

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

DARIUS L. GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000994

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX.....	i
ISSUE PRESENTED.....	1
STATEMENT.....	2
ARGUMENT.....	4
CONCLUSION.....	7
PETITION TO BE RELIEVED AS COUNSEL.....	8

ISSUE PRESENTED

Did the PCR Court err in holding that Petitioner's guilty plea was intelligently, voluntarily, and knowingly entered in light of Petitioner's testimony that he and plea counsel never discussed the elements of murder of voluntary manslaughter coupled with the fact that he did not wish to plead guilty?

STATEMENT

On February 25, 2013, Petitioner pled guilty to voluntary manslaughter in front of the Honorable Stephanie P. McDonald in Charleston County. Ted Smith and Megan Ehrlich represented Petitioner, and Jennifer Shealy served as the Assistant Solicitor.

The facts presented at the guilty plea by Solicitor Shealy are as follows: Petitioner allegedly stabbed David Moultrie on September 28, 2011. App. 2 lines 20 – 23. Moultrie was employed at a Wal-Mart located in Mount Pleasant and got to work around 7:00 a.m. on the morning of September 28, 2011. App. 2 lines 24 – 25; App. 3 lines 8 – 12. According to one of Moultrie's friends and coworkers, Damian Noel, a Crown Victoria with three men drove into the Wal-Mart parking lot. App. 3 line 17 – App. 4 line 15. The three men got out of the car and Petitioner approached the decedent, David Moultrie. App. 4 lines 16 – 18.

Witnesses to the ensuing fight indicated that Petitioner was the first aggressor. App. 5 line 20 – App. 6 line 6. According to witnesses, Petitioner punched and/or stabbed Moultrie. App. 6 lines 4 – 24. Moultrie suffered four stab wounds and died at the scene. App. 7 lines 2 – 4; App. 8 lines 6 – 7.

Petitioner rode away in in the same vehicle in which he arrived, and he discarded his bloody undershirt at a nearby Food Lion. App. 9 lines 13 – 22. After interviewing witnesses, law enforcement located Petitioner and took him into custody. App. 10 lines 3 – 6.

Petitioner was indicted for murder. App. 15 lines 18 – 24; App. 99. He pled guilty to voluntary manslaughter. The guilty plea was subject to a negotiated sentence of twenty-five years. App. 2 lines 5 – 7. Judge McDonald accepted Petitioner's plea and sentenced him to twenty-five years' imprisonment. App. 27 lines 12 – 23.

Petitioner did not seek an appeal. He filed a timely application for post-conviction relief on July 16, 2013. App. 29. Petitioner's application contained allegations of ineffective assistance of counsel, including failure to advise of the right to appeal and involuntary guilty plea. App. 31. The State made its Return on or about March 20, 2015. App. 26 – 40.

An evidentiary hearing was conducted on December 14, 2015 before the Honorable Deadra Jefferson. App. 42. Christopher L. Murphy represented Petitioner, and J. Rutledge Johnson represented the State. App. 43. Petitioner and plea counsel testified during the hearing.

On April 20, 2016, Judge Jefferson issued her order denying Petitioner relief. App. 90 – 98. The Order was filed April 22, 2016. This Petition follows.

ARGUMENT

The PCR Court erred in holding that Petitioner’s guilty plea was intelligently, voluntarily, and knowingly entered in light of Petitioner’s testimony that he and plea counsel never discussed the elements of murder of voluntary manslaughter coupled with the fact that he did not wish to plead guilty.

Petitioner testified that Counsel neither discussed the murder charge with him nor sent him a letter explaining the elements of murder. App. 49 lines 7 – 19. Petitioner told counsel five or six times that he did not want to plead guilty. App. 53 lines 15 – 18. Petitioner rejected a plea of zero to twenty years on voluntary manslaughter, because he believed that his self defense claim would overcome the murder charge. App. 53 lines 19 – 24; App. 54 lines 2 – 11.

Nonetheless, Counsel insisted that Petitioner accept the plea. App. 58 lines 1 – 4. Petitioner felt that Counsel neither adequately prepared for the plea nor explained the consequences of the plea. App. 58 lines 10 – 14. Furthermore, he believes his choice to plead guilty was involuntary. App. 58 lines 15 – 18.

Petitioner testified that in the end he chose to plead guilty, because he believed two alleged eyewitnesses witnesses—Virgil DeLesline and Damon Knolls—were going to testify against him. App. 57 lines 9 – 24. Petitioner later found out that DeLesline was not going to testify against him. App. 57 lines 21 – 24.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers. Boykin v. Alabama, 395 U.S. 238, 243-244 (1969). The record must show with certainty that the plea is “an intentional relinquishment or abandonment of a known right or privilege.” State v. Patterson, 278 S.C. 319, 322, 295 S.E.2d

264, 265 (1982) overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). Entering a guilty plea results in a waiver of several constitutional rights; therefore the Due Process Clause requires that defendants enter into guilty pleas voluntarily, knowingly, and intelligently. Burnett v. State, 352 S.C. 589, 591, 576 S.E.2d 144, 145 (2003).

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). The right to the effective assistance of counsel extends to the plea bargaining process. Hill v. Lockhart, 474 U.S. 52, 57-59 (1985); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). Appellate courts give great deference to the PCR court's findings of fact and conclusions of law. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005). When reviewing a PCR court's decision, a reviewing court "is concerned only with whether any evidence of probative value exists to support the decision." Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006).

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

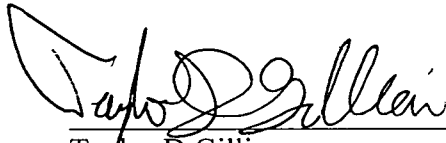
On cross-examination, Petitioner admitted that while under oath during the guilty plea he agreed with the solicitor's recitation of the facts. App. 61 line 7 – App. 62 line 21. Justifying his acquiescence to the facts and decision not to stop the plea, Petitioner testified that Counsel advised him to agree with the judge and solicitor so that he “would be all right.” App. 62 lines 1 – 24. Petitioner further testified that had he known that he could have stopped the plea and explained the facts as he understood them, he would have done so. App. 65 lines 4 – 15.

Counsel testified that he discussed the charges and sentences associated with murder and voluntary manslaughter with Petitioner. App. 68 lines 1 – 20. Counsel stated that Petitioner was “on board” with pleading guilty and that Petitioner was never threatened or promised anything in exchange for his plea; it was Petitioner's decision to plead guilty. App. 69 line 25 – App. 70 line 9. Counsel believed Petitioner had a choice between pleading guilty and going to trial. App. 75 line 25 – App. 76 line 4.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his petition for writ of certiorari to allow full briefing on this issue, reverse the charges against him, and remand the case for a new trial.

Respectfully submitted,



Taylor D Gilliam

ATTORNEY FOR PETITIONER

This 16th day of December, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

DARIUS L. GREEN,

PETITIONER

V.

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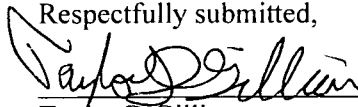
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Darius L. Green states:

1. Her is an for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on December 14, 2015 (Evidentiary Hearing). In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve as counsel for Darius L. Green.

Respectfully submitted,


Taylor D Gilliam

ATTORNEY FOR PETITIONER

This 16th day of December, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

DARIUS L. GREEN,

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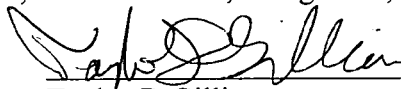
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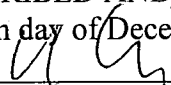
CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Darius L. Green, 354407 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC, 29472, this 16th day of December, 2016.


Taylor D Gilliam

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 16th day of December, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/12/2025.