

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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JUN - 8 2016

**SC SUPREME COURT**

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Certiorari to Orangeburg County  
Maite Murphy, Circuit Court Judge  
\_\_\_\_\_

YOREL WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002327  
\_\_\_\_\_

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 that plea counsel rendered effective assistance of counsel where his lack of preparation so undermined Petitioner's confidence that Petitioner felt compelled to accept the State's plea offer rather than proceed to trial?

## STATEMENT OF THE CASE

On January 11, 2012, the Orangeburg County grand jury indicted Petitioner Yorel Williams for one count of murder. App. 62.

On September 13, 2012, Williams entered a guilty plea to voluntary manslaughter before the Honorable Edgar W. Dickson. Williams was represented by Gerald Davis. The trial court accepted Williams' plea and sentenced Williams to twenty-five years incarceration.<sup>1</sup> App. 16.

On August 22, 2013, Williams filed an application for post-conviction relief (PCR). App. 2. The State filed its Return on March 6, 2014. App. 9. On May 20, 2015, an evidentiary hearing was held before the Honorable Matié Murphy. Williams was represented by Jonathan D. Waller, and the State was represented by assistant attorney general J. Clayton Mitchell. App. 14.

On October 1, 2015, Judge Murphy entered an Order of Dismissal, denying William's PCR application. App. 53.

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<sup>1</sup> Court Administration was unable to produce a transcript of the guilty plea hearing. App. 1.

## ARGUMENT

**The PCR court erred in finding that plea counsel rendered effective assistance of counsel where his lack of preparation so undermined Petitioner's confidence that Petitioner felt compelled to accept the State's plea offer rather than proceed to trial?**

Decedent Brailsford, Petitioner Yorel Williams's on-again/off-again girlfriend, had threatened Williams in the past and even stabbed him on one occasion. App. 21, l. 16 – 22, l. 24. Williams provided defense counsel with his cellular phone, which, as seen *infra*, contained recordings of disturbing threats Brailsford made against Williams' life. App. 22, l. 25 – 23, l. 24; App. 49, ll. 12-17; Applicant's Ex. 2 (on file with this Court). Nonetheless, defense counsel did not discuss any potential defenses that Williams could pursue at trial, including self-defense, or the possibility of a charge on the lesser included offense of involuntary manslaughter. App. 20, ll. 21-23; see State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 470 (2008) (a self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges). The sparse time that defense counsel spent with Williams, coupled with his failure to discuss the evidence against Williams, the value of Williams' recordings of verbal threats to his life from the decedent, the possibility of suppressing Williams' statement, and the possibility of jury charges on involuntary manslaughter and self-defense, led Williams to conclude that counsel was not prepared for trial in his case. As such, Williams felt compelled to accept the State's offer to plead guilty to voluntary manslaughter. Were it not for defense counsel's deficient representation, Williams would have instead proceeded to trial.

### Relevant Facts

The charges against Williams arose from the shooting death of Darshal Brailsford, with whom Young had one child in common. App. 21, ll. 16-21. Williams said that defense counsel

only met with him four times over the two years that he was incarcerated and that each of those meetings lasted no more than thirty minutes. App. 18, ll. 6-23. According to defense counsel Davis, his only task was to get an offer from the solicitor, as he claimed that Williams indicated early on that “he wanted me to try to work out some kind of deal for him. It was never an issue with Mr. Williams of going to trial.” App. 47, ll. 4-7. Davis testified: “[T]he facts that I had were chiseled in stone when he [Williams] came to me.” App. 46, ll. 21-22. While defense counsel said that he could have challenged Williams’ statement at trial, he noted that the State had provided him with a written waiver of Miranda<sup>2</sup> rights signed by Williams. App. 46, l. 24 – 47, l. 4. Defense counsel was unable to recall any detail about the contents of Williams’ cell phone, but he claimed that it was not “earth-shattering” and would not “turn this case around.” App. 47, ll. 8-13; App. 48, ll. 14-23.

The following threats of violence were made against Williams by Brailsford and recorded on Williams’ cell phone:

Trust me, I’ll make sure my kids are old enough to take care of themselves. Because I know crime. There has been crimes that have not been solved until thirty years later. So by that time my kids will be set. They won’t need nobody to take care of them. They’ll just take care of themselves. So when I spend the rest of my life in jail, I ain’t gotta say oh, man, I wish my kids, they need me, they’re babies. They still need their mommy to teach them this and that. Nope, they gonna be grown. They [inaudible] or nothin’. **And your ass going to be six feet under, wishin’ you had did me right.**

You’re right because I mean, I’m not denying it. **I’ll be the first to say: “Yep, I slit his throat and was laughing when I did it.”** You ain’t going to go out here and be with nobody else and do me wrong again.

Applicant’s Ex. 2 (Disc 2, 32:40 – 35:00).

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<sup>2</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

[inaudible] talkin' about please Darshal, don't do it. **And all you'll feel is the ripping of your flesh while you slowly fading in and out.** You laughing but **I'm so not playing.** [inaudible] with emotions, **I'm for real.** And I'm going to say "You know what judge, I plead temporary insanity. Imma say this [inaudible] cheated on me so many times. We got a child together. I loved him. I had just got out of an abusive relationship and I was trying to be with him. And my husband had already been, you know, real abusive with me and I never did anything to him. And then I got in a relationship with this guy, and he was really not faithful and just did a lot of things."

Applicant's Ex. 2 (Disc 2, 35:01 – 37:29).

Your [inaudible] father did some things to push you to the limit. And your mom, she knows how you are. Cause she said you weren't ready to settle down. So she knows that you be fuckin' around. **And you know what, she gonna say: "You know what. She must have found something or he must have did something and she fucking killed him."** She's going to be so mad and so hurt. But, you know what, fuck it. **You're a mother fucker.**

I [inaudible] my emotions. I will. Don't worry about it. **You keep trying me Yorel, I swear to God. And imma [inaudible] try to get away with it.** I got three kids to think about. **Oh trust me, I got you.**

Applicant's Ex. 2 (Disc 2, 37:30 – 39:40). After Williams provided defense counsel with the cell phone, Williams was not visited by counsel again until the week before Williams was either going to enter the plea or go to trial. That was also the first time that defense counsel shared the State's discovery with Williams. App. 23, ll. 10-15; App. 29, ll. 20-23.

The twelve years old eyewitness in the case provided a written statement in which he indicated that he was looking out the window when he saw the victim pull up and get out of her car. He could not see if the victim and shooter were talking or arguing, but he saw the flash of a gun and a man in a hoody run away. App. 52. A gunshot residue (GSR) test conducted on Williams' hands was **negative for GSR.** App. 21, ll. 2-15. According to Williams the only other evidence against him was his written statement, in which Williams said his "**mind went blank.**" While the solicitor characterized the statement as a "confession," Williams said it was

not incriminating. Regardless, Williams maintained that he was forced to write a statement by law enforcement, who said Williams could not go anywhere until he “put something down on paper” and ignored his repeated requests for an attorney. App. 19, ll. 11 – 20, l. 14; App. 36, l. 9 – 37, l. 1. Despite this, defense counsel never discussed with Williams the potential of challenging the admissibility of Williams’ statement at trial. App. 20, ll. 15-20. While Williams believed that his interrogation was recorded, no recording was provided in the State’s discovery. App. 44, ll. 13-19. The State was also intended to use a Facebook post made by Williams against him, but Williams said the post was just music lyrics. App. 24, ll. 5-23. Williams further testified that he **“didn’t even approach the situation with a weapon.”** App. 37, ll. 20-21.

Williams said that by the time he realized that defense counsel had failed to investigate his case, it was too late to retain another attorney. Thus, he felt pressured to plead guilty, knowing that defense counsel was not prepared for trial. App. 25, ll. 8-14; App. 28, l. 6 – 30, l. 13. Were it not for defense counsel’s lack of preparation, Williams would have proceeded to trial rather than pleading guilty. App. 31, ll. 12-17.

In its Order of Dismissal, the PCR court found: “Applicant knew he was pleading guilty, but explained that he felt forced because Counsel advised him he was likely to be convicted if he chose to go to trial.” App. 59. The court further noted that effective assistance of counsel does not include a specified number of meetings between the client and attorney. App. 59. Regardless, the PCR court found that defense counsel “adequately prepared” Williams’ case and that the evidence against Williams was “substantial.” App. 60. The PCR court also found it “noteworthy” that defense counsel “was successful in getting the murder charge dropped to voluntary manslaughter, significantly limiting Applicant’s exposure.” App. 60.

## Discussion

Contrary to the PCR court's findings, Williams did not plead guilty because defense counsel said he was likely to be convicted if he went to trial. App. 59. Rather, Williams, pled guilty because defense counsel was unprepared for a trial and "urging" him to plead guilty. App. 28, l. 4 – 29, l. 6. Moreover, it was not only the amount of meetings that was the problem in Williams' case, but their lack of content regarding Williams' case. App. 59; App. 18, ll. 6-23; App. 20, ll. 21-23; App. 23, ll. 10-15; App. 29, ll. 20-23. Additionally, defense counsel's "success" in securing a plea offer for voluntary manslaughter in this case hardly remarkable. See App. 60. The "eyewitness" could not identify Williams as the shooter, there was no gunshot residue on Williams' hands, and Williams' statement at most admitted to being present in the parking lot but otherwise indicated that his "mind went blank." App. 21, ll. 2-15; App. 36, l. 9 – 37, l. 1; App. 52. There was also evidence that the victim had previously stabbed Williams and made threats to "slit his throat." App. 21, l. 1 – 23, l. 24; Applicant's Ex. 2. Thus, the State's case against Williams for murder was far from "air tight." Further, though voluntary manslaughter may seem like a "good deal" compared to murder, it loses its luster when compared to the acquittal that Williams may have received if the jury believed he was acting in self-defense or the lesser sentence for involuntary manslaughter.

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). 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). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969). Therefore, in the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). “The second, or ‘prejudice,’ requirement . . . focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Hill v. Lockhart, 474 U.S. 52, 59 (1985). In other words,

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)).

Any interest that Williams had in a potential plea offer from the State did not obviate defense counsel’s duty to investigate. See App. 47, ll. 4-7. The value of any offer can only be assessed in contrast to the potential risks and benefits of trial. Defendants are not trained in the

law and do not know the nuances of murder, voluntary manslaughter, involuntary manslaughter, accident and self-defense. That is exactly why defendants have lawyers, who can advise them regarding the lesser-included offenses and defenses. See, e.g., Kerrigan v. State, 304 S.C. 561, 406 S.E.2d 160 (1991) (holding petitioner's counsel was ineffective because where "he failed to advise petitioner that if he went to trial, he could have requested a charge on the lesser offense and might have been convicted of the misdemeanor of use of a vehicle without permission rather than the felony of grand larceny" and "but for counsel's failure to advise petitioner of the lesser offense, he would not have pled guilty"). Details that may seem inconsequential to a layman can be of great significance in determining the level of a defendant's criminal culpability, if any.

Contrary to defense counsel's assertion, Williams' provision of a written statement indicating that his "mind went blank" did not mean the defense's theory of the cases was "chiseled in stone." App. 46, ll. 21-22. Even if unsuccessful in suppressing the statement, Williams would certainly not be the first defendant to recant or expound upon his prior statement at trial. See State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001) (holding that defendant was entitled to voluntary manslaughter charge based on State's admission of his recanted statement); State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (2003) (holding that defendant was entitled to voluntary manslaughter charge where the evidence, including one of defendant's prior statements, supported inconsistent defense theories, one of which was that the victim pushed and punched the defendant in the eye prior to her shooting him). The defense could have explained that the initial shock of the events affected Williams' memory or that Williams was simply uncomfortable giving the police a full account of the events without an attorney present. Williams testified that he now believes that his conduct amounted only to involuntary manslaughter or self-defense and that he did not approach the victim with a weapon. App. 29, ll.

16-17; App. 37, ll. 17-21; see Light, 378 S.C. at 651, 664 S.E.2d at 470 (“When there is a factual issue as to whether the shooting was committed intentionally in self-defense or was committed unintentionally, then the defendant is entitled to both charges as there is “any evidence” to support each charge. When there is evidence of both . . . the jury is entitled to resolve the question of how the shooting actually occurred.”).

Defense counsel further failed to realize and explain the significance to the victim’s recorded threats. App. 47, ll. 8-15. Had Williams pursued self-defense at trial, the threats made to Williams and the prior stabbing committed against Williams would have been relevant to support the reasonableness of Williams’ apprehension of harm from the victim. See State v. Day, 341 S.C. 410, 419-20, 535 S.E.2d 431, 436 (2000) (“In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible **unless they were directed against the defendant** or, if directed against others, were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm.” (emphasis added)); see also State v. Smith, 263 S.C. 150, 208 S.E.2d 533 (1974) (holding that evidence that person at whom defendant was shooting when one of the bullets struck and killed another had made prior threats against defendant, who asserted self-defense, was admissible in evidence to impeach other person’s testimony that defendant began the shooting, as the threat did not relate to a collateral matter). The value of the statements to a self-defense theory should have been discussed with Williams in order for him to properly evaluate the State’s offer.

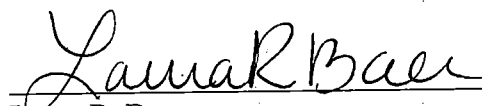
In sum, the PCR court mischaracterized the basis of Williams’ ineffective assistance claim and erred in finding that defense counsel’s preparation was “adequate.” App. 59 – 60.

Defense counsel failed to have even the most basic discussion of the lesser-included offenses and defenses to murder in order for Williams to make an informed decision regarding whether plead guilty. Williams simply could not take the risk of going to trial with an attorney who was unprepared for his case and ignored him until the week before trial. Thus, Williams' guilty plea did not represent "a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill, 474 U.S. at 56.

CONCLUSION

Based on the foregoing, Petition Yorel Williams respectfully requests that this Court grant certiorari to allow full briefing on this issue.

Respectfully submitted,



Laura R. Baer  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of June, 2016.

STATE OF SOUTH CAROLINA

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Maite Murphy, Circuit Court Judge

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YOREL WILLIAMS,

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RESPONDENT

APPELLATE CASE NO. 2015-002327

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CERTIFICATE OF SERVICE

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I certify that a true copy of the 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 Yorel Williams, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 8th day of June, 2016.



Laura R. Baer  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day  
of June, 2016.



(S.)  
Notary Public for South Carolina  
My Commission Expires: April 27, 2026.