due to certain deficiencies, Petitioner was more likely to be manipulated.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an

objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). “A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.’ ” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “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, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

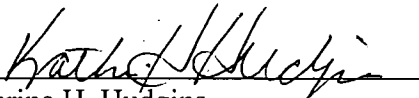
“The second, or ‘prejudice,’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. at 59, 106 S.Ct. 366. “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a 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.” Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

Counsel was ineffective in failing to hire an expert to evaluate Petitioner and establish that, due to certain deficiencies, Petitioner was more likely to be manipulated. There is a reasonable probability that if plea counsel had presented expert testimony in regard to deficiencies that rendered Petitioner more likely to be manipulated, this would have served as mitigation sufficient to result in a sentence of less than the thirty five (35) year sentence imposed.

**CONCLUSION**

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of June, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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ADRIAN BEATON,

PETITIONER,

V.

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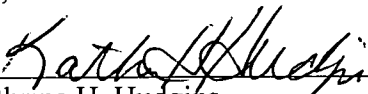
APPELLATE CASE NO. 2014-002024

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CERTIFICATE OF SERVICE

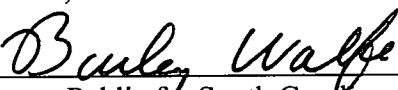
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Adrian Beaton, #327914, at McCormick Correctional Institution this 24th day of June, 2015.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day  
of June, 2015.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 24, 2021.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHARLESTON COUNTY  
R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

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ADRIAN BEATON,

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STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2014-002024

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PETITION TO BE RELIEVED AS COUNSEL

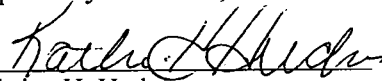
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Counsel for Adrian Beaton states:

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 April 15, 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 Adrian Beaton.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 24th day of June, 2015