

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

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DAVID W. WATSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000577

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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 in refusing to find that the guilty plea was rendered involuntary by the fact that counsel did not provide Petitioner with a copy of the discovery material?

## STATEMENT

In March of 2011, the Richland County Grand Jury indicted Watson for burglary second degree, possession of a stolen vehicle and unlawful carrying of a pistol, indictments #2011-GS-40-597, 1073, 1074. In September of 2011, the Richland County Grand Jury indicted Watson for three counts of armed robbery, attempted armed robbery and murder, indictments #2011-GS-40-4582, 4644, 4645, 4392 and 4391. In October of 2011, the Richland County Grand Jury indicted Watson for breaking into a motor vehicle, indictment #2011-GS-40-3982. In April of 2012, the Richland county Grand Jury indicted Watson for an additional count of possession of a stolen vehicle, indictment #2012-GS-40-1424). On September 10, 2012, Watson appeared before the Honorable L. Casey Manning and pled guilty to the above listed charges. Additionally, Watson waived grand jury presentment and pled guilty to another count of armed robbery, indictment #2012-GS-40-5052. Jennifer C. Davis and Clarke Newton represented Watson. Meghan Walker and Kathryn Luck Campbell prosecuted the case. Pursuant to negotiations, Judge Manning sentenced Watson to an aggregate sentence of fifty (50) years. A timely notice of intent to appeal was filed but on October 17, 2012, the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203(d)(1)(B)(vi).

On October 1, 2013, Watson filed an application for post conviction relief. The State filed a return on February 5, 2014. An amended application was filed on November 18, 2014. On December 11, 2014, an evidentiary hearing was held before the Honorable J. Ernest Kinard, Jr. Kristy Goldberg represented Watson at the PCR hearing. J. Clayton Mitchell represented the State. In a written order filed March 3, 2015, Judge Kinard denied relief and dismissed the application. A timely notice of intent to appeal was served on March 17, 2015. This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred in refusing to find that the guilty plea was rendered involuntary by the fact that counsel did not provide Petitioner with a copy of the discovery material.

In the amended application for post conviction relief Watson asserts that trial counsel failed to provide him with a copy of his discovery material and trial counsel allowed him to enter into a guilty plea that was not knowingly and intelligently made. (App. p. 97). Watson additionally asserts that he should have proceeded to jury trial on the murder charge. (App. p. 97). During the PCR hearing Watson testified that he never received a copy of his discovery material. (App. p. 108, lines 23-25). When asked if his attorney reviewed the discovery with him, Watson answered, "She brung it, but I never got a chance to look in it for myself to see what was what." (App. p. 109, lines 2-6). Watson testified that after he entered his guilty pleas he obtained his discovery material from counsel. (App. p. 109, lines 9-11). Watson testified that after reviewing the discovery he believes that the jury would have found him not guilty of murder and attempted armed robbery because there was no physical evidence. (App. p. 108, line 11 – p. 109, lines 1-25).

Plea counsel testified at the PCR hearing that she reviewed all of the discovery material with Watson. (App. p. 122, lines 9-16). Counsel testified that four co-defendants gave statements implicating themselves and Watson in the murder. (App. p. 124, line 24 – p. 125, line 1). She also testified that ballistics evidence linked the gun used in the murder to Watson. (App. p. 125, lines 5-11). Additionally, counsel testified there was an alleged confession to the murder that Watson denied making. (App. p. 123, lines 2-6; p. 131, line 23 – p. 132, lines 1-7). Counsel testified that she was prepared to challenge the confession had Watson proceeded to jury trial. (App. p. 132, lines 8-10).

In the order of dismissal the PCR judge wrote:

This Court finds Applicant's allegation that Counsel failed to review discovery with him to be meritless. Counsel's credible testimony on the issue is persuasive. Counsel met with applicant and reviewed the discovery materials. Counsel emphasized that Applicant knew what evidence would be presented against him if the case went to trial. This Court finds Applicant has failed to show how Counsel's alleged failure to provide him with a copy of discovery materials affected the outcome of his proceedings. This court also finds Counsel's testimony credible with regards to her advice on the terms of the negotiated plea agreement and how she thoroughly reviewed the offer and its consequences. This Court finds these allegations are wholly without merit.

(App. p. 145). The PCR judge erred. Trial counsel was ineffective in failing to provide Watson with copies of the discovery material. Although counsel reviewed the discovery with Watson, this was not sufficient to allow Watson to make an intelligent decision as to whether he should plead guilty for a negotiated fifty (50) years or proceed to trial on the murder and attempted armed robbery.

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)).

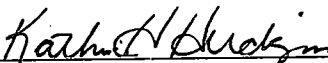
"The second, or 'prejudice,' requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. at 59, 106 S.Ct. 366. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character 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's representation in failing to provide Watson with a copy of his discovery material falls below an objective standard of reasonableness. The guilty plea was rendered involuntary by counsel's failure to provide Watson with a copy of the discovery material. Without having his own copy of the discovery material, the plea does not represent a voluntary and intelligent choice among the alternative courses of action open to Watson. Watson was prejudiced by the deficient performance. There is a reasonable probability that, but for counsel's errors, Watson would not have pled guilty, but would have insisted on going to trial on the murder and attempted armed robbery charge.

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 12th day of November, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY  
J. ERNEST KINARD, JR., CIRCUIT COURT JUDGE

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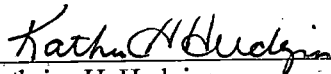
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Counsel for David W. Watson states:

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 December 12, 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 David W. Watson.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 12th day of November, 2015

STATE OF SOUTH CAROLINA

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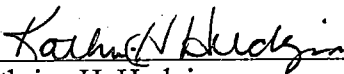
V.

STATE OF SOUTH CAROLINA,

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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 Clay Mitchell, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and David W. Watson, #334288, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 12th day of November, 2015.

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

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

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

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.