

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Greenville County

Honorable Brooks P. Goldsmith, Circuit Court Judge  
\_\_\_\_\_

STEVE LEON GRIFFIN,

**ORIGINAL**  
**RECEIVED**  
MAR 30 2018  
S.C. SUPREME COURT  
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-1565  
\_\_\_\_\_

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

Kathrine H. Hudgins  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT ..... 3

CONCLUSION ..... 7

PETITION TO BE RELIEVED AS COUNSEL ..... 8

**ISSUE PRESENTED**

Was the guilty plea to attempted armed robbery rendered involuntary by the fact that Petitioner was unaware that he was indicted for armed robbery?

## STATEMENT

In September of 2015, the Greenville County Grand Jury indicted Petitioner, Steve L. Griffin, for armed robbery, indictment #2014-GS-23-7782. On February 1, 2016, Petitioner appeared before the Honorable Edward W. Miller and pled guilty to the lesser included offense of attempted armed robbery. Christopher Scalzo represented Petitioner at the plea. Elizabeth Major prosecuted the case. Judge Miller sentenced Appellant to thirteen (13) years. Petitioner did not appeal his sentence or conviction.

On September 12, 2016, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return on January 12, 2017. On February 22, 2017, Petitioner appeared before the Honorable Brooks P. Goldsmith for an evidentiary PCR hearing. Rodney W. Richey represented Petitioner at the PCR hearing. Jessica Kinard represented the State. In a written order signed June 17, 2017, Judge Goldsmith denied relief and dismissed the application. A timely notice of intent to appeal was served on July 14, 2017. This petition for writ of certiorari follows.

## ARGUMENT

**The guilty plea to attempted armed robbery was rendered involuntary by the fact that Petitioner was unaware that he was indicted for armed robbery.**

During the PCR hearing Petitioner testified that, as a result of counsel's failure to provide discovery material, Petitioner was unaware that he was indicted for armed robbery rather than attempted armed robbery. (App. p. 36, lines 1-10). Petitioner testified that he would not have pled guilty if counsel had shared discovery. (App. p. 35, line 18 – p. 36, lines 1-3). Plea counsel testified that he was not certain whether he reviewed the indictments with Petitioner testifying, "I don't know if I went over the indictments word for word. We work off whether or not they've been indicted or whether or not it would be a waiver. So, that's generally how I do it." (App. p. 42, lines 5-10).

In the order of dismissal the PCR judge found that counsel provided effective assistance of counsel. Specifically, the PCR judge wrote, "In Applicant's testimony, he stated that he did not know that he was no [sic]indicted on attempted armed robbery until he got his discovery after his plea; however, he further testified that he believed taking a guilty plea was in his best interest." (App. p. 58). Applicant actually testified that he based his decision to plead guilty, without seeing the indictments, based on counsel's advice. "I made my choice that day based on what Mr. Scalzo had told me that he had talked to Ms. Morgan [verbatim]. And this is what they were going to come up with. And that it was in my best interest right then to go ahead and take that. And I'm thinking he knew something that maybe I didn't know. And so." (App. -. 40, lines 16-21). Counsel was ineffective for failing to review the indictments with Petitioner. The PCR judge erred in refusing to find that the guilty plea was rendered involuntary by the fact that Petitioner was unaware that he was indicted for armed robbery.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). “A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.’ ” Pittman v.

State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “The longstanding test for determining the validity of a guilty plea is ‘whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.’ ” Hill, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999), the South Carolina Supreme Court wrote:

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. Id. Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. This Court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In addition to the requirements of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. id.

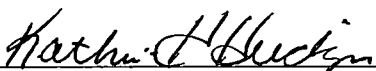
“The second, or ‘prejudice,’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. at 59, 106 S.Ct. 366. “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.” Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

Counsel was ineffective for failing to review the indictments with Petitioner. Counsel's deficient performance affected the outcome of the plea process. The guilty plea was rendered

involuntary by counsel's deficient performance. There is a reasonable probability that, but for counsel's errors, Petitioner would not have pled guilty, but would have insisted on going to trial.

**CONCLUSION**

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of March, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Greenville County

Honorable Brooks P. Goldsmith, Circuit Court Judge

---

STEVE LEON GRIFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL


---

Counsel for Steve Leon Griffin states:

1. She is 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 trial before Judge Brooks P. Goldsmith, which was held on February 22, 2017, 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 Steve Leon Griffin.

Respectfully Submitted,

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 30th day of March, 2018.

**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.”



Kathrine H. Hudgins  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 30th day of March, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Greenville County

Honorable Brooks P. Goldsmith, Circuit Court Judge

\_\_\_\_\_

STEVE LEON GRIFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

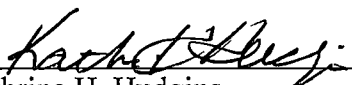
RESPONDENT

\_\_\_\_\_

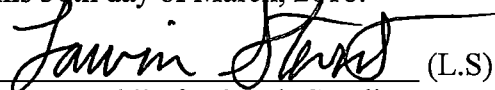
CERTIFICATE OF SERVICE

\_\_\_\_\_

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 Deshawn H. Mitchell, 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 Steve Leon Griffin, #121940, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 30th day of March, 2018.

  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 30th day of March, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.