

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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SC SUPREME COURT

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Certiorari to Spartanburg County  
Roger L. Couch, Circuit Court Judge  
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FREDDIE EDWARDS, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001961

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in finding plea counsel was effective where he advised Petitioner to plead guilty to four charges of armed robbery even though the solicitor's statement of facts supported at most two counts of armed robbery and two counts of attempted armed robbery?

## STATEMENT OF THE CASE

### **Factual Background**

According to the solicitor's statement of facts read at the plea hearing, co-defendant Drakkarr Crawford contacted Timothy Clayton about where he could purchase some marijuana. Clayton contacted Ronnie Metcalf on Crawford's behalf. Since Crawford did not have the money to purchase the marijuana, he contacted co-defendant Fred Pearson. Pearson suggested that they rob Metcalf instead of paying for the marijuana. App. 11, ll. 11-23.

The solicitor alleged that later that evening, Petitioner Freddie Edwards, Jr (driver), Pearson (front passenger), and Crawford (rear passenger), picked up Clayton in an SUV. Clayton directed them to Metcalf's house and was unaware of the robbery plan. They dropped Clayton off, but returned to Metcalf's home an hour and half later wearing masks. Pearson was armed with a .22 rifle, which Petitioner allegedly retrieved from the back of the vehicle. Crawford had an Airsoft pistol. When they turned the corner they found five men in and around the garage area – Timothy Clayton, Izel Poates, Richard Benson, Gilbert Cook, and Ronnie Metcalf. App. 11, l. 23 – 13, l. 7.

Metcalf and Pearson struggled over the rifle while Petitioner and Crawford were allegedly outside with the other victims, whom they had instructed to get on their knees and empty their pockets. Izel Poates opened his wallet to show them they he did not have anything. Pearson called for help, at which time Petitioner allegedly hit Metcalf in the head with a red grinder tool box, allowing Pearson to get free. Pearson fired shots as he backed out of the garage, killing Metcalf and wounding Cook. The assailants left, taking the red grinder tool box and some cigarettes with them. Co-defendant Collin Mills hid the red grinder tool box, Airsoft gun, and rifle, which were later recovered by police. App. 13, l. 7 – 14, l. 18.

### **Indictment and Plea Hearing**

On June 17, 2011, Petitioner was indicted by the Spartanburg County grand jury for one count of murder, one count of attempted murder, and four counts of armed robbery. App. 74 – 85 (Indictments). Notably of the four armed robbery indictments, only the indictment related to Cook contained a “to wit” section, which denoted “power tools.” App. 80 – 81. The other three indictments, related to Benson, Clayton, and Poates, generally listed “goods or monies” as taken. App. 78 – 79; App. 82 – 85.

On November 26, 2012, Petitioner entered guilty pleas to four counts of armed robbery and Alford<sup>1</sup> pleas to two counts of attempted murder, all for a negotiated thirty (30) year sentence. App. 4 – 10. Petitioner appeared before the Honorable Lee S. Alford and was represented by Theo Mitchell. The State was represented by assistant solicitor Jennifer Jordan. App. 1. Judge Alford sentenced Petitioner to six concurrent sentences of thirty years. App. 17, l. 10 – 18, l. 5.

### **Application for Post-Conviction Relief and Hearing**

On June 10, 2013, Petitioner filed his Application for Post-Conviction Relief, which included allegations of ineffective assistance of counsel. App. 20. The State filed its Return on July 9, 2014. App. 28. On March 23, 2015, an evidentiary hearing was held before the Honorable Roger L. Couch. Petitioner was represented by Brandt Rucker, and the State was represented by assistant attorney general Suzanne White. App. 35. Petitioner and plea counsel Theo Mitchell both testified at the PCR hearing. App. 36.

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

Petitioner explained that Mr. Mitchell was hired to represent him at the outset of his case. During the seventeen months of representation, they met four times for approximately forty-five minutes to one hour. App. 40, ll. 4-24. Mr. Mitchell did not provide Petitioner any detail on the evidence against him and they did not discuss any defenses. App. 40, l. 25 – 41, l. 8; App. 41, ll. 20-22. Petitioner testified repeatedly that two of victims said that they did not have anything to be taken, thus two of the armed robbery charges should have been dropped to a lesser charge. App. 41, ll. 9-16; App. 42, ll. 12-20; App. 43, ll. 6-17; App. 44, ll. 17-21.

Plea counsel Mitchell gave a summary of the information provided in the discovery, including that: “Marijuana was taken, other items which I can’t enumerate at this point, taken from the victims. The main thing they went to steal [was] marijuana and they stole it . . . with a rifle.” App. 49, ll. 20-25. He further testified that based on his review of the case, he believed that armed robbery was an “appropriate charge” with respect to all four victims. App. 50, ll. 1-6. Mr. Mitchell opined that there were no defenses to raise in Petitioner’s case. App. 55, l. 13-14. However, he admitted that the case against Petitioner was largely based on witness statements. Mr. Mitchell also noted that marijuana was discovered in Petitioner’s home, apparently after a member of Petitioner’s family consented to a search of the home while he was incarcerated. Nonetheless, Mr. Mitchell admitted that he “ha[d] no idea where the marijuana came from.” App. 56, ll. 22 – 58, l. 4.

### **Order of Dismissal**

On August 17, 2015, the PCR court filed an Order of Dismissal, denying Petitioner’s PCR application. The PCR court noted Petitioner’s testimony “that Counsel did not review any possible defenses with Applicant, including the fact that two of the victims indicated that they did not have anything to steal.” App. 66 (Order of Dismissal, p. 4). The Court seemed to consider this allegation

in its analysis of the adequacy of plea counsel's pre-trial investigation, stating: "To establish counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared." App. 67 (Order of Dismissal, p. 5); see also App. 68 ((Order of Dismissal, p. 5) ("This Court finds that Applicant has failed to meet his burden of proof as to *all claims* that Counsel was ineffective." (emphasis added)). Despite Petitioner's testimony and the plea transcript, the PCR court further found that "Applicant failed to point to any specific matters Counsel failed to discover or any defenses that could have been pursued had Counsel completed additional investigation." App. 67 (Order of Dismissal, p. 5). The PCR court made only a general and conclusory finding that "Applicant has failed to prove the second prong of *Strickland* – that he was prejudiced by Counsel's performance." App. 70 (Order of Dismissal, p. 8)

This petition for writ of certiorari follows.

## ARGUMENT

**The PCR court erred in finding plea counsel was effective where he advised Petitioner to plead guilty to four charges of armed robbery even though the solicitor's statement of facts supported at most two counts of armed robbery and two counts of attempted armed robbery.**

The PCR court erred in finding that Petitioner failed to present any specific evidence to support his allegation of ineffective assistance of counsel. Petitioner testified that two of the victims said that nothing was taken from them such that plea counsel was ineffective in advising him to plead guilty to four counts of armed robbery. App. 41, ll. 12-16; App. 43, ll. 6-10; App. 44, ll. 17-21. A review of the factual basis provided by the solicitor at the plea hearing reveals that the items stolen were a red grinder tool box and some cigarettes. App. 14, ll. 8-10. Attempted armed robbery carries a lesser potential sentence of zero to twenty years, as opposed to the sentencing range of ten to thirty years for armed robbery. S.C. CODE ANN. § 16-11-330.

The petitioner in a PCR hearing bears the burden of establishing his entitlement to relief. Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 146 (2014). This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law. Id.

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 (1984). "Where allegations of ineffective assistance of counsel are made, the question becomes, 'whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' " Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686). 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).

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. “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). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

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).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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.

Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)); see also Hill, 474 U.S. at 59 (footnote omitted).

In the present case, plea counsel was deficient in advising Petitioner to plead guilty to four counts of armed robbery where the factual basis for the plea listed only two items as taken – a red grinder tool box and cigarettes. App. 14, ll. 8-10. Plea counsel's testimony that marijuana and “other items which I can't enumerate at this point” were taken from the victims, should have been evaluated in light of the specific allegations in the record at the plea hearing. App. 49, ll.

20-25; Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.”). The solicitor even noted that one of the victims, Izel Poates, opened his wallet to show that he did not have anything to take. App. 13, ll. 9-15.

Petitioner was prejudiced by plea counsel’s deficient conduct in that he plead guilty to two crimes for which the solicitor did not articulate the factual basis and which he did not commit. Though Petitioner testified at the PCR hearing that he entered his pleas to avoid a possible life sentence, it is notable that Petitioner was not facing a life sentence on any of the armed robbery charges. App. 43, ll. 1-5. Rather, the solicitor pled Petitioner’s murder charge down to attempted murder. Petitioner then entered Alford pleas on the two attempted murder charges, such that he did not admit that he participated in the acts constituting those crimes. However, plea counsel should not have allowed Petitioner to essentially “plead up” what should have been two attempted armed robbery charges and two armed robbery charges to four armed robbery charges where there were not facts to support such a plea. See State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975) (“The judge **must be certain** that the defendant understands the charge and the consequences of the plea and **that the record indicates a factual basis for the plea.**” (emphasis added)); Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001) (“All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, **and that the record reflect a factual basis for the plea.**” (emphasis added)).

Petitioner was accordingly entitled to the grant of post-conviction relief because plea counsel was deficient in failing to advise him that the conduct with respect to at least two of the victims did not meet the elements of armed robbery since nothing was taken from them. Petitioner

was prejudiced in that he pled guilty to crimes that he did not commit. The PCR court erred in finding that Petitioner did not present any specific evidence to support his allegation of ineffective assistance of counsel where Petitioner's testimony and the plea transcript supported Petitioner's contention.

CONCLUSION

Based on the foregoing, Petitioner Freddie Edwards, Jr. respectfully requests that this Court grant the petition for writ of certiorari and order additional briefing on the issue raised herein.

Respectfully submitted,

A handwritten signature in cursive script that reads "Laura R. Baer". The signature is written in black ink and is positioned above a horizontal line.

Laura R. Baer  
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of February, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO SPARTANBURG COUNTY  
ROGER L. COUCH, CIRCUIT COURT JUDGE

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FREDDIE EDWARDS, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001961

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PETITION TO BE RELIEVED AS COUNSEL


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Counsel for Freddie Edwards, Jr. 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 March 23, 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 the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Freddie Edwards, Jr..

Respectfully submitted,



Laura R. Baer

Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of February, 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
Roger L. Couch, Circuit Court Judge  
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FREDDIE EDWARDS, JR.,

PETITIONER,

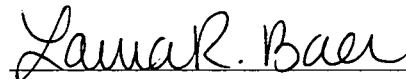
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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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 Alicia Olive, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Freddie Edwards, Jr., #353276, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 29th day of February, 2016.



Laura R. Baer  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day  
of February, 2016.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: July 3, 2023.