

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Oconee County

RECEIVED

DEC 28 2016

Honorable Edgar W. Dickson, Circuit Court Judge  
S.C. SUPREME COURT

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WILLIAM CANNON GRESHAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000517

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Taylor D Gilliam  
Appellate Defender

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

ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR Court err in denying Petitioner relief where plea counsel provided ineffective assistance by failing to investigate and pursue a duress theory?

## STATEMENT

On March 31, 2011, Petitioner pled guilty to burglary in the first degree, assault and battery with intent to kill, possession of a weapon during the commission of a violent crime, grand larceny over five thousand dollars, two counts of kidnapping, and two counts of murder in front of the Honorable R. Lawton McIntosh in Oconee County. W. Wilson Burr represented Petitioner, and Chrissy Adams represented the State.

The facts presented at the guilty plea by Adams are as follows: On April 19, 2010, Petitioner and Shawn Owens allegedly attacked Eloise Corley at her home while she was working in the yard. App. 23 lines 14 – 20. She died from shock secondary to sharp force trauma. App. 23 lines 19 – 20.

According to the prosecution, Petitioner and Owens then went into the Corley home and began going through their belongings. App. 23 lines 21 – 22. Mrs. Corley's husband, Jerry, arrived at the house along with Mrs. Corley's sister, Audrey Scull. App. 23 lines 22 – 25. Petitioner and Owens allegedly held these two individuals against their will and at gunpoint for several hours. App. 23 line 22 – App. 24 line 5.

Mr. Corley and Mrs. Scull were then taken to a wooded area where Owens shot both of them. App. 24 lines 8 – 12. Mrs. Scull passed away as a result to gunshot wounds to the head. App. 24 lines 10 – 11.

Petitioner was indicted for the eight crimes to which he pled guilty by an Oconee County Grand Jury in August 2010. App. 92 – App. 107. Owens and Petitioner were codefendants. App. 3 line 22. The State withdrew its intent to seek the death penalty in exchange for Petitioner's testimony against Owens. App. 4 lines 5 – 10.

Petitioner pled guilty to each charge. App. 19 line 6 – App. 20 line 5. Judge McIntosh accepted Petitioner’s guilty plea. App. 27 lines 10 – 16. Petitioner was sentenced to the maximum on each charge. App. 47 lines 7 – 10.

Petitioner did not seek an appeal. According to his application for post-conviction relief filed on October 16, 2012, he was unable to comply with the ten day deadline regarding appeals. App. 31. Petitioner’s application contained allegations of ineffective assistance of counsel, including failure to investigate a duress theory of the case and failure to have a competency evaluation. App. 32. The State made its Return on or about July 2, 2014. App. 38 – 42.

An evidentiary hearing was conducted on July 28, 2014 before the Honorable Edgar W. Dickson. App. 44. William Whitmire, Jr. represented the State, and Tjay Bagwell represented Petitioner. Petitioner and plea counsel testified during the hearing.

On June 5, 2015, Judge Dickson issued his order denying Petitioner relief, finding that Petitioner had numerous instances to reasonably disengage from the murders. App. 82 – App. 91. The Order was filed on June 15, 2015. This Petition follows.

## ARGUMENT

**The PCR Court erred in denying Petitioner relief where plea counsel provided ineffective assistance by failing to investigate and pursue a duress theory.**

Petitioner does not claim to be completely innocent. App. 57 lines 17 – 21; App. 61 lines 6 – 9. However, he is not guilty of the full extent of the crimes for which he was accused. App. 57 line 22 – App. 58 line 2. Petitioner’s codefendant, Owens, threatened to kill him unless Petitioner attacked Mrs. Corley. App. 60 lines 12 – 15. Owens told him that “if [Petitioner] didn’t do what he said [then] he would ... kill me.” App. 60 line 22 – App. 61 line 5. At the time of this exchange, Owens was still armed with a knife. App. 61 line 4. Petitioner relayed this information to plea counsel. App. 60, lines 16 – 19. Petitioner could not recall whether Counsel explained the law regarding duress. App. 60 lines 20 – 21.

Petitioner correctly asserted that Counsel was ineffective, because he did not investigate or pursue a duress theory prior to Petitioner’s guilty plea. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel’s performance was deficient, and (2) the deficient performance prejudiced the defendant. Id. at 687. “[T]he court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (quoting Strickland at 690).

First, to be entitled to PCR, the applicant must show that counsel’s performance was deficient. Payne v. State, 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003) (citing Strickland v.

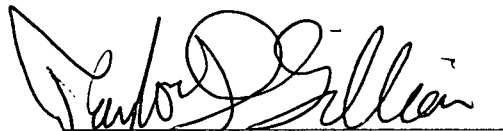
Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). In this regard, Counsel failed to consult with Petitioner regarding certain defenses which were available prior to the plea. Petitioner's testimony, as outlined above, indicates that Counsel did not go over the duress issues in his case. Such conduct falls within the gamut of deficiency.

“The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). As evident from Petitioner's testimony, the prejudice in his case manifests itself in his plea which was made without full knowledge of possible defenses available to him.

Counsel testified that Petitioner “over-cooperated” with law enforcement. App. 75 lines 15 – 18. Counsel claimed that he did not have much room to negotiate as a result of Petitioner's cooperation. App. 77 lines 7 – 16. Nonetheless, Counsel provided ineffective assistance by failing to investigate and pursue a duress defense theory.

**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.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of December, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Oconee County

Honorable Edgar W. Dickson, Circuit Court Judge

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WILLIAM CANNON GRESHAM,

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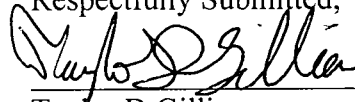
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for William Cannon Gresham states:

1. He is 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 Judge Edgar W. Dickson, which was held on July 28, 2014 (Evidentiary Hearing), 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 William Cannon Gresham.

Respectfully Submitted,



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Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of December, 2016.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari 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."

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam", written over a horizontal line.

Taylor D Gilliam  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

This 28th day of December, 2016.

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CERTIFICATE OF SERVICE  
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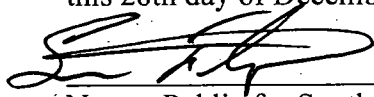
The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on William Cannon Gresham, #349177, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 28th day of December, 2016.

  
Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 28th day of December, 2016.

  
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(L.S)

Notary Public for South Carolina

My Commission Expires: 10/30/2022