

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

 ORIGINAL

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Certiorari to York County

RECEIVED

J. Derham Cole, Circuit Court Judge

APR 24 2017

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JOMAR ANTAVIS ROBINSON,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002025

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

John H. Strom  
Appellate Defender

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

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**ISSUE PRESENTED**

Did the PCR court err in finding Petitioner knowingly, voluntarily, and intelligently pled guilty where Petitioner based his decision to plead guilty on plea counsel's advice when Petitioner had no knowledge of plea counsel's failure to investigate the circumstances surrounding Petitioner's confession, made while he was in long-term solitary confinement?

## STATEMENT

On September 28, 2008, York police responded to a report of a shooting at an area laundromat. App. 6, l. 11 – 7, l. 20. Law enforcement found Ernest Tolbert lying on the street in front of the laundromat with a fatal gunshot wound to his abdomen. *Id.* Underneath Tolbert was a revolver wrapped in a plastic bag. *Id.*

Police had no leads in the shooting until a jailhouse informant told them that Petitioner had bragged about the shooting to him. App. 30, l. 7 – 32, l. 12. Efforts by police to have Petitioner confess to the informant again in a recorded phone call failed. *Id.*

Law enforcement then interrogated Petitioner, who was serving a life-sentence in SCDC for an unrelated drug offense. App. 3, ll. 9-20. At the time that he was interrogated, Petitioner was in solitary confinement. After denying initially denying involvement in the shooting, Petitioner eventually confessed to the shooting in a video recorded interrogation. App. 6, l. 11 – 7, l. 20.

Once Petitioner confessed, he was removed from solitary confinement and taken to Moss Judicial Center to be indicted and belatedly appointed an attorney.

### **Indictment and Guilty Plea**

On June 12, 2008, Petitioner was indicted by the York County Grand for murder and possession of a weapon during the commission of a violent crime. Phillip Jamieson was appointed to represent Petitioner. Assistant Solicitor Willi Thompson represented the State.

On September 6, 2012, Petitioner entered an *Alford* plea before the Honorable John C. Hayes to the lesser included offense of voluntary manslaughter and to possession of a weapon during the commission of a violent crime. App. 1 – 11. Petitioner received a negotiated total

sentence of seventeen years imprisonment. App. 2, ll. 2-16. Petitioner was already serving a sentence of life without parole for unrelated drug charges. App. 3, ll. 8-20.

### **PCR Application and Evidentiary Hearing**

On April 9, 2014, Petitioner filed an application for post-conviction relief (PCR) alleging that his *Alford* plea was unknowingly and involuntarily made because of plea counsel deficient representation. App. 12 – 19. On July 22, 2014, the State filed a Return. App. 20 – 23.

On January 22, 2015, an evidentiary hearing was held before the Honorable J. Derham Cole. App. 25 – 63. William Hemlepp represented Petitioner. Assistant Attorney General J. Rutledge Johnson represented the State. Petitioner and plea counsel both testified.

Petitioner stated that his confession to the crime was coerced while he was in solitary confinement for forty-four days. App. 31, l. 1 – 34, l. 6.

. . . I made a coerced confession. I was forced to make a confession.

I got no sleep, my lights stayed on constantly. They brought me my food. I had hair in my food, visible hair, visible dirt. I couldn't eat it. Lost an excessive amount of weight. I was told that since I was already currently serving a life sentence for drugs, that if I didn't take this plea and if I went to trial, a new trial, I would receive the death penalty.

App. 33, ll. 11-21. SCDC and law enforcement refused to allow Petitioner access to an attorney, despite his repeated requests for counsel. App. 34, ll. 7-20.

Under increasing pressure by repeated interrogations and the deprivations of solitary confinement, Petitioner testified that he falsely confessed to the shooting to simply end the ordeal. App. 32, l. 14 – 33, l. 21.

Plea counsel claimed that he spoke with SCDC officials and the officers that conducted the interrogation. After speaking with those officials and without further investigation, counsel

accepted that Petitioner had been in solitary confinement because of an unrelated disciplinary infraction. *Id.* Counsel explained that someone at SCDC told him that Petitioner was put in solitary confinement before he was interrogated because SCDC did not have the capacity to place him into solitary when the disciplinary infractions first occurred. App. 35, l. 1 – 41, l. 17.

Counsel did not investigate Petitioner's claims that he lost weight and was subjected to sleep deprivation techniques in the weeks during which law enforcement wanted him to confess to the shooting. App. 47, l. 7 – 49, l. 6. Counsel stated that he watched the video of Petitioner's confession where Petitioner was wearing a solitary confinement jumpsuit, but that the video did not record any threats communicated to Petitioner. App. 47, ll. 7-24. Counsel noted that the confession was the only real evidence of Petitioner's involvement in the shooting. App.50, l. 2 – 61, l. 24.

#### **Order of Dismissal**

The PCR court denied Petitioner's application in a written order issued on August 23, 2016. App. 64 – 71. The Court concluded that plea counsel was not ineffective for failing to investigate the circumstances surrounding Petitioner's confession while in solitary confinement at SCDC. *Id.*

## ARGUMENT

**The PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty because Petitioner based his decision to plead guilty on plea counsel's advice when Petitioner had no knowledge of plea counsel's failure to investigate the circumstances surrounding Petitioner's confession, made while he was in long-term solitary confinement.**

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results.” *Brady v. United States*, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin v. Alabama*, 395 U.S. 238 (1969) (provides that a defendant’s decision to plead guilty must be knowingly and voluntarily made); *see also State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (provides that the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea).

Furthermore, the South Carolina Supreme Court has held that the difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.” *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). However, “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.” *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

In this case, Petitioner testified at the evidentiary hearing that plea counsel never adequately investigated the circumstances surrounding Petitioner’s confession. It was undisputed that Petitioner was in solitary confinement for several weeks at the time that he confessed. App. 34, l. 3 – 35, l. 18.

Defense counsel showed no interest in independently investigating the circumstances of Petitioner's confession, despite the highly coercive conditions and the highly suspicious delay in enforcing a vaguely described disciplinary infraction. App. 34, ll. 1-21; *See Cobbs v. State*, 305 S.C. 299, 408 S.E.2d 223 (1991) (provides that failure to investigate possible defenses constitutes ineffective assistance of counsel); *see also Praylow v. Martin*, 761 F.2d 179 (4<sup>th</sup> Cir. 1985) (provides that a defendant's stated interest in pleading guilty does not counsel of his duty to investigate possible defenses).

Furthermore, Petitioner testified that had he been advised of any possible defenses, including suppressing his confession, he would have stood trial. App. 41, ll. 16-24; *See Hill v. Lockhart*, 474 U.S. 52, 57-59 (1985) (provides, in pertinent part: To prove ineffective assistance of counsel from a guilty plea, the defendant must show: (1) "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases" and (2) that "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial."). Petitioner also testified that the only reason he pled guilty was because of plea counsel's advice. App. 38, l. 1-11; App. 40, ll. 9-24.


Although Petitioner pled guilty, an "unsound result" occurred in this case because the record does not reflect that Petitioner freely and intelligently waived his constitutional trial rights when he based his decision to plead guilty on plea counsel's advice. *See Brady*, 397 U.S. at 758; *see also Boykin*, 395 U.S. 238; *accord Hazel*, 275 S.C. 392, 271 S.E.2d 602; *Berry*, 381 S.C. at 635, 675 S.E.2d at 427.

Therefore, the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty when he would have went to trial had plea counsel advised him of his possible defenses.

App. 64 - 71; *See Boykin*, 395 U.S. 238; *see also Hill*, 474 U.S. at 57-59.

CONCLUSION

For the foregoing reason, this Court should grant the petition with the ultimate relief of a new trial for Petitioner Jomar Robinson.

A handwritten signature in black ink, appearing to read "John H. Strom", written over a horizontal line.

John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of April, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to York County

Honorable J. Derham Cole, Circuit Court Judge

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JOMAR ANTAVIS ROBINSON,

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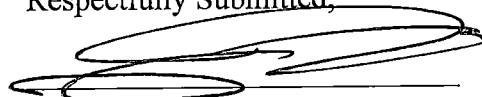
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Jomar Antavis Robinson 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 J. Derham Cole, which was held on January 22, 2015, 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 Jomar Antavis Robinson.

Respectfully Submitted,



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John H. Strom  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 24th day of April, 2017.

**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."



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This 24th day of April, 2017.

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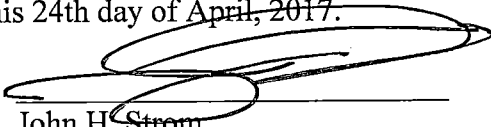
RESPONDENT

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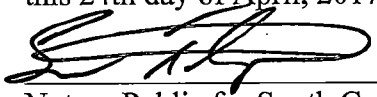
CERTIFICATE OF SERVICE

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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 Justin J. Hunter, 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 Jomar Antavis Robinson, #281722, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 24th day of April, 2017.

  
\_\_\_\_\_  
John H. Strom  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 24th day of April, 2017.

  
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(L.S)  
Notary Public for South Carolina  
My Commission Expires: 10/30/2022