

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County  
G. Thomas Cooper, Circuit Court Judge

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SAIRE CASTRO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001415

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made when plea counsel failed to properly investigate the case before advising Petitioner to plead guilty?

## STATEMENT

A Horry County Grand Jury indicted Petitioner at the August 2012 term of General Sessions for the offense of murder. App. 78-79. Petitioner pled guilty to the lesser included offense of voluntary manslaughter on September 12, 2013 before the Honorable J. Derham Cole. App. 1. Assistant Solicitor Bradley C. Richardson represented the state, and Randall K. Mullins represented Petitioner. App. 1. Petitioner was sentenced by Judge Cole to thirty years imprisonment. App. 34, ll. 14-18. He did not appeal.

On May 24, 2013, Petitioner filed an application for post-conviction relief (PCR) raising the issue argued in this petition. App. 36-40. The state filed a return to this application dated October 23, 2013. App. 41-45. The matter proceeded to an evidentiary hearing on February 4, 2015 before the Honorable G. Thomas Cooper. App. 46. Assistant Attorney General Joshua Thomas represented the state, and Daniel Selwa represented Petitioner. App. 46. By order dated April 27, 2015, Judge Cooper denied Petitioner relief. App. 70-77.

This petition for writ of certiorari follows.

## ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel failed to properly investigate the case before advising Petitioner to plead guilty.

### **Guilty Plea**

At the beginning of the plea, Assistant Solicitor Richardson informed the court that while Petitioner was indicted for murder, he was pleading guilty to the lesser included offense of voluntary manslaughter with a sentence recommendation from the state of thirty years imprisonment. App. 3, ll. 1-10. After a routine colloquy where Judge Cole advised Petitioner of his constitutional rights, including his right to remain silent and his right to a jury trial, the sentencing range for voluntary manslaughter, and the consequences of pleading guilty to the offense, Petitioner stated he was pleading guilty. App. 6, l. 3 – 13, l. 5. When asked by Judge Cole, Petitioner indicated he had discussed with plea counsel his possible defenses to the allegations and the two had determined he had no defense to the charge. App. 10, l. 24 – 11, l. 12.

When asked for the state's version of the facts, the assistant solicitor maintained that Kareem Harry had an ongoing dispute with Kevin Bowens over payment for a television Harry's girlfriend had allegedly given to Bowens the previous week. Shortly after nine o'clock on March 1, 2011, Harry drove to the home where Petitioner was staying with a friend<sup>1</sup>, and after a short conversation, Petitioner and the friend followed Harry in a separate car to Bowens' residence in Murrells Inlet.

When the group arrived, Harry confronted Bowens in his front yard about the television. The assistant solicitor admitted Bowens was armed with a firearm on his hip. During the confrontation, Petitioner and the friend got out of their car, and Petitioner ultimately shot Bowens

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<sup>1</sup> Petitioner later identifies this friend as Thomas Burn. See App. 23, l. 15.

with a .357 revolver. After the shooting, the three men fled the yard and were eventually apprehended by law enforcement. App. 13, l. 16 – 15, l. 25.

After the solicitor's recitation, Petitioner told Judge Cole that he disagreed with the state's version of events. Instead, Petitioner explained he was having dinner at a friend's house when Kareem Harry came over and asked Petitioner's friend, Thomas Burn, "to go with him to retrieve some money from" Bowens because Bowens had stolen drugs from Harry. Petitioner drove with Burns to Bowens' house "to make sure nothing was going to happen." Petitioner explained to Judge Cole that he did not know Bowens, had never met him, and had no "reason to want to cause him any harm." However, after the men arrived, "the situation changed in the blink of an eye" and "everything changed so fast." Petitioner said he had a gun and Bowens had a gun and he eventually used his gun against Bowens, but he did not "plan on any of" it to happen. App. 23, l. 2 – 24, l. 7.

When asked, Petitioner admitted he travelled to Bowens' house while armed, went onto Bowens' property uninvited, and ultimately "used [his] weapon against" Bowens. App. 24, ll. 8-16. Petitioner also indicated that, if he proceeded to trial, he believed he would be acquitted of murder, but likely convicted of voluntary manslaughter. App. 25, l. 2 – 26, l. 1.

Judge Cole ultimately accepted Petitioner's guilty plea and, at the end of the proceeding, sentenced him to thirty years imprisonment. App. 27, ll. 13-18; App. 34, ll. 14-18.

### **PCR Hearing**

Petitioner testified at the PCR hearing that his plea counsel, Randy Mullins, failed to properly investigate the case before advising him to plead guilty. Petitioner explained that his discovery materials did not disclose that Bowens had a firearm on his person when the shooting occurred. Instead, the evidence merely showed that a firearm was found inside of Bowens'

residence shortly after the shooting. Moreover, the discovery indicated that no drugs were found inside the house or on Bowens' person.

However, Petitioner testified that he discovered after his guilty plea from his co-defendant's attorney that there was evidence cocaine was flushed down the toilet at Bowens' home before officers arrived. He also learned the state had evidence that a firearm was removed from Bowens' body and placed inside the house before law enforcement arrived. Petitioner testified that this evidence would have backed up and proved his account that Bowens was armed when he shot him. App. 49, ll. 2-23. He explained that he did not think anyone would believe Bowens was armed when he shot him because he had no evidence to prove it, "but the whole time the proof was there, and I never knew about it." App. 49, l. 24 – 50, l. 2.

Moreover, Petitioner testified that he did not know if plea counsel was aware the discovery materials he received from the assistant solicitor did not include all of the evidence. However, he maintained that if counsel would have properly investigated his case, he would have discovered the evidence that proved Harry was armed, which supported Petitioner's knowledge of what actually happened. App. 54, ll. 11-17.

Lastly, Petitioner testified, "If I would have [known] there was evidence to back my story, what I was saying was true . . . then I would have elected to either go to trial or be able to present this evidence, and it would have come to a better plea for myself." App. 54, ll. 2-10.

On cross-examination, Petitioner asserted that "being able to prove that this man [Bowens] did pull out a gun . . . would have changed things dramatically" because "it wouldn't look like I just went to somebody's house and shot them for no reason. It would look like . . . I went to somebody's house and I didn't have anything to do with the conversation [or] . . . the escalation, and

when he [Bowens] pulled the gun out, I shot him. . . . So it really would have been out there that, yes, I was defending my co-defendant [Harry].” App. 56, l. 20 – 57, l. 9.

Plea counsel, Randy Mullins, testified that he was appointed to represent Petitioner and that he met with Petitioner at the detention center on at least six occasions before Petitioner pled guilty. Mullins maintained that during these meetings he reviewed the discovery materials he received from the assistant solicitor with Petitioner and that he later “put [his] analysis” of the evidence “in writing in a three-page letter” along with his thoughts as to why pleading guilty to voluntary manslaughter was in Petitioner’s best interests. App. 58, l. 24 – 61, l. 6.

Mullins claimed he was aware that a firearm and cocaine was on Bowens’ person when Bowens was shot and killed. He explained, “Brad [Richardson, the assistant solicitor,] eventually confessed, after I leaned on him a little bit, that there had been a gun and cocaine on the victim, Mr. Bowens, but the girlfriend and the neighbors moved it prior to the body being moved. So he [Bowens] was armed and he did have cocaine, and I knew that and the Solicitor knew that and Mr. Castro [Petitioner] knew that” before Petitioner pled guilty. App. 63, ll. 4-10.

Despite this evidence, Mullins did not think Petitioner had a strong defense. He asserted that Petitioner and Kareem Harry were not lawfully on Bowens’ property when the shooting occurred and they “brought on the situation . . . themselves” so he did not think Petitioner could successfully allege self-defense or “stand-your-ground” at trial. App. 63, ll. 13-18. Without a strong defense, Mullins testified that he thought pleading guilty to voluntary manslaughter, which was the best the solicitor was willing to offer, was in Petitioner’s best interests. App. 63, l. 21 – 64, l. 5. He claimed he explained to Petitioner the elements of murder, voluntary manslaughter, self-defense, defense of others, and stand your ground, and with an understanding of these matters, Petitioner decided to plead guilty. App. 64, ll. 6-16.

## **Order of Dismissal**

The PCR court found Petitioner failed to prove plea counsel was ineffective for failing to properly investigate his case. App. 74. The court found Petitioner failed to show how a further investigation would have uncovered evidence that could have assisted his defense. Moreover, the court noted plea counsel's testimony that he was aware, before Petitioner pled guilty, that Bowens had a firearm and cocaine on his person when the shooting occurred. Thus, the court concluded Petitioner failed to demonstrate how a further investigation would have changed his decision to plead guilty and ultimately dismissed his application with prejudice. App. 74.

## **Discussion**

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel failed to properly investigate the case before advising Petitioner to plead guilty. Specifically, counsel failed to discover, or properly convey to Petitioner, that the evidence showed Bowens was armed when he was shot and had cocaine on his person. If Petitioner was aware that there was evidence to support his knowledge of what actually happened, namely that he shot Bowens only after Bowens pulled a gun, then he would not have pled guilty, but would have proceeded to trial.

The difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). "The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (internal quotations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984), to claims of the same against plea counsel).

First, “the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” Id. On the other hand, the prejudice requirement focuses on whether “there is a reasonable probability that, but for counsel’s errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. “[T]he 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.” Holden v. State, 393 S.C. 565, 572-574, 713 S.E.2d 611, 615 (2011) (citing Roddy v. State, 339 S.C. 29, 33; 528 S.E.2d 418, 420 (2000)).

Petitioner testified at the PCR hearing that he was not aware there was evidence to support his knowledge that he shot Bowens in defense of Kareem Harry after Bowens pulled a firearm from his waistband. This evidence was not included in the discovery materials he received from the state. Petitioner said he did not learn there was evidence that a firearm was removed from Bowens’ body before officers arrived at the scene until after he pled guilty. See App. 49, ll. 2-23. Plea counsel was ineffective because if he would have properly investigated the case before Petitioner pled guilty then he would have discovered the existence of this evidence. Counsel’s deficient performance rendered Petitioner’s guilty plea invalid because it prevented Petitioner from making a voluntary and intelligent decision about whether to plead guilty or proceed to trial.

If Petitioner had been aware of the existence of evidence that corroborated his knowledge of what actually occurred, namely that he shot Bowens in defense of Harry, then he would not have pled guilty, but instead would have proceeded to trial. Petitioner asserted that “being able to prove that this man [Bowens] did pull out a gun . . . would have changed things dramatically” because “it wouldn’t look like I just went to somebody’s house and shot them for no reason.” Instead, this

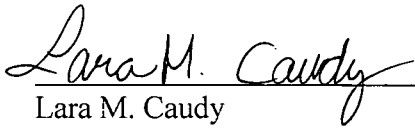
evidence would have showed Petitioner “was defending [his] co-defendant.” See App. 56, l. 20 – 57, l. 9. Petitioner was prejudiced by counsel’s failure to properly investigate because if Petitioner had been aware of this evidence, he would have proceeded to trial and presented a defense to the charge.

Because counsel’s deficient performance rendered Petitioner’s guilty plea involuntary and Petitioner was clearly prejudiced by counsel’s performance, this Court should reverse the order of the PCR court and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

  
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Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of November, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO Horry COUNTY  
G. THOMAS COOPER, CIRCUIT COURT JUDGE

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SAIRE CASTRO,

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PETITION TO BE RELIEVED AS COUNSEL

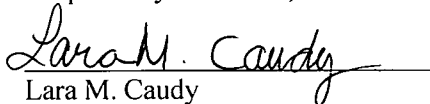
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Counsel for Saire Castro states:

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 that was held on February 4, 2015. 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 one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Saire Castro.

Respectfully submitted,



Lara M. Caudy  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 6th day of November, 2015

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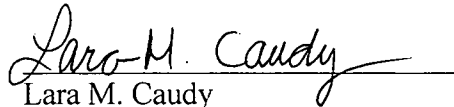
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CERTIFICATE OF SERVICE

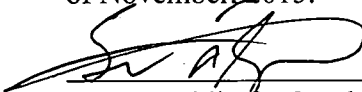
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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Jessica E. Kinard, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Saire Castro, #352370, at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472, this 6th day of November, 2015.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day  
of November, 2015.

  
\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022.