

STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Diane S. Goodstein, Circuit Court Judge

Docket No. 2009-CP-38-0005

**RECEIVED**

APR 25 2012

S.C. Supreme Court

ORIGINAL

WILLIAMA. GLEATON, #326282 ..... Petitioner,  
vs.  
STATE OF SOUTH CAROLINA ..... Respondent.

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Did the PCR court err in not finding that the trial judge should have recused himself due to bias in favor of the victims and/or their families, or his lack of impartiality toward Petitioner?
2. Did the PCR court err in not finding ineffective assistance of Plea Counsel?
3. Did the PCR court err in finding the Petitioner was not coerced into entering a guilty plea ?

## STATEMENT OF THE CASE

In 2006, the Petitioner was arrested and charged in Orangeburg and Bamberg Counties along with four other defendants. The Petitioner was indicted by the Orangeburg County Grand Jury for Possession of A Weapon during the Commission of Certain Crimes (2007-GS-38-0442), Kidnaping (2007-GS-38-0443), Armed Robbery (2007-GS-38-0444), Pointing and Presenting A Firearm (2007-GS-38-0445), Burglary, First Degree (2007-GS-38-0446), Assault and Battery with Intent to Kill ("ABWIK") (2007-GS-38-1369); and, Burglary-First Degree (2007-GS-38-1370). Petitioner was also charged in Bamberg County with Burglary-First Degree (2007-GS-05-0148) and ABWIK (2007-G-05-0149). William Gleaton was appointed a Public Defender in each County.

Petitioner was represented by Scott Palmer, Esq. at the January 15, 2008, plea hearing before the Honorable James C. Williams, Jr. at the Court of General Sessions in Orangeburg County, in the matter of *State of South Carolina v. Gleaton, et al.*, which disposed of the charges in Orangeburg and Bamberg Counties. The Petitioner pled guilty and sentencing was deferred. Petitioner was also represented by Scott Palmer, Esq. at the January 23, 2008, sentencing hearing. Petitioner was sentenced to an aggregate term of forty (40) years imprisonment. Petitioner did not appeal his guilty plea or sentence because he was not advised by Plea Counsel or the Trial Court of his right to appeal.

On January 2, 2009, Petitioner filed a *pro se* Application for Post-Conviction Relief. The Application for Post-Conviction Relief was timely filed and verified by the

Petitioner. The Application alleges that the that the judge was biased and prejudiced; that Plea Counsel provided ineffective legal representation by failing to develop evidence of mitigating circumstances, coercing Petitioner's guilty plea, and failing to advise of rights to appeal. ["PCR Application"] The Respondent made its Return on November 2, 2010.

At the evidentiary hearing on June 7, 2011, on the PCR Application, the witnesses testified as to the adequacy of Petitioner's former counsel's investigation, preparation and representation of Petitioner regarding (I) the plea agreement, (ii) plea hearings , (iii) the sentencing in Petitioner's convictions for multiple felonies; and, (iv) the Judge's impartiality, bias and conflict of interest. The Petitioner testified on his own behalf. Also testifying were Scott Palmer, Esq. [hereinafter "Plea Counsel"]; Cynthia Simpkins, the Petitioner's sister; and Mary Gleaton, the Petitioner's mother. The Petitioner was represented by Hemphill P. Pride, II Esq. The Respondent was represented by Mary S. Williams, Esq., Office of the South Carolina Attorney General.

On September 30, 2011, an Order of Dismissal was entered, denying the Petitioner's Application for Post-Conviction Relief and dismissing the proceeding with prejudice. Petitioner filed a Motion to Alter or Amend Judgement under South Carolina Rules of Civil Procedure, Rule 59 (e), which was denied on January 16, 2012. On February 1, 2012, Petitioner filed his Notice of Intent to Appeal pursuant to Rule 243 of the South Carolina Rules of Appellate Procedure. Presently, the Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment.

## ARGUMENT

### I. Did the PCR court err in not finding that the trial judge should have recused himself due to bias in favor of the victims and/or their families, or his lack of impartiality toward Petitioner?(Question presented, Question 1)

Petitioner had the right to a fair and impartial tribunal. *Mallett v. Mallett*, 323 S.C. 141, 147, 473 S.E.2d 804, 808 (S.C. App.1996) “It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution.” *Id.* “A fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). The entitlement to an impartial tribunal applies to the sentencing phase of a criminal proceeding as well as to the guilt phase. See *Witherspoon v. Illinois*, 391 U.S. 510, 518, 88 S.Ct. 1770, 1775, 20 L.Ed.2d 776 (1968). Due process demands more than that the sentencer actually be impartial; rather, “ ‘justice must satisfy the appearance of justice.’ ” *In re Murchison*, 349 U.S. at 136, 75 S.Ct. at 625, (quoting *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11 (1954)).

The transcript of the plea and sentencing hearing demonstrates that Judge Williams had actual bias in favor of the victims and/or their families and lacked impartiality toward Petitioner. At the conclusion of the plea hearing, after Petitioner had entered his guilty plea, Judge Williams addressed the victims present:

I know your families. I know some of you personally, individually. I know both of your families. I can't imagine what you're going through and what you're going to continue to go through. But please know that my heart goes out to you, my prayers go out to you. And tell Vance and Ms. Polite that I send them my best wishes and I'll keep them in my prayers, please.”

(December 15-16- and 23, 2008 Transcript, p 143).

Under Appellate Rule 501, Code of Judicial Conduct, Canon 3(B)(5):

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in performance of judicial duties, by words or conduct manifest bias or prejudice . . . .

Additionally, Canon 3(E)(1) provides:

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceedings; . . . .

Clearly the above cited canons of the Code of Judicial Conduct are applicable in this case where the Judge articulated his bias and prejudice in favor of the victims. "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a personal bias or prejudice against a party." *Koon v. Fares*, 379 S.C. 149, 156, 666 S.E.2d 230, 234 (S.C. 2008). The deprivation of Petitioner's right to an impartial tribunal is structural defect that compromises the reliability of a criminal trial to function as a vehicle for determining guilt or innocence and is not subject to harmless-error analysis. *State v. Lee-Grigg*, 374 S.C. 388, 412, 649 S.E. 2d 41, 53 (S.C. App. 2007).

Petitioner was deprived of his due process right to be heard by a fair and impartial tribunal at his plea hearing and at sentencing. See *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252, 2255 (2009). "Because the objective standards implementing the Due Process Clause do not require proof of actual bias, this Court does not question [the West Virginia Supreme Court of Appeals's] subjective findings of impartiality and propriety and need not determine whether there was actual bias. Rather, the question is whether, "under a realistic appraisal of psychological tendencies and human weakness" the interest "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented."

In this case, the Petitioner was doubly harmed. First, his Plea Counsel, at the sentencing hearing, failed to object to the clearly biased and prejudicial remarks made by Judge Williams or move for recusal--another instance of inadequate representation by Plea Counsel. After the Judge expressed his personal feelings and relationships with the victims and their families at the sentencing hearing, Plea Counsel's only stated reason for failing to inquire into the Judge's possible bias was that he did not think it was necessary to do so, Plea counsel believed there was no injury to the Petitioner, because the Judge could not exceed the maximum sentence of 40 years, stated in the plea agreement. Conversely, the Judge could have sentenced Petitioner to less than 40 years because he had no prior criminal record. Plea Counsel failed to inquire into the plea and sentencing court's openly expressed personal relationships with the victims and their families; he raised no objection, nor any inquiry, nor did he make any attempt to withdraw Petitioner's guilty plea at the time of the Judge's statement; and no appeal was taken on the basis of the substantial evidence of lack of impartiality. These failures amount to deficient assistance of counsel under all the circumstances. (See argument below on Question 2)

Secondly, the Judge's remarks were of such a nature to prove that his familiarity with the victims and their families caused him to, in fact, impose a harsher sentence than he would have had he not been familiar with the victims and their families. In other words, the Judge's own comments show that he had personal knowledge of the victims and their families acquired outside of the courtroom; and that he held deeply felt sympathy for them and corresponding ill will toward the alleged perpetrators of the crimes such that he could not impose an impartial sentence. The Judge refused to take into consideration evidence that the Petitioner was not an active participant in the crimes and even tried to stop some of the criminal acts, reflected in the imposition of an extremely harsh and punitive sentence against the Petitioner. Thus, the bias and prejudice of the Judge are evidenced by his own words made in open court on the record.

**II. Did the PCR court err in not finding ineffective assistance of Plea Counsel?(Question Presented, Question 2)**

Based on the transcript of Petitioner's plea and sentencing hearings dated January 15-16, and 23, 2008, and the testimony of Petitioner at the PCR hearing on June 7, 2011, the evidence conclusively showed that Plea Counsel's representation fell below the objective standard of reasonableness and that there is a reasonable probability that, but for the errors of Plea Counsel, Petitioner would not have pled guilty, but would have insisted on going to trial. Plea Counsel was deficient which prejudiced the outcome of the guilty plea and sentencing hearings, to wit:

1. Plea Counsel failed to timely confer and advise Petitioner of the material evidence against him;

2. Plea Counsel failed to timely challenge a deficient photo array from which Petitioner was identified;

3. Plea Counsel failed to timely obtain discovery and other file materials for the Bamberg County felony charges;

4. Plea Counsel failed to timely investigate, develop and confer with Petitioner about exculpatory evidence appearing in the State's file and/or of which Petitioner advised Plea Counsel;

5. Plea Counsel failed to competently advise Petitioner about the merits of a guilty plea as opposed to a trial;

6. Plea Counsel coerced Petitioner into pleading guilty;

7. Plea Counsel failed to vet the plea and sentencing after Judge's expressed personal relationships with the victims and their families and possible bias;

8. Plea Counsel failed to develop and present to the Court mitigating evidence;

9. Plea Counsel failed to correct the errors of the Solicitor, at the plea and sentencing hearing, in reciting to the court Petitioner's criminal history; and,

10. Plea Counsel incorrectly stated the law relating to Defendant's mere presence at the scene of the crime.

11. Plea Counsel negotiated an unfair plea agreement in that the plea was based on the fact Petitioner had a prior criminal record.

In *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), the United State Supreme Court explained certain "structural defects in the constitution of the trial mechanism" result in deprivations that affect the entire framework within which the trial is conducted, from beginning to end. These "structural" defects compromise the reliability with which a criminal trial functions as a vehicle for determining guilt or innocence and are not subject to harmless error analysis. Among these structural defects are the deprivation of the right to counsel.

Our Supreme Court recently held similar failures, prior to a guilty plea, to be deficient. See, *Kolle v. State*, 386 S.C. 578, 591, 690 S.E.2d 73, 80 (S.C. 2010) (finding deficiencies to have prejudiced the outcome because there was "a reasonable probability this [evidence] would have influenced the trial judge's decision regarding the existence of exigent circumstances, i.e., affected the outcome of the suppression motion" and, in turn, his decision to plead guilty.). The Supreme Court recently reiterated "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *Mcknight v. State*, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (S.C. 2008). Furthermore, "strategic choices made by counsel after an incomplete investigation are reasonable 'only to the extent that reasonable professional judgment supports the limitations on the investigation.'" *Id.* (citations omitted). In *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003), the United States Supreme Court found the defendant's attorneys were ineffective in failing to expand their

investigation beyond cursory reports, in order to present compelling mitigating evidence on the defendant's behalf during the penalty phase of the trial.

As a Defendant in the criminal proceedings described herein, the Petitioner had the right to the effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984). Petitioner may receive post conviction relief if he first "show[s] that his trial counsel's performance was deficient, meaning that 'counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.' . . . Second, he must demonstrate that this deficiency prejudiced him to the point that he was deprived of a fair trial whose result is reliable." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (S.C. 2011) (citations omitted).

The U.S. Supreme Court has explained:

Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. . . . From counsel's function as assistant to the defendant derive the overarching duty to **advocate the defendant's cause** and the more particular duties to **consult with the defendant** on important decisions and to **keep the defendant informed of important developments** in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. . . .

**These basic duties neither exhaustively define the obligations of counsel nor form a checklist** for judicial evaluation of attorney performance. **In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.**

*Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1984)(citations omitted, emphasis added).

In examining the effectiveness of his counsel's assistance in Petitioner's guilty plea and related issues, it is proper to consider the guilty plea transcript as well as the evidence presented at the PCR hearing. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (S.C. 2007). "In the context of a guilty plea, the court must determine whether 1) counsel's advice was within the range of competence demanded of attorneys in criminal cases, i.e.

**was counsel's performance deficient;** and, 2) if there is a reasonable probability that, **but for counsel's errors, the defendant would not have pled guilty.**" *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (S.C. 2006) (emphasis added) (citing *Hill v. Lockhart*, 474 U.S. 52, 56–58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). "The [Petitioner's] undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that [Petitioner] would not have pled guilty." *Id.* at 138, 631 S.E.2d 260, 631 S.E.2d at 261.

The record includes probative evidence that Plea Counsel failed to obtain discovery or other materials in the Bamberg County charges; failed to investigate, develop and confer with Petitioner about mitigating and exculpatory evidence; failed to advise and confer with Petitioner as to material evidence to be offered against him; and, that he failed to move to suppress a prejudicial photo array from which a victim identified Petitioner. If Plea Counsel had these discovery materials, and fully developed mitigating and other evidence, he could have effectively cross examined relevant witnesses for suppression of the photo array. And, in general, he could have evaluated the strength of Applicant's case and advised him to proceed to trial. Additionally, the record establishes that Plea Counsel failed to correct the Solicitor's errors in reciting to the Court, at the plea and sentencing hearing, Petitioner's criminal felony history.

The explanation Plea Counsel offered for proceeding to the plea and sentencing stages on the Bamberg County charges, for which he did not possess discovery, was that he felt comfortable in proceeding with incident reports and the statements of the four (4) co-Defendants who were planning to testify against the Petitioner. Plea counsel further explained in testimony at the PCR hearing that it did not occur to him to move to suppress the photo array victim identification of Petitioner in which Petitioner's photograph is the only visible and clear image. No explanation was offered for why Plea Counsel did not investigate, develop and confer with Petitioner about the mitigating evidence prior to

advising Petitioner about the plea offer, nor his failure to develop and present that evidence to the Court at sentencing.

The record reflects that there is no dispute that exculpatory and/or mitigating evidence existed in the form of a victim's statement in the prosecution's file, to the effect that Applicant attempted to stop the crimes in general, and/or specifically attempted to prevent a brutal sexual assault (June 7, 2011 Transcript, pp 30-31; Exhibit 2). However, Plea Counsel failed to develop and confer with Petitioner about it and to present this evidence to the court at sentencing; and, further, that without developing this evidence, Plea Counsel was unable to opine and reasonably advise Petitioner whether Petitioner should proceed to trial. With regard to this witness statement, Plea Counsel testified at the PCR hearing that "it's really hard to figure out what that—what all it means." (June 7, 2011 Transcript, p 32).

There is no dispute that exculpatory and/or mitigating evidence existed in the form of the Petitioner's statements to Plea Counsel (June 7, 2011 Transcript, p 43) that Petitioner had discharged a weapon unintentionally, as a result of a struggle. Rather, Plea Counsel failed to develop this evidence and to confer with Petitioner about it, such that Plea Counsel was unable to opine and reasonably advise Petitioner as to the effects of this evidence at trial, or, conversely, whether Petitioner should plead guilty.

At the sentencing hearing, Plea Counsel made only a passing and vague comment on Petitioner's behalf that "*[t]here's some evidence that Applicant tried to stop of [sic] these crimes, especially with regard to the criminal sexual conduct. With regard to the shooting of Mr. Polite, as unfortunate and tragic as that is, there is some evidence that it was the result of a struggle and perhaps not intentional.*" (December 15-16 and 23, 2008 Transcript, p 107, lines 12-17) This was immediately followed by Plea Counsel's statement that "*Now, with regard to William Gleaton, Your Honor, these are some of the most serious crimes that can be committed, as you've already pointed out, and you would think that anybody*

*capable of this would be a cold blooded person incapable of remorse.*" (June 7, 2011 Transcript, p 107, lines 19-22).

Furthermore, Plea Counsel's representation was deficient in the following manner:

(a) Plea counsel testified that it did not occur to him to move to suppress the photo array victim identification of Petitioner (Exhibit 1) in which Petitioner's photograph is the only visible and clear image. (June 7, 2011 Transcript, pp 16-17)

(b) Plea counsel testified to some reluctance to represent Petitioner: *"I was never comfortable with this case, sir. ... This was a bad, bad case."* (June 7, 2011 Transcript, p 24) Similarly, Ms. Simpkins testified that Plea Counsel said, just prior to the plea hearing, that *"he didn't want this case, you know. It's a touchy case."* (June 7, 2011 Transcript p 54))

(c) Plea counsel testified that he went forward with the Orangeburg County guilty plea, to Bamberg County felony charges, even though he had not received discovery in the Bamberg matter, because he had obtained information from counsel for the four co-Defendants (June 7, 2011 Transcript, pp 24-25), indicating that he relied upon this information even though Plea Counsel knew that all of these co-Defendants intended to testify against Petitioner. (June 7, 2011 Transcript, pp 35; 38-39)

(d) Petitioner, his sister and his mother testified that they had difficulty convincing Plea Counsel to visit Applicant in jail in order to advise Petitioner and to obtain Petitioner's assistance in his defense (June 7, 2011 Transcript, pp 48-49, 61, 62-63); Petitioner testified that he was incarcerated from his December 20, 2006 arrest forward, but that Plea Counsel did not meet with him until March 7 of the following year (2007), on which date he met with Applicant for ten or fifteen minutes prior to his preliminary hearing. (June 7, 2011 Transcript, p 70-71) Further, at the March 7, 2007 meeting, Plea Counsel did not bring any file documents; and, did not inform Petitioner of any co-Defendants' statements implicating Applicant. (June 7, 2011 Transcript, pp 70-72) And, Plea Counsel corroborated

the statement that he did not have the file at the first meeting with Applicant. (June 7, 2011 Transcript, p 103)

(e) Petitioner and his sister testified that they informed Plea Counsel of their belief that Judge Williams had close ties to the community where the crimes occurred, and, a close relationship with one or more of the victims and/or their families. (June 7, 2011 Transcript, pp 51-52).; and, Plea Counsel testified that, prior to the plea hearing, he knew that Judge Williams lived "*essentially in the area where most of [the crimes] took place.*" (June 7, 2011 Transcript, p 38).

(f) Petitioner testified that Plea Counsel never informed him that the co-Defendants had made statements against him or were offering to testify against him. (June 7, 2011 Transcript, pp 71-72, 73, 74, 75); that Plea Counsel never showed him any of the co-Defendants' statements (June 7, 2011 Transcript, pp 72); and, that he did not know that the co-Defendants intended to testify against him until he heard their guilty pleas (December 15, 2008 – thirteen months post-arrest). (June 7, 2011 Transcript , pp 72, 75, 76, 77-78)

(g) Petitioner expressed surprise when he testified at the PCR hearing that he never knew, prior to that June 7, 2011 hearing before this Court, that any victim had identified him. (June 7, 2011 Transcript p 91)

(h) Petitioner presented evidence at the PCR hearing, that he had no prior felony convictions at the time of the guilty plea and sentencing, but that his brother had been convicted using Petitioner's identity (June 7, 2011 Transcript pp 95-102); and, Petitioner's current counsel represented to the Court that he had reviewed Applicant's criminal history and had found no prior convictions (June 7, 2011 Transcript pp 5; 99-102). However, at the sentencing hearing, Solicitor Pascoe represented to Judge Williams that Petitioner had prior convictions for assault and battery; second degree burglary; and possession of crack cocaine. No objection or correction of this mis-statement as to

Petitioner's record was ever made by Plea Counsel; and, it is unclear whether Plea Counsel was ever aware that Petitioner had no felony criminal record. (December 15-16 and 23, 2008 Transcript, p 98)

**III. Did the PCR court err in finding the Petitioner was not coerced into entering a guilty plea ?(Question Presented, Question 3)**

A guilty plea must be an informed and intelligent decision. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). A guilty plea is valid if it represents a voluntary and intelligent choice among alternatives available to a defendant. *Id.* Plea counsel's deficient assistance prejudiced Petitioner, because there is a reasonable probability that, but for counsel's errors, Petitioner would not have pled guilty; and his advice undermined the proper functioning of the adversarial process. As a result, the plea hearing and the sentencing hearing cannot be relied upon as having produced a just result. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); *Kolle v. State*, 386 S.C. 578, 591, 690 S.E.2d 73, 80 (2010).

In this case, Petitioner testified that the only reason he pled guilty was that Plea Counsel convinced him he had no meaningful choice. Petitioner, Plea Counsel, as well as Petitioner's sister and mother testified that Petitioner maintained his innocence at all times.

Petitioner testified that his first meeting with Plea Counsel lasted 10 to 15 minutes; and his second meeting with Plea Counsel was immediately before the plea hearing, at which time, Plea Counsel told him about the plea offer. (June 7, 2011 Transcript, p 71). Petitioner and Ms. Simpkins testified that, after they witnessed the first two co-Defendants plead guilty, Plea Counsel advised them that the co-Defendants were going to testify against Petitioner who, again, stated his innocence and that he did not want to plead guilty. (June 7, 2011 Transcript, pp 54, 75). Plea Counsel should have advised Petitioner that the Trial Court would give instructions to the jury on weight that they should give to co-

Defendants' testimony and that co-Defendants' testimony against a Defendant must be viewed with skepticism.

As to whether Plea Counsel exercised improper pressure to coerce Petitioner to plead guilty, the following testimony and evidence were offered to this Court; and, support a finding and conclusion that Plea Counsel did not properly prepare and investigate on Petitioner's behalf; and, that he used improper pressure or coercion to convince Petitioner to plead guilty:

(a) The Petitioner, his sister, and his mother, testified that Petitioner had maintained his innocence for the entire time between his arrest (December 20, 2006) and his guilty plea and, again, insisted on his innocence to Plea Counsel just prior to the plea hearing. (December 15-16, 2008). (June 7, 2011 Transcript pp 51-52, 54, 65, 82).

(b) Petitioner testified that his first meeting with Plea Counsel lasted 10 to 15 minutes and his second meeting with Plea Counsel was immediately before the plea hearing, at which time Plea Counsel told him about the plea offer. (June 7, 2011 Transcript, p 71) Petitioner and Ms. Simpkins testified that, after they witnessed the first two co-Defendants plead guilty, Plea Counsel advised them that the co-Defendants were going to testify against Petitioner who, again, stated his innocence and that he did not want to plead guilty. (June 7, 2011 Transcript, pp 54, 75)

(c) Ms. Simpkins and Petitioner testified that, after a heated exchange between the family and Plea Counsel as to whether to accept the guilty plea offer, Plea Counsel left Petitioner to sit alone, without counsel, in the courtroom as the proceedings reconvened. Moreover, Plea Counsel did not stand with Petitioner at the beginning of the plea hearing. (June 7, 2011 Transcript pp 54-55, 76) Plea counsel corroborated this, to some degree, in his own testimony. *"They didn't know what to do. And I didn't tell them . . . I left the room."* (June 7, 2011 Transcript pp 105)

(d) Petitioner testified that, after the co-Defendants plead guilty, Plea Counsel attempted to convince Petitioner to plead guilty using the phrase “hands of one/hands of all,” and, in reference to Petitioner’s presence during the crimes: *“mere presence [during the crimes]- with them saying that I was there with them, would have made me guilty . . . subject to get a life sentence . . . I felt like I had no other choice but to take the plea, because he- gave me no . . . alternate option.”* (June 7, 2011 Transcript pp 77-79; 82; 83; 85; 90-91; 94).

(e) Petitioner testified before this Court, repeatedly, on direct and under cross-examination, that the only reason he pled guilty was the Plea Counsel convinced him he had no meaningful choice. (June 7, 2011 Transcript pp 81-82). He testified that Plea Counsel led him to believe that there were no choices but guilty plea or a life sentence; and, Plea Counsel intimated that if Petitioner did not plead guilty, Plea Counsel would not make his best efforts to defend him at trial. This occurred during the interim between Petitioner’s witnessing of the guilty pleas of the first two co-Defendants and the guilty plea hearing of the Petitioner. And, at that time, the Petitioner was still maintaining his innocence and unconvinced that he should plead guilty, until Plea Counsel *“talked me into taking the plea . . . it ain’t the fact about seeing those two. It was that-- the advice that I received . . . . My lawyer, he led me to think that there was no other choice . . . .”* (June 7, 2011 Transcript pp 81-83; 85; 91). Mrs. Gleaton also paraphrased Plea Counsel’s advice as *“Well, everybody else plead [sic] you know, in other words you may as well plead too, because you know, I’m-- I know you didn’t think I was going to get you off.”* (June 7, 2011 Transcript p 64).

**CONCLUSION**

Petitioner respectfully ask this Court to grant a writ of certiorari, reverse the decision of the PCR Court and remand this case for a new trial.

Respectfully submitted,

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of  
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