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March 29, 2016

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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SC SUPREME COURT

Re: *Willie Ritter, SCDC #00337044 v. State of South Carolina*  
Case No.: 2014-CP-40-5384

Dear Mr. Shearouse:

Please find enclosed the original and six (6) copies of the Petition for Writ of Certiorari, two (2) copies of the Appendix, one of which is unbound, and the Proof of Service in the above-referenced matter. Should you have any questions or concerns, please feel free to contact me.

With kind regards, I am

Very truly yours,

VON HERRMANN LAW FIRM



Heather S. von Herrmann

HvH/bho  
Enclosures: As stated  
cc: Client

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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

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Case No. 2014-CP-40-5384

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Willie Ritter  
SCDC#00337044

Petitioner,

v.

State of South Carolina,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Did the circuit court err in holding that petitioner's trial counsel was not ineffective in failing to correctly inform petitioner of the potential sentencing range and mandatory minimum sentence for Homicide by Child Abuse?
2. Did the circuit court err in holding that petitioner's guilty plea was given freely, voluntarily, knowingly and intelligently?
3. Did the circuit court err in holding that petitioner's trial counsel was not ineffective in failing to file a motion to vacate the guilty plea or other post-trial motions within 10 days of the sentencing?
4. Did the circuit court err in holding that the sentencing judge adequately informed petitioner of the sentencing range?

## STATEMENT OF THE CASE

Petitioner Willie Ritter is a seventy-one (71) year old male currently housed in the South Carolina Department of Corrections. Mr. Ritter was indicted by the Richland County Grand Jury for Homicide by Child Abuse under docket number 2007-GS-40-4465 and was represented by Attorney Jan Strifling at the trial level.

On July 20, 2009, Petitioner Ritter plead guilty as indicted and sentencing was deferred. (App.p.1-33; p.208). During the guilty plea, the trial court advised, “[f]or that particular offense, the maximum possible penalty is up to life imprisonment with a minimum sentence of 20 years. However, that is not what we term a mandatory minimum sentence.” (App.p.4, lines 21-24). The court further stated, “The - -we will have further discussion about that in a few minutes, but for right now I’m advising you of when I say it’s not a mandatory minimum sentence, that means that that minimum sentence portion of the statute can be suspended, as I understand the law.” (App.p.4, line 25, p.5 lines 1-4).

Appellant’s attorney, Jan Strifling, stated, “[s]o we—we also enter this plea, Your Honor, with the understanding that the Court, as you have stated, believes that the statute under which my client is pleading is a suspendible statute. (App.p. 27, lines 4-7). Strifling also stated, “[i]n other words, he’s facing 20 to life, and Your Honor can give him a suspended sentence, you, give him some committed sentence which you can suspend all or part of it.” (App.p. 27, lines 8-11).

On September 21, 2009, the sentencing hearing was held and The Honorable Paul M. Burch sentenced Petitioner to a term of twenty (20) years’ imprisonment. (App.p.69, lines 10-12) On September 25, 2009, petitioner’s attorney, Mr. Strifling filed a Motion to Reconsider the Sentence but no other post-trial motions. (App.p.209)

On December 8, 2010, William B. von Herrmann was substituted as petitioner's counsel and Jan Strifling was relieved.

On October 31, 2011, the Court heard Mr. Ritter's Motion to Reconsider the Sentence. At that time, Defense counsel also moved to vacate the guilty plea. (App.p.74, lines 3-7). On March 5, 2012, The Hon. Paul M. Burch denied petitioner's Motion to Reconsider the Sentence and further denied the Motion Vacate the Guilty Plea. (App.p.210-216)

A notice of appeal was filed at the South Carolina Court of Appeals. Counsel William B. von Herrmann perfected the appeal. The South Carolina Court of appeals affirmed the conviction and sentence on June 18, 2014, finding that the issues had not been properly preserved for appeal. State v. Ritter, Op. No. 2014-UP-232 (S.C. Ct. App. Filed June 18, 2014). (App.p.217) The Remittitur was sent on July 3, 2014.

Petitioner then brought this action seeking post-conviction relief on September 10, 2014. (App.p.89).

Petitioner alleged that he was incorrectly advised by both his attorney, Jan Strifling, and his sentencing judge, the Hon. Paul M. Burch, of the potential sentencing range during his guilty plea. Specifically, that he was incorrectly advised that he could receive a suspended sentence for Homicide by Child Abuse, a charge which carries a mandatory minimum twenty (20) year sentence. He further alleged that counsel's conduct in failing to properly advise him so undermined the proper functioning of the guilty plea that the plea could not have been relied on to have produced a just result nor could it have been entered into freely, voluntarily, knowingly and intelligently. Further, he asserts Mr. Strifling failed to object to the sentence so that the matter would be preserved for review by the appellate court and that Mr. Strifling failed to file a

motion to vacate the guilty plea in a timely manner, thereby foreclosing Mr. Ritter's opportunity to have the issue heard on appeal.

As a result of these errors, Petitioner asserted that counsel's representation fell well below an objective standard of reasonableness and that there was a real possibility that but for trial counsel's errors, Petitioner would not have plead guilty but would, rather, have insisted upon going to trial.

The hearing for Post-Conviction Relief was held on July 15, 2015 before The Hon. G. Thomas Cooper, Jr. (App.p.126). Judge Cooper denied the application on October 29, 2015. (App.p.196). Notice of Appeal was served on November 24, 2015. Petitioner now seeks a writ of certiorari to review this denial.

## ARGUMENT

### I. COUNSEL WAS INEFFECTIVE IN FAILING TO INFORM PETITIONER OF THE POTENTIAL SENTENCING RANGE ON HIS GUILTY PLEA TO HOMICIDE BY CHILD ABUSE.

The two-pronged test used to measure whether an attorney's performance was ineffective may be found in Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (quoting Strickland v. Washington, 466 U.S.668, 104 S.Ct. (1984)). Petitioner must prove first that counsel's performance was deficient and second, that petitioner was prejudiced.

In the case at bar, Mr. Strifling's performance was not "reasonable under prevailing professional norms" and this deficient performance prejudiced Petitioner such that "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-118, 386 S.E.2d at 625.

A person convicted of Homicide by Child Abuse may be imprisoned "for life but not less than a term of twenty years." S.C. Code Ann. § 16-3-95(C) (1) (1976). Mr. Strifling testified that he was aware of the sentencing range under the Homicide by Child Abuse statute; and also that under S.C. Code §24-21-410, if a crime carries a potential life sentence, it not suspendible. (App.p.137, lines 10 through p. 141, line 25). In State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011), this Court held that section 24-21-410 of the South Carolina Code "does not give courts the authority to suspend sentences for crimes punishable by death or life imprisonment, and this includes crimes that include

lesser sentences than death or life imprisonment.”

Nevertheless, Mr. Strifling advised Mr. Ritter that the sentence could be suspended and that Mr. Ritter would be eligible for a suspended sentence. (App.p. 137, lines 1-2).

At the time of sentencing, Mr. Ritter was 65 years old. Mr. Strifling informed Mr. Ritter that the sentence was suspendible. (App.p. 137, lines 1-2). Had Mr. Ritter known that Homicide by Child abuse carried a mandatory minimum twenty (20) year sentence, he would certainly have chosen to go forward with a trial by a jury of his peers as opposed to entering a plea of guilty without any recommendation from the State. (App.p.181, lines 14-18; p.183, lines 3-5) The United States Supreme Court in Hill v. Lockhart, 474 U.S. 52 (1985), held that where an applicant is able to show that there was a reasonable probability that, but for counsel’s errors, he would not have pled guilty and would have insisted upon going to trial, the PCR should be granted.

Mr. Strifling testified that Mr. Ritter came to court on the day of his guilty plea with the intention of going to trial and that a jury venire was even qualified. (App.p.131, lines 22-24; p.143, lines 22-25). Mr. Ritter testified that he chose to plead only after being advised by Mr. Strifling that “it didn’t look like we’re going to have a good chance of getting a fair verdict.” (App.p.179, lines 21-22). Counsel’s conduct in failing to properly advise Mr. Ritter of the sentencing range so undermined the proper functioning of the guilty plea that it cannot have produced a just result.

II. PETITIONER'S GUILTY PLEA WAS NOT FREELY, VOLUNTARILY,  
KNOWINGLY AND INTELLIGENTLY GIVEN WHERE BOTH PETITIONER'S  
COUNSEL AND THE SENTENCING JUDGE FAILED TO INFORM HIM THAT  
HE WAS SUBJECT TO A MANDATORY MINIMUM TWENTY (20) YEAR  
SENTENCE FOR HOMICIDE BY CHILD ABUSE.

The United States Supreme Court has held that any plea taken must be made knowingly and voluntarily. Boykin v. Alabama, 395 U.S. 2238, 242 (1969). This Court has held that "[i]n order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." Roddy v. State, 339 S.C. 29, 34 (2000) (citing Dover v. State, 304 S.C. 433, (1991) (citing State v. Hazel, 287 S.C. 392 (1980)).

The Petitioner in this case did not have a full understanding of the consequences of his plea; in fact, he was informed erroneously by both his attorney and the trial court that he could receive a suspended sentence (App.p.4, lines21-25; p. 5, lines 1-4). Counsel was ineffective in advising Mr. Ritter that his sentence could be suspended and this failure resulted in a plea of guilty that would not have occurred had petitioner been aware of the full consequences of his plea. (App.p.182, lines 13-25; p.183, lines 1-10) The fact that the trial court, the State, and previous defense counsel all believed this sentence could be suspended shows that the plea could not have been entered into knowingly as none of the participants in the courtroom were able to properly articulate the law to the defendant at either the time of his plea or at sentencing.

Further, petitioner testified that Counsel never showed him or discussed with him

the statute under which he was indicted or the elements of Homicide by Child Abuse. (App.p.184, lines 17-24). He testified that he “never saw one of those (statutes) until I was in prison for about two years. And they explained to me what the elements of the crime was and what it meant. I had no clue as to what an element of the crime was and what - - how it affected the court system and what had to be done by the prosecution in order to find me guilty.” (App.p.184, lines 17-24). This Court has held that a defendant entering a guilty plea must be made aware of the nature and crucial elements of the offense, the maximum and minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623, 624 (1999); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Where petitioner was not informed of these crucial elements or the maximum and minimum penalties, he cannot have entered his plea in conformity with this Court’s requirements.

III. COUNSEL WAS INEFFECTIVE IN THAT HE FAILED TO FILE A MOTION TO VACATE THE GUILTY PLEA OR OTHER POST-TRIAL MOTIONS WITHIN 10 DAYS OF SENTENCING.

In State v. Willie Ritter, Op. No. 2014-UP-232 (S.C. Ct. App filed June 18, 2014), the Petitioner’s conviction was affirmed pursuant to Rule 220(b), SCRCR and Rule 29(a), SCRCrimP (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.) Petitioner’s trial attorney, Jan Strifling, failed to make the appropriate post-trial motions

in this matter foreclosing Petitioner's ability to have his issues heard on appeal.

Mr. Strifling admitted that he failed to object to the sentence (App.p.147, lines 17-25) and that he failed to ask the court to vacate the sentence (App.p.148, lines 19-25; p.149, lines 1-2). Because of these deficiencies in representation, Mr. Ritter's issues were not preserved for appeal and he was denied an appellate review of his case.

While Mr. Strifling did file a Motion to Reconsider, between September 21, 2009, when Defendant was sentenced and December 8, 2010 when new counsel was substituted, Mr. Strifling did nothing to advance his Motion to Reconsider or to have it heard. (App.p.148, lines 19-25; p.149, lines 1-2)

#### IV. THE SENTENCING JUDGE FAILED TO ADEQUATELY INFORM PETITIONER OF THE POTENTIAL SENTENCING RANGE

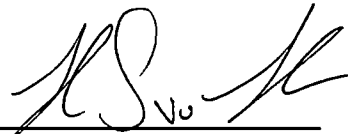
As discussed above, the trial judge also failed to properly inform Mr. Ritter of the potential sentencing range. There is no question but that Mr. Ritter was improperly and erroneously informed. (App.p.4, lines 21-25; p.5, lines1-4). The fact that the trial judge may have believed that he could issue a suspended sentence is of no moment. The petitioner must be informed of the actual sentencing range under the law of the State of South Carolina. He was not so informed, rendering his plea involuntary.

#### CONCLUSION

When determining issues relating to guilty pleas, the court will consider the entire record,

including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000). In this matter, after a review all of the evidence, petitioner asks this Court to grant the petition for a writ of certiorari.

Respectfully submitted,



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March 29, 2016  
Conway, SC

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**SC SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
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G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-5384

Willie Ritter  
SCDC#00337044

Petitioner,

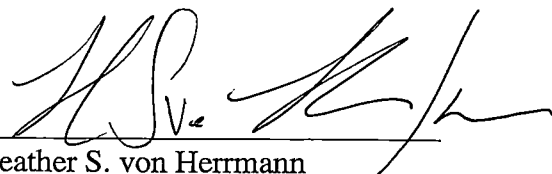
v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the petition for writ of certiorari and Appendix on the State of South Carolina by depositing the a copy of it in the United States Mail, postage prepaid, on March 29<sup>th</sup>, 2016 addressed to its attorney of record: James Clayton Mitchell, Assistant Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.



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