

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO BERKELEY COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable Larry B. Hyman, Circuit Court Judge

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Appellate Case No.: 2016-000105  
Lower Court Case No.: 2013-CP-08-2677

STEVEN ROGERS, SCDC #353340,.....Petitioner,

v.

STATE OF SOUTH CAROLINA,.....Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## **ISSUE PRESENTED**

Probative evidence exists to uphold the post-conviction relief court's finding that plea counsel was not ineffective in her representation of Petitioner and that Petitioner's plea was knowingly and voluntarily made where Petitioner was aware of his sentencing range prior to his plea and that range remained the same regardless of whether the State ultimately charged Petitioner with an additional Burglary charge.

## STATEMENT OF THE CASE

On November 29, 2012, represented by Deborah Littlejohn, Esquire, Petitioner pleaded guilty to Burglary in the First Degree (2012-GS-08-0884). (Supp. App. p. 1.) The Honorable R. Markley Dennis, Jr. sentenced Petitioner to confinement for a period of fifteen years. Id. Petitioner did not appeal his conviction or sentence.

Petitioner subsequently filed an application for post-conviction relief on December 3, 2013, and Respondent filed a Return dated March 26, 2015. (App. pp. 23, 41.) A PCR hearing was held on September 10, 2015, at the Charleston County Courthouse before the Honorable Larry B. Hyman, Jr. Petitioner was represented by Lance Boozer, Esquire, and J. Rutledge Johnson, Assistant Deputy Attorney General, appeared on behalf of the state. (App. pp. 47-48.) In an order filed December 21, 2015, Judge Hyman denied Petitioner's claims of ineffective assistance of counsel in the case. (App. p. 100.)

Petitioner appealed that order and filed a petition for writ of certiorari to this Court. This Return to that petition follows.

## STATEMENT OF THE FACTS

Petitioner pleaded guilty to a negotiated fifteen year sentence to the charge of Burglary in the First Degree. The plea transcript shows the plea court explained to Petitioner that his options were not limited to pleading to the negotiated fifteen year sentence for Burglary in the First Degree. (App. p. 4, ll. 19 – p. 5, l. 3.) First, the Court confirmed no other indictments were pending, which the Solicitor confirmed. (App. p. 4, l. 23 – p. 5, l. 1.) Then, the plea court informed Petitioner he could go to trial on the charge where, if convicted, the trial court had to sentence Petitioner to a minimum of fifteen years, but the trial court could also “impose a life sentence, or anything in between.” (App. p. 4, l. 19 – p. 5, l. 8.) The Court also explained to Petitioner “it is your right to go to trial because a jury may not convict you.” (App. p. 6, ll. 24-25.) Due to the Court’s impression that Petitioner was not comfortable with the plea, the Court set the plea to the side. (App. p. 7, ll. 14-16.) After a recess, Petitioner came back before the plea court and stated he wanted to plead guilty. (App. p. 7, l. 18 – p. 8, l. 2.) When asked by the plea court if anyone threatened Petitioner in any way or promised him anything to get him to plead guilty, Petitioner answered “no, sir.” (App. p. 9, l. 24- p. 10, l. 2.)

At one point, the plea court asked Petitioner if he was choosing to plead instead of going to trial and confronting witnesses and Petitioner explained he “believe[d] that’s the best that I can get.” (App. p. 11, ll.1-6.) In response, the plea court explained that the State is required to prove Petitioner’s guilt and then said that “when you say ‘that’s the best that I can do,’ an acquittal is the best that you can do.” (App. p. 11, ll. 7-25.) In response, Petitioner explained he’d “rather not take the chance of having to do life in prison, not come home to my family and all, Your Honor.” (App. p. 12, ll. 1-3.) After the State explained the allegations in the case and acknowledged Petitioner’s lack of a prior criminal record, the Court explained to Petitioner that

while the court could not “promise it[;] . . . I think that probably, given no prior record, that you would probably have received a fifteen-year sentence if you were convicted.” (App. p. 13, ll. 20-25.) After a brief on the record discussion with Petitioner, the Court again informed Petitioner he was entitled to have a jury trial, but Petitioner again stated he wanted to plead guilty. (App. p. 17, ll. 13-16.)

Throughout the plea, Petitioner did not waiver from admitting his guilt, stating at different times that he “did commit the crime” (App. p. 5, l. 9), admitting that the facts as stated by the prosecutor were correct (App. p. 13, ll. 17-19), stating he was “guilty of the crime with which [he was] charged” (App. p. 14, ll. 23-25), stating he was guilty (App. p. 15, l. 1), stating this was his first offense and that “[i]t was a mistake, a big mistake. In no way can I justify what I did. . . . I went over the edge and I regret what I did, terribly” (App. p. 15, ll. 9-10 (emphasis added)).

At the PCR hearing, plea counsel testified she did communicate to Petitioner prior to his plea that the solicitor alluded the State may seek another indictment for Burglary First against Petitioner due to his entering the house more than once. (App. p. 36, ll. 2-6.) Plea counsel also testified, however, that it was not correct that she would have advised either Petitioner or his wife that the mandatory minimum for Petitioner, if he was direct indicted for a second burglary conviction, would be thirty years. (App. p. 96, l. 23 – p. 97, l. 3.) Plea counsel testified she would have advised Petitioner he could face “fifteen to life and anywhere in between.” (App. p. 96, ll. 10-18.) Plea counsel testified the sentencing range, regardless of whether Petitioner was facing one or two burglary convictions, was still fifteen years to life because the two convictions could be run concurrently. (App. p. 97, ll. 5-13.)

## STANDARD OF REVIEW

This Court must affirm the post-conviction relief (“PCR”) court's factual findings if there is any evidence of probative value in the record to support them. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). This Court should reverse the PCR court only where there is no probative evidence to support the decision or the decision was controlled by an error of law. Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010). Furthermore, this Court “gives great deference to the [PCR] court's findings of fact and conclusions of law.” Id. (quoting Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005)).

## ARGUMENT

**Probative evidence exists to uphold the post-conviction relief court's finding that plea counsel was not ineffective in her representation of Petitioner and that Petitioner's plea was knowingly and voluntarily made where Petitioner was aware of his sentencing range prior to his plea and that range remained the same regardless of whether the State ultimately charged Petitioner with an additional Burglary charge.**

Petitioner claims his attorney was ineffective in advising him that the State could charge him with a second burglary charge based on entering the victim's home twice and advising Petitioner he could get thirty years if he were to be charged and convicted of both of those burglaries.

The PCR Court correctly found plea counsel was not ineffective in her advice to Petitioner prior to his guilty plea and that Petitioner's plea was knowingly and voluntarily made. Petitioner was advised of and understood that he was pleading guilty to a crime that carried fifteen years to life in prison and that he would receive a negotiated fifteen year sentence if he entered a plea of guilty. Regardless of the possibility that the State could end up *charging* him with another Burglary if he did not enter a plea of guilty at that time, he would have been facing the same sentencing range of fifteen years to life, which was explained to him by his attorney. The plea transcript is replete with references that Petitioner understood the charge and sentence to which he was pleading, that he had an absolute right to a trial, that he was waiving that right, and that he was—in fact—guilty of the crime which he was pleading guilty to.

“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.’” Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011) (quoting Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366 (1985)). “A guilty plea is a solemn, judicial admission of the truth of the charges against an individual.” Dalton v. State, 376 S.C. 130, 137-38, 654

S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). “Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir.1975) *overruled by* United States v. Whitley, 759 F.2d 327 (4th Cir. 1985); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976)). “Ordinarily, a defendant's testimony, several years after a guilty plea, that his plea was induced by erroneous advice of counsel is not persuasive” in post-conviction motion alleging ineffective assistance of counsel. Hinson v. State, 297 S.C. 456, 458, 377 S.E.2d 338, 339 (1989).

This Court gives great deference to a PCR judge's findings where matters of credibility are involved. Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (citing Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993)). “When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). “Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Id. (citing Harres, 282 S.C. at 131, 318 S.E.2d at 360).

This Court is required to affirm the PCR court's findings if there is any probative evidence in the record to uphold them. Dempsey, *supra*.

Based on the abundance of case law and the clarity of the record, it is apparent Petitioner understood the conditions and ramifications of the guilty plea as he entered it and that he did so

knowingly and voluntarily. The plea transcript contains numerous references to the total amount of potential prison time that Petitioner was facing. (App. p. 4, l. 19 – p. 5, l.8; App. p. 12, ll. 1-3; App. p. 13, ll. 20-25) On multiple occasions, the plea judge questions Petitioner about his knowledge of the charge, the potential sentence of the charge, whether Petitioner truly wishes to waive his right to a trial, and whether Petitioner is guilty of the charge. (App. pp. 4-5, 6, 9-10, 11-15.) Not only was the plea judge very thorough in ensuring Petitioner's understanding of the charge he faced and the consequences of that charge, he was also very patient in securing Petitioner's answers.

During his guilty plea, Petitioner stated his reasons for entering the plea. He testified he was pleading guilty in order to avoid the possibility of receiving a life sentence at trial, and he never wavered from the fact that he was guilty. (App. p. 12, ll. 1-3; App. p. 5, l. 9; App. p. 13, ll. 17-19; App. p. 14, ll. 23-25; App. p. 15, l.1; App. p. 15, ll. 9-10.) Petitioner also told the plea court he was not threatened or promised anything to plead guilty. (App. p. 9, l.24- p. 10, l. 2.). Additionally, after hearing testimony from Petitioner and plea counsel at the PCR hearing for this matter—where plea counsel testified that even in explaining that the State may seek another indictment for Burglary, Petitioner's sentencing exposure would remain fifteen years to life because the charges could be run concurrently (App. p. 97, ll. 1-16)—the PCR court made a specific credibility finding that plea counsel properly advised Petitioner of the elements of the charge and the penalties and that it was Petitioner's decision to plead guilty. (App. p. 104.). This was the finding of the PCR judge, and probative evidence exists to uphold that decision. For these reasons, this petition for writ of certiorari should be denied and dismissed with prejudice.

**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling as there is ample evidence of probative value to support the PCR Court's denial of Petitioner's application. Should this Court grant Certiorari, Respondent requests permission under the rules to fully brief the issue discussed above.

Respectfully submitted,

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28 Nov., 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Berkeley County  
Court of Common Pleas  
The Honorable Larry B. Hyman, Circuit Court Judge

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S.C. SUPREME COURT

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STEVEN ROGERS, SCDC #353340,

PETITIONER,

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THE STATE OF SOUTH CAROLINA,

RESPONDENT.

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Wanda H. Carter, Esquire**  
**SC Commission of Indigent Defense**  
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This 28<sup>th</sup> day of November, 2016

  
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