

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Sumter County

Tanya A. Gee, Circuit Court Judge

RECEIVED

JAN 30 2017

COREY GEDDIE,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001720

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT

Petitioner’s guilty plea was rendered involuntary due to plea  
counsel’s ineffective assistance in derogation of the Sixth and  
Fourteenth Amendments to the United States Constitution where  
plea counsel failed to ensure Petitioner understood he was pleading  
guilty to murder, not a lesser-included offense, such as voluntary  
or involuntary manslaughter. .... 6

CONCLUSION ..... 9

PETITION TO BE RELIEVED AS COUNSEL ..... 10

**ISSUE PRESENTED**

Was Petitioner's guilty plea rendered involuntary due to plea counsel's ineffective assistance in derogation of the Sixth and Fourteenth Amendments to the United States Constitution where plea counsel failed to ensure Petitioner understood he was pleading guilty to murder, not a lesser-included offense, such as voluntary or involuntary manslaughter?

## STATEMENT

On April 21, 2012, Petitioner and his brother, Christopher Lovely, went to the home of Akeem Henry to buy marijuana. App. 5, l. 22 – App. 6, l. 16; App. 7, ll. 1-2. Instead of the expected business transaction, an altercation ensued. App. 6, l. 24 – App. 7, l. 1. During the fight, shots were fired. App. 7, ll. 5-15. After the fight, Petitioner and Lovely left. App. 7, ll. 21-23. Henry was found dead shortly thereafter. App. 8, ll. 3-5.

The police found a 9 millimeter gun in the hood of Petitioner's mother's car. App. 8, ll. 19-20. The police matched the projectile removed from Henry's body to the gun found in the car. App. 9, ll. 7-9. When the police arrested Petitioner, he admitted his involvement and claimed he used the gun that was matched to the Henry projectile. App. 9, ll. 5-7; App. 9, ll. 15-25; App. 11, ll. 1-2.

On September 27, 2012, a Sumter County grand jury indicted Petitioner, Christopher Lovely, and Gregory Vaughn for murder, armed robbery, and attempted murder (2012-GS-43-1148). App. 95-97. Petitioner was also indicted for possession of a weapon during a violent crime. App. 95-97. On November 19, 2013, Petitioner pled guilty to murder before the Honorable W. Jeffrey Young. App. 1; App. 2, ll. 3-5. John P. Meadors represented the state. Susan Elaine Cooke represented Petitioner. App. 16, ll. 10-12.<sup>1</sup> Jack D. Howle, Jr., represented Lovely. App. 1. Although the solicitor charged Petitioner and Lovely with murder, attempted

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<sup>1</sup> Based on the cover of the guilty plea transcript, it appears Jack D. Howle, Jr., represented Petitioner. App. 1. However, the transcript makes clear that Mr. Howle represented Petitioner's brother, Lovely, and Susan Elaine Cooke represented Petitioner. App. 2, ll. 15-17; App. 16, ll. 10-12.

murder, and armed robbery, the solicitor amended the indictment at the plea hearing to permit Lovely to plead guilty to accessory after the fact of a felony only. App. 2, ll. 7-10; App. 95-97.<sup>2</sup>

During the guilty plea hearing, relative to Petitioner's case, the solicitor informed Judge Young, "There is a recommendation or negotiation whichever Your Honor would prefer." App. 2, ll. 11-12. The solicitor repeated this later during a colloquy with the judge:

The Court: Now I am looking at a sheet that says a negotiated sentence. Is this negotiated or are there recommendations?

Mr. Meadors: Your Honor, however Your Honor, would prefer it, we had negotiated this.

The Court: I mean you all negotiated. But I thought it was going to be a negotiated recommendation.

Mr. Meadors: Yes, sir.

App. 22, ll. 8-16.

During sentencing, plea counsel asked the judge to "go along with the recommendation." App. 28, ll. 1-2. After law enforcement expressed agreement with a thirty-year sentence, the solicitor also encouraged the judge to accept "the recommendation" as "the appropriate thing." App. 39, ll. 15-18; App. 40, ll. 10-14. Judge Young sentenced Petitioner to thirty years' imprisonment. App. 41, ll. 18-21; App. 98. He sentenced Lovely to fifteen years' imprisonment. App. 41, l. 24 – App. 42, l. 3. Petitioner did not file a direct appeal. App. 45.

On May 13, 2014, Petitioner filed an application for post-conviction relief (PCR). App. 44-49. On November 17, 2015, the matter proceeded to an evidentiary hearing before the Honorable Tanya A. Gee. App. 56. Daniel Gourley represented the state, and Lance Boozer represented Petitioner. App. 56.

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<sup>2</sup> A bystander was shot in the ankle during the fight, which formed the basis for the attempted murder charge. App. 9, ll. 12-13.

During the hearing, Petitioner explained that based on his conversations with plea counsel, he believed he had “a negotiated plea” to “a lesser charge,” specifically “manslaughter.” App. 65, ll. 4-13. Petitioner explained that plea counsel told him that “more likely when you go up and plead, it will be nine times out of that that I would be got up for involuntary manslaughter.” App. 66, ll. 5-13. He also stated that plea counsel said he “would be up for voluntary manslaughter.” App. 66, ll. 14-16.

Plea counsel informed him that the sentencing range for involuntary manslaughter was “[i]n-between zero to 30.” App. 66, l. 23 – App. 67, l. 2. Plea counsel explained that the solicitor offered “a negotiated mandatory minimum 30 years on murder.” App. 77, l. 25 – App. 78, l. 1. However, during “the middle of the plea,” the solicitor approached her and said he could not do a negotiated guilty plea. App. 78, ll. 1-3. This meant Petitioner would have to take whatever sentence the judge imposed. App. 78, ll. 3-4. Plea counsel was thankful that Judge Young imposed a thirty year sentence in light of the solicitor withdrawing the original plea offer during the plea hearing. App. 78, ll. 4-5. Additionally, plea counsel indicated she told Petitioner that if his case went to trial she “would be seeking self-defense, involuntary manslaughter.” App. 78, ll. 14-19. She did not think the evidence supported a murder conviction. App. 78, ll. 19-21. In light of this fact, she “talked to the solicitor numerous times about a lesser plea.” App. 79, ll. 1-2. She arranged for Petitioner to take a polygraph to corroborate his version of events, and Petitioner did so. App. 79, ll. 3-5. Petitioner “passed the polygraph with the highest numbers” the polygrapher had ever seen. App. 79, ll. 11-14. She used this in her negotiations with the solicitor, but the solicitor was unyielding. App. 79, ll. 15-19.

Plea counsel was emphatic that she did not feel that Petitioner deserved to be in prison for thirty years for his role. App. 80, ll. 8-11. As a result, the case “bother[ed]” her “a lot” and

“haunt[ed]” her. App. 80, ll. 4-7. Based on her experience and knowledge of the facts of the case, she surmised that Appellant was not treated fairly. App. 82, l. 24 – App. 83, l. 2. In explaining why she recommended Petitioner accept the plea offer, she noted her fear that Petitioner would receive a life sentence if he went to trial. App. 80, ll. 21-22; App. 83, ll. 20-21. Nevertheless, plea counsel insisted she never promised Petitioner he would be allowed to plead guilty to something less than murder. App. 84, ll. 6-8.

By an order filed on January 25, 2016, Judge Gee denied Petitioner relief from his conviction and sentence. App. 88-94. The PCR judge acknowledged Petitioner testified that he “believed he was pleading guilty to manslaughter, not murder.” App. 89. Further, the PCR judge acknowledged that plea counsel testified she “begged the solicitor for a reduced charge” because she believed Petitioner “was not the aggressor.” App. 90. According to the order, “[p]lea counsel stated that she hoped she would be able to secure a voluntary or involuntary manslaughter charge; however, the solicitor refused to offer anything less than murder.” App. 90. In the end, the PCR judge found Petitioner’s guilty plea was entered freely and voluntarily. App. 92. According to the order, Petitioner “failed to carry his burden of proving that his guilty plea was involuntarily made.” App. 93. The judge determined the record showed Petitioner “was thoroughly advised of the waiver of constitutional rights by both counsel and the plea judge, ... knew the charge he faced, and he understood the consequences of his plea.” App. 93.

Following the PCR order, Petitioner served his notice of appeal on August 19, 2016. This petition for writ of certiorari follows.

## ARGUMENT

Petitioner's guilty plea was rendered involuntary due to plea counsel's ineffective assistance in derogation of the Sixth and Fourteenth Amendments to the United States Constitution where plea counsel failed to ensure Petitioner understood he was pleading guilty to murder, not a lesser-included offense, such as voluntary or involuntary manslaughter.

“The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984). To prove ineffective assistance of counsel, “the defendant must show that counsel’s performance was deficient” and “that the deficient performance prejudiced the defense.” Id. “When a convicted defendant complains of the ineffectiveness of counsel’s assistance, the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” Id. at 687-688. “[T]he performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” Id. at 688. Concerning prejudice, “a defendant need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” Rather, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694.

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* 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). In order for a defendant to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)(citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). The judge must question the defendant about the possible punishment that could be imposed. Id. at 434-435.

The evidence before the PCR judge supported Petitioner's contention that he did not understand that his guilty plea was to murder, and not a lesser-included offense, such as voluntary manslaughter or involuntary manslaughter. Petitioner testified that he believed he was pleading guilty to a lesser-included offense. Plea counsel testified she discussed lesser-included offenses extensively with Petitioner and the solicitor. Plea counsel also convincingly testified that in her opinion the facts did not support murder. Rather, the facts supported a lesser-included offense. In fact, during the solicitor's recitation of the facts during the guilty plea, it was clear that a lesser-included offense, such as voluntary or involuntary manslaughter was more appropriate in light of the shooting occurring during a fight. See State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009)(stating that "[v]oluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation"); State v. Chatman, 336 S.C. 149, 152, 519 S.E.2d 100, 101 (1999)(stating that involuntary manslaughter can be "the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause

death or great bodily harm” and can be “the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others”); State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008)(finding the defendant was entitled to a jury charge on involuntary manslaughter where the defendant and the victim struggled over the weapon). Therefore, the PCR judge erred in finding Petitioner’s guilty plea was knowingly, voluntarily, and intelligently entered where the record supported his claim that he thought he was entering a guilty plea to an offense less than murder. For this reason, this Court should reverse the PCR judge’s decision, find Petitioner’s guilty plea involuntary based on plea counsel’s ineffective assistance, and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. In the event this Court grants the petition and dispenses with full briefing, Petitioner respectfully requests this Court reverse the decision of the PCR court and grant him a new trial.

*Susan B. Hackett*

Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of January, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Sumter County

Tanya A. Gee, Circuit Court Judge

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COREY GEDDIE,

PETITIONER

V.

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RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Corey Geddie states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
2. She has reviewed the record of Petitioner's guilty plea, which was entered on November 19, 2013 and the record of Petitioner's PCR hearing before Judge Tanya A. Gee, which was held on November 17, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Corey Geddie.

Respectfully Submitted,



Susan B. Hackett

Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of January, 2017.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of her 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."

*Susan B. Hackett*

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South Carolina Commission on Indigent  
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This 30th day of January, 2017.

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V.

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CERTIFICATE OF SERVICE  
—————

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 Julie Coleman, 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 Corey Geddie, #357875, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 30th day of January, 2017.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 30th day of January, 2017.

 (L.S)

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