

STATE OF SOUTH CAROLINA  
In The Supreme Court

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NOV 23 2016

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Honorable Larry B. Hyman, Circuit Court Judge

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Joshua Monroe, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

Appellate Case No. 2015-002434

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

**Did the PCR Court correctly find counsel provided effective representation in advising Petitioner to give a statement to law enforcement for mitigation and refusing to make a Rule 410, SCRE, motion to withdraw the statement?**

## STANDARD OF REVIEW

In a post-conviction relief action, the proper standard of review is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). "This Court gives great deference to the post-conviction relief (PCR) courts findings of fact and conclusions of law." Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005). "The Petitioner bears the burden of proving the allegations in their application." Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of an attorney's performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The Petitioner must overcome this presumption in order to receive relief. Cherry.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Petitioner must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the 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, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

## ARGUMENT

1. **The PCR Court correctly found Counsel Dupree and Counsel Stratos provided effective representation in advising Petitioner to give a statement to law enforcement and plead guilty.**

The PCR Court found the following regarding Counsel Dupree's (hereinafter "Dupree") and Counsel Stratos's (hereinafter "Stratos") effective assistance of counsel in Petitioner's PCR case: Both Counsel advised Petitioner of the charges and the sentences the charges carried. Both Counsels negotiated with the State in Petitioner's best interest. Stratos was able to get charges dismissed as part of a plea agreement and mitigated Petitioner's potential exposure to a life without parole sentence with his statement and cooperation with law enforcement.

Petitioner admitted at his guilty plea that he was not threatened to plead guilty, and there were no promises other than the charges dismissed to entice him to plead guilty. App. p.44. Based on the transcript and testimony, the PCR Court found Petitioner made the decision to plead guilty on his own accord with the help of effective counsel. App. p.163. The PCR Court found Petitioner made his decision to plead freely and voluntarily without any threats or promises. App. p.163. Furthermore, the PCR Court found it was ultimately the Petitioner's decision to plead guilty. The State agrees.

The PCR Court found Petitioner's testimony not credible. App. p.163. "This Court gives great deference to a PCR judge's findings where matters of credibility are involved. (*Drayton v. Evatt*, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993))." *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (citations omitted). Petitioner's plea was not involuntarily caused by the statement he gave. The video evidence against Petitioner, which showed Petitioner's identifying tattoos, and the codefendant's statement against Petitioner compelled his guilty plea. Early in the case, Dupree realized the strength of the State's case and advised Petitioner accordingly. The evidence against Petitioner dictated that mitigation was his best defense. When Dupree advised

Petitioner to give a statement it was clearly in Petitioner's best interest. The statement Petitioner gave and his willingness to plead guilty were the best arguments Petitioner had against imprisonment for life. Dupree testified at the hearing that he believed it was in Petitioner's best interest, based on the evidence the State had against him, to move forward with the plea deal and not retract Petitioner's statement. App. p.141. The PCR Court found this testimony persuasive. After Dupree was fired and Stratos was hired, Stratos agreed with Dupree's assessment and advised Petitioner not to withdraw his statement and to plead guilty. App. p.146. In Stratos's words, "this was not a triable case, that I wasn't being hired to try this case. I was being hired to work out on the best plea on his behalf that I possibly could." App. page 147. In a case with overwhelming evidence, and life without parole as a potential sentence, Dupree and Stratos were not deficient for advising their client that mitigation and pleading guilty were in his best interest.

Accordingly, the PCR Court was correct when it found Petitioner failed to prove the first prong of the Strickland test – counsel failed to render reasonably effective assistance under prevailing professional norms. The Petitioner failed to present specific and compelling evidence that Dupree or Stratos committed either error or omission in their representation of Petitioner.

The PCR Court was also correct when it found Petitioner failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. App. p.164. If counsel was not deficient there can be no prejudice. However, even if counsel was deficient, the evidence against Petitioner still necessitated a plea. It is well established the State has no obligation to extend a plea deal. Petitioner was facing life imprisonment if he went to trial. The evidence against Petitioner was overwhelming. Therefore, the Petitioner was not prejudiced by the statement he gave when the evidence without the statement already necessitated a guilty plea and arguing for mitigation.

**2. The PCR Court correctly found that ground for a White claim existed and properly granted a belated direct appeal.**

The State does not contest the Petitioner's allegation he was improperly denied a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

CONCLUSION

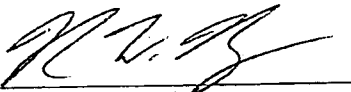
For all of the foregoing reasons, the State respectfully requests that the petition be denied. If this Court sees fit to grant the petition for writ of certiorari, Petitioner would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina

STATE OF SOUTH CAROLINA  
In The Supreme Court

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Appeal from Charleston County  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Larry B. Hyman, Circuit Court Judge

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JOSHUA MONROE,

PETITIONER,

v.

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 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:

**Tiffany L. Butler, Esquire**  
**SC Commission of Indigent Defense**  
**Appellate Defense**  
**Post Office Box 11589**  
**Columbia, SC 29211**

This 23th day of November, 2016

  
\_\_\_\_\_  
ASHLEY HAWORTH  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

November 23, 2016

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NOV 23 2016

S.C. SUPREME COURT

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

**RE: Joshua Monroe v. State of South Carolina**  
**Appellate Case No. 2015-002434**  
**Lower Court Case No: 2013-CP-10-5445**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Ruston W. Neely  
Assistant Attorney General  
SC Bar No. 100192

RWN/ah  
Enclosures

cc: Tiffany L. Buter, Esquire