

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**ORIGINAL**

Certiorari to Lexington County

Honorable William Jeffrey Young, Circuit Court Judge

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**RECEIVED**

**OCT 19 2016**

ALEXANDER LYNCH,

**S.C. SUPREME COURT  
PETITIONER,**

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000516

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO AUSTIN V. STATE

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David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX ..... i

ISSUE PRESENTED .....1

STATEMENT .....2

ARGUMENT

Petitioner is entitled to a new trial under the Sixth Amendment’s  
guarantee of the right to the effective assistance of counsel because  
petitioner would not have pled guilty but for plea counsel’s failure  
to investigate incriminating statements made by petitioner and  
explain to him that the admissibility of these statements could be  
litigated in a pretrial hearing .....3

CONCLUSION .....6

PETITION TO BE RELIEVED AS COUNSEL .....7

## ISSUE PRESENTED

Whether petitioner is entitled to a new trial under the Sixth Amendment's guarantee of the right to the effective assistance of counsel because petitioner would not have pled guilty but for plea counsel's failure to investigate incriminating statements made by petitioner and explain to him that the admissibility of these statements could be litigated in a pretrial hearing?

## STATEMENT

On June 10, 2010, a Lexington County grand jury indicted petitioner for homicide by child abuse. App. 92. On June 7, 2010, petitioner pled guilty before the Honorable R. Knox McMahon. App. 1. Debra B. Moore represented the State. App. 1. Elizabeth C. Fullwood represented petitioner. App. 1. Judge McMahon sentenced petitioner to life imprisonment. App. 25, l. 21 – 26, l. 4.

On February 4, 2011, petitioner filed a PCR application. App. 28. On August 14, 2012, a hearing was held before the Honorable W. Jeffrey Young. App. 39. Daniel D. Kienker represented petitioner. App. 39. Kaelon E. May represented the State. App. 39. On June 9, 2013, Judge Young denied petitioner's application. App. 61-67. No appeal was filed.

On October 3, 2012, petitioner filed another PCR application. App. 68. On January 14, 2016, a hearing was held before the Honorable J. Mark Hayes. App. 82. Patrick Schmeckpeper represented the State. App. 82. Anna R. Good represented petitioner. App. 82. The State consented to relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 85, ll. 14 – 17. On February 16, 2016, Judge Hayes granted petitioner a belated appeal from his first PCR. App. 88-90. This petition follows.

## ARGUMENT

Petitioner is entitled to a new trial under the Sixth Amendment's guarantee of the right to the effective assistance of counsel because petitioner would not have pled guilty but for plea counsel's failure to investigate incriminating statements made by petitioner and explain to him that the admissibility of these statements could be litigated in a pretrial hearing.

Petitioner's guilty plea was unknowing and involuntary because of the ineffective assistance of counsel. "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 v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted).

At the PCR hearing, petitioner testified that he would not have pled guilty had he known that he was entitled to a pretrial hearing on the admissibility of statements he gave to the police. App. 48, ll. 4 – 23. In this homicide by child abuse case where petitioner received a life sentence, plea counsel only met with him three times. App. 43, ll. 19 – 20. She did not ask him about the circumstances surrounding his statements. App. 46, ll. 2 – 4. She did not tell petitioner that he had the right to challenge the admissibility of the statements. App. 46, ll. 5 – 11.

Petitioner was entitled to a pretrial hearing to determine the admissibility of his statements to the police. Jackson v. Denno, 378 U.S. 368 (1964). While petitioner admitted that he had been given Miranda warnings after being arrested, he also gave a statement at the scene of

the incident. App. 44, l. 17 – 45, l. 23. App. 51, ll. 13 – 16. See Miranda v. Arizona, 384 U.S. 436 (1966). Plea counsel had no “independent recollection” of reviewing these statements with petitioner. App. 53, ll. 3 – 8.

Without reviewing the circumstances of the first statement, plea counsel had no way of knowing whether petitioner received Miranda warnings. If petitioner did not receive Miranda warnings, his subsequent statement would have been inadmissible despite the warnings which petitioner admitted receiving before his second statement. Missouri v. Seibert, 542 U.S. 600 (2004). State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010).

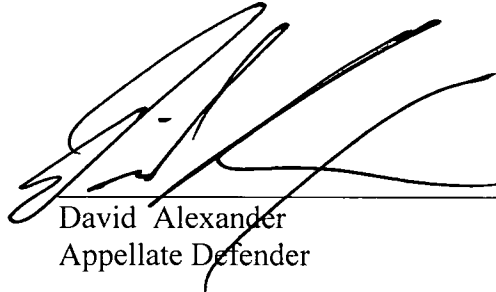
Furthermore, it is clear that petitioner invoked his constitutional rights during his interrogation. App. 45, ll. 4 – 17. Interrogation should have ceased, yet the police continued to illegally question petitioner. App. 45, ll. 4 – 17. A citizen cannot “be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. “If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.” Miranda v. Arizona, 384 U.S. 436, 474 (1966). An accused . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” Edwards v. Arizona, 451 U.S. 477, 484-85 (1981). “The State has the burden to show by the preponderance of the evidence that a defendant has voluntarily waived his right to counsel.” State v. Binney, 362 S.C. 353, 359, 608 S.E.2d 418, 421 (2005).

Petitioner told plea counsel he wanted a trial. App. 44, ll. 7 – 16. He would not have pled guilty had trial counsel informed him he could have litigated the admissibility of his statements before trial. App. 48, ll. 4 – 23. This proves prejudice. Strickland v. Washington, 466

U.S. 668 (1984). In order to prove prejudice under Strickland in a plea context, “a defendant must show the outcome of the plea process would have been different with competent advice.” Lafler, 132 S.Ct. at 1384. “[A] petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” Padilla, 130 S.Ct. at 1485. However, the primary focus remains on whether petitioner’s plea was involuntary and that he would not have otherwise pled guilty. Lockhart, 474 U.S. at 56-57. Therefore, petitioner has demonstrated prejudice under Strickland and Lafler. This Court should grant certiorari and reverse petitioner’s conviction.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari with the ultimate relief of reversing petitioner's conviction and granting him a new trial.



David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of October, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable William Jeffrey Young, Circuit Court Judge

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ALEXANDER LYNCH,

PETITIONER,

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STATE OF SOUTH CAROLINA,

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PETITION TO BE RELIEVED AS COUNSEL

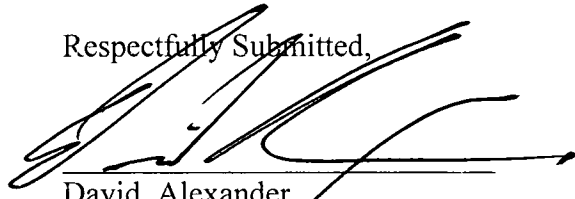
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Counsel for Alexander Lynch states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's trial before the Honorable William Jeffrey Young, which was held on August 14, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Alexander Lynch.

Respectfully Submitted,



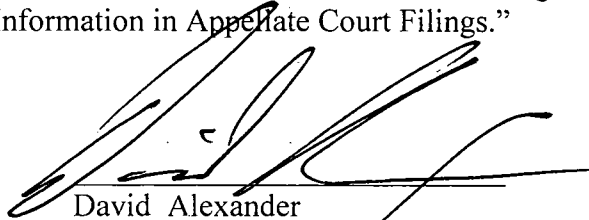
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David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 19th day of October, 2016.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari Pursuant to Austin V. State complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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This 19th day of October, 2016.

STATE OF SOUTH CAROLINA

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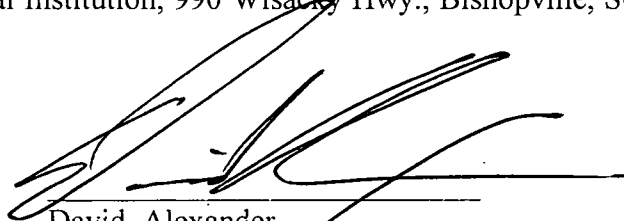
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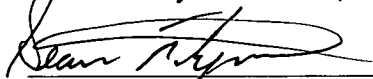
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari Pursuant to Austin V. State and a copy of the Appendix in the above referenced case has been served upon Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari Pursuant to Austin V. State and a copy of the Appendix have been served on Alexander Lynch, #341145, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 19th day of October, 2016.



\_\_\_\_\_  
David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 19th day of October, 2016.

 (L.S)

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