

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

AUG - 7 2015

**S.C. Supreme Court**

\_\_\_\_\_  
Certiorari to Aiken County  
R. Knox McMahon, Circuit Court Judge  
\_\_\_\_\_

ANTHONY SAPP,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002298

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

JOHN H. STROM  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

**INDEX**

INDEX.....1

ISSUE PRESENTED .....2

STATEMENT .....3

ARGUMENT .....6

CONCLUSION .....8

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

**ISSUE PRESENTED**

Did the PCR court err in finding that Petitioner knowingly, voluntarily, and intelligently pled guilty when Petitioner felt pressured into pleading guilty based on his belief that his attorney was not prepared for trial?

## STATEMENT

### **Indictment**

On August 2, 2012, Petitioner was indicted by the Aiken County Grand Jury for three counts of trafficking in cocaine, three counts of distribution of cocaine base within the proximity of a school, and one count of distribution of cocaine base. App. 135 –148.

### **Plea Hearing**

On August 7, 2012, a plea hearing was held before the Honorable Doyet A. Early, III. App. 1 – 26. H. Wayne Floyd represented Petitioner and Assistant Solicitor Elizabeth Young represented the State.

Pursuant to a negotiated plea deal, Petitioner pled guilty to all seven indictments in exchange for the State recommending concurrent fifteen year sentences on all offenses. App. 3 – 5. The State explained that SLED in conjunction with the Aiken County Sherriff's Department used a confidential informant to make a series of drug purchases from Appellant. App. 15, ll. 13 – 23, ll. 8. The transactions were recorded on video. *Id.*

The plea court found that there was a factual basis for the plea and that Petitioner freely, voluntarily, knowingly, and intelligently pled guilty. App. 24, ll. 4-24. The plea court sentenced Petitioner to seven concurrent terms of fifteen years imprisonment. *Id.*

### **PCR Application and Evidentiary Hearing**

On March 14, 2013, Petitioner filed an application for post-conviction relief. App. 27 – 56. On June 13, 2013, the State filed a Return. App. 57– 65. On August 1, 2014, an evidentiary hearing was held before the Honorable R. Knox McMahon. Petitioner was represented by Tommy Thomas and the State was represented by Assistant Attorney General David Gourley.

### Testimony Petitioner

Petitioner testified that he met with defense counsel three times during the pendency of his case, but that counsel never reviewed his case with him. App. 73, ll. 22 – 74, ll. 8. Petitioner stated that defense counsel should have moved to suppress the evidence against him because of discrepancies between the confidential informant's statements and law enforcement's reports. App. 74, ll. 22 – 75, ll. 21.

Petitioner also stated that counsel should have challenged the drug weights as the amounts were close to the trafficking minimum and included the packaging weight. App. 76, ll. 9-24. Petitioner attested that defense counsel "coerced me into [pleading guilty] because . . . he was unprepared for trial." App. 85, ll. 24 – 85, ll. 17.

Petitioner further testified that he was insistent on going to trial and fighting the charges until defense counsel informed him that he could "go to trial and lose because we're not prepared or . . . you can take 15 years and get paroled." App. 84, ll. 1-19. To encourage a guilty plea, Petitioner stated that defense counsel advised that Petitioner would be eligible for parole after only five years of imprisonment because of unspecified sentencing reforms. App. 85, ll. 7-22.

### Testimony of Defense Counsel

Defense counsel claimed that he was prepared for trial and that he had discussed the State's evidence with Petitioner. App. 106, ll. 5-16. Counsel averred that the State had a strong case with video footage of multiple transactions. App. 115, ll. 7-15. Counsel recalled that the State initially wanted a twenty year sentence. App. 109, ll. 1-21. Counsel believed this was excessive and eventually secured the State's recommendation for a fifteen year sentence. *Id.*

Counsel denied advising Petitioner that he would be eligible for parole after five years. App. 113, ll. 15-23. Counsel alleged that he explained to Petitioner that he would have to serve eighty-

five percent of the negotiated fifteen year sentence. *Id.* Counsel claimed that he reviewed the drug weight tests conducted by SLED and did not believe there was any basis for challenging the weights. App. 110, ll. 5 – 113, ll. 20; *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991).

### **Order of Dismissal**

The PCR court denied Petitioner's application in an Order of Dismissal issued on September 12, 2014. App. 121 – 134. The PCR court concluded that defense counsel provided constitutionally effective representation. Specifically, the PCR Court ruled that counsel did not coerce Petitioner into pleading guilty. App. 130. The court also determined that defense counsel was not ineffective for failing to file a motion to suppress evidence and that counsel gave accurate advice on Petitioner's ineligibility for parole. App. 132 – 133.

## ARGUMENT

**The PCR court erred in finding that Petitioner knowingly, voluntarily, and intelligently pled guilty when Petitioner felt pressured into pleading guilty based on his belief that his attorney was not prepared for trial.**

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.” *Brady v. United States*, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin*, 395 U.S. 238; *accord State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (finding the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea); *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) (finding the difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea”).

Furthermore, “[i]n 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, an “unsound result” occurred because the record does not reflect that Petitioner freely and intelligently waived his constitutional trial rights. *See Brady*, 397 U.S. at 758; *see also Boykin*, 395 U.S. 238. Specifically, Petitioner testified that defense counsel was unprepared for trial and did not review the elements of the charges Petitioner faced or the evidence the State produced in discovery. App. 73, ll. 22 – 74, ll. 8; App. 84, ll.1-19; *see Hazel*, 275 S.C. 392, 271 S.E.2d 602; *see*

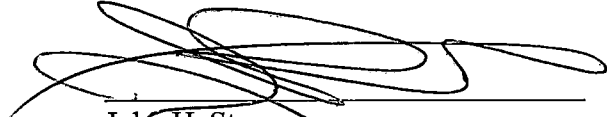
*also Berry*, 381 S.C. at 635, 675 S.E.2d at 427. Moreover, Petitioner stated that defense counsel coerced him into pleading guilty by erroneously informing Petitioner that he would be eligible for parole after only serving five years. App. 85, ll. 7-22.

Therefore, the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty. App. 166 – 175; *See Boykin*, 395 U.S. 238 (finding a defendant's decision to plead guilty must be knowingly, voluntarily, and intelligently made).

**CONCLUSION**

Based on the foregoing reason, Petitioner Anthony Sapp's petition for writ of certiorari should be granted to allow full briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. Strom", written over a horizontal line.

John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of August, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO AIKEN COUNTY  
R. KNOX MCMAHON, CIRCUIT COURT JUDGE

---

ANTHONY SAPP,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002298

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Anthony Sapp 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 August 1, 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 Anthony Sapp.

Respectfully submitted,



---

John H. Strom  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 7th day of August, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Aiken County

R. Knox McMahon, Circuit Court Judge  
\_\_\_\_\_

ANTHONY SAPP,

PETITIONER,

V.

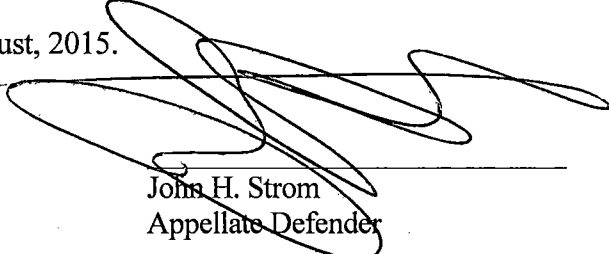
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002298

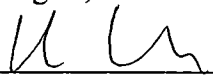
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

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 Daniel Gourley, Esquire and Anthony Sapp, #351929, at Broad River Correctional Institution this 7th day of August, 2015.

  
\_\_\_\_\_  
John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day  
of August, 2015.

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

My Commission Expires: May 12, 2025.