

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Aiken County

Honorable R. Scott Sprouse, Circuit Court Judge  
\_\_\_\_\_

LEON SIMMONS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001085  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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S.C. SUPREME COURT

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Petitioner’s guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel improperly coerced and pressured Petitioner to give a false confession and ultimately to plead guilty, and where Petitioner was prejudiced because he would not have pled guilty but for counsel’s undue pressure, particularly where Petitioner initially invoked his constitutional right to remain silent upon his arrest and insisted for over two years that he wanted to exercise his right to a jury trial ..... 7

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**ISSUE PRESENTED**

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made when plea counsel improperly coerced and pressured Petitioner to give a false confession and ultimately to plead guilty, and where Petitioner was prejudiced because he would not have pled guilty but for counsel's undue pressure, particularly where Petitioner initially invoked his constitutional right to remain silent upon his arrest and insisted for over two years that he wanted to exercise his right to a jury trial?

## STATEMENT OF THE CASE

Petitioner was seventeen years old when the state alleged he and several of his peers conspired to burglarize and rob Shane Jones to get money for “senior week.” App. 125, ll. 2-7. During the early morning hours of May 29, 2013, three armed men entered Jones’ house through the back door. During the burglary, Jones was fatally shot. He had cocaine in his system and Xanax pills were allegedly taken from his person after he was shot. A second individual was shot in the upper thigh. After an investigation, Markese East, Brian Morton, Rashawn Isaac, and Petitioner were arrested. East and Isaac both gave statements to law enforcement implicating Petitioner. However, upon his arrest, Petitioner invoked his right to remain silent and his right to counsel and refused to give a statement to the police. Brian Morton denied being involved. App. 26, l. 6 – 29, l. 4.

After Petitioner’s arrest, law enforcement obtained incriminating text messages that were exchanged between Petitioner and Morton as well as others. From these text messages, officers discovered that there was an “inside person” in the house who was providing the teenagers with information, including the best time to enter the house. This individual was later identified as Trevon Butler. App. 29, ll. 5-19.

For nearly two and a half years, Petitioner maintained his innocence and demanded a jury trial. He told plea counsel “over and over” again that he “was looking forward to a trial.” At “every meeting” with counsel, Petitioner insisted on going to trial. However, instead of preparing for trial, counsel told Petitioner he was “trying to get a guilty plea worked out” and repeatedly advised Petitioner “you need to plead guilty.” App. 89, ll. 10-21. According to counsel, Petitioner’s best option was to testify against his codefendants in hopes of getting a “good offer” from the state. App. 89, l. 21 – 90, l. 2. Despite this advice, Petitioner refused

counsel's suggestion that he plead guilty and continued to insist on a jury trial. App. 90, ll. 3-18. He told counsel, "I do want a trial. I'm going to trial. I don't know why you keep suggesting a plea of guilt." App. 90, ll. 3-15. In July 2015, Petitioner turned down an offer to plead guilty in exchange for a sentence recommendation of thirty years. This offer required Petitioner to testify against his codefendants. App. 90, l. 19 – 91, l. 7.

On October 22, 2015, counsel visited Petitioner in the local detention center where he was housed. Counsel presented Petitioner with a typed letter addressed to Brian Morton, Petitioner's close friend and codefendant. This letter, which was on plea counsel's letterhead, was from Petitioner and stated that Petitioner intended to cooperate with investigators and tell the entire truth about the events that occurred on May 28, 2013. App. 92, l. 2 – 94, l. 24; App. 146. The letter continued, "I'm doing so with the understanding that you will also be cooperating and telling the truth to investigators about the events that took place on May 28, 2013. I think it is in both of our best interest to do so at this point." App. 146.

Petitioner testified at the evidentiary hearing that plea counsel had prepared this letter on his own without Petitioner's knowledge and that the two had not discussed the letter beforehand. When counsel presented the letter to Petitioner, counsel explained that the letter was a mere suggestion to Brian Morton that the two cooperate. Petitioner believed the letter would lead to him and Morton, along with their attorneys, meeting to discuss the possibility of giving a statement to the police. Therefore, Petitioner signed it. App. 94, l. 25 – 96, l. 10.

Within a short period of time after signing this letter, Petitioner was called out of his cell at the detention center and escorted downtown to the Aiken Department of Public Safety. He did not know why he was being transported. When he arrived, plea counsel was there. Counsel told Petitioner he had been transported so that he could give a statement to law enforcement. When

Petitioner refused to give a statement because he had not met with Brian Morton, counsel insisted that Petitioner cooperate and that if he did not give a statement that day he would move to be relieved as counsel. Plea counsel told Petitioner he had worked too hard to arrange a meeting with law enforcement for Petitioner to throw away the opportunity. Counsel also threatened that he would not represent Petitioner at trial if Petitioner chose to proceed to trial. App. 96, l. 24 – 98, l. 11. Counsel led Petitioner to believe that he had no choice but to give a statement. Consequently, Petitioner gave the police a false confession. App. 98, l. 19 – 99, l. 13.

In addition to counsel's undue pressure to provide a statement, Petitioner was also under the impression that his codefendant Brian Morton had recently given a statement implicating Petitioner. However, this turned out not to be true. Morton did ultimately give a statement to the police implicating Petitioner, but it was only after Petitioner confessed. App. 100, ll. 7-23.

Less than three weeks after counsel first presented Petitioner with the letter to Brian Morton indicating he planned to cooperate with law enforcement, Petitioner pled guilty.

An Aiken County Grand Jury indicted Petitioner on October 31, 2013 for murder, armed robbery, and first degree burglary. App. 159-164. On November 12, 2015, Petitioner pled guilty as indicted before the Honorable Doyet A. Early, III. App. 1. Deputy Solicitor John William Weeks represented the state, and Kevin Molony represented Petitioner. App. 1. Pursuant to a negotiated sentence, Petitioner was sentenced to thirty years imprisonment for each offense to be served concurrently. App. 59, l. 19 – 60, l. 2. He did not appeal.

On May 13, 2016, Petitioner filed an application for post-conviction relief (PCR). App. 62-67. The state filed a returned to this application dated October 17, 2017. App. 68-76. Petitioner filed an amended application on January 12, 2018. App. 77-78. An evidentiary hearing was convened on May 7, 2018 before the Honorable R. Scott Sprouse. App. 79.

Assistant Attorney General Julie Coleman represented the state, and Lance Boozer represented Petitioner. App. 79.

Kevin Molony, Petitioner's plea counsel, testified at the evidentiary hearing that for the majority of his representation, Petitioner consistently stated he wished to go to trial. Consequently, Molony was preparing for a trial. However, on October 13, 2015, Molony received a copy of Brian Morton's telephone records that contained text messages exchanged between Morton and Petitioner. Molony and Petitioner agreed these records were "extremely damaging evidence." Molony testified that after receiving these records, Petitioner "knew . . . the party was over" and decided to cooperate with law enforcement. App. 126, l. 4 – 129, l. 19.

According to Molony, Petitioner's main concern with cooperating was hurting Brian Morton, who was his close friend and codefendant. Consequently, Molony drafted a letter to Morton from Petitioner informing Morton that Petitioner intended to cooperate. Petitioner signed the letter and Molony gave the letter to Morton's counsel. App. 132, l. 15 – 133, l. 23.

Molony denied threatening Petitioner to provide a statement or pressuring him to plead guilty. App. 135, ll. 18-20.

By order filed June 11, 2018, the PCR judge denied Petitioner relief. App. 147-158. Based on plea counsel's testimony at the evidentiary hearing and the record of Petitioner's plea hearing, the judge ruled Petitioner was not threatened, forced, or coerced to give a statement to law enforcement or to plead guilty. App. 156. The judge found credible plea counsel's testimony that he thoroughly discussed with Petitioner the evidence against him, the possibility of giving a statement, and his option of pleading guilty or proceeding to trial. App. 156. The judge further found it was Petitioner's decision to plead guilty after receiving the "very damaging evidence of the records of his text messages with Morton planning the crime." App.

156. Consequently, the judge concluded Petitioner's plea was entered freely and voluntarily. App. 155-156.

Because Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel improperly coerced and pressured Petitioner to give a false confession and ultimately to plead guilty, and since Petitioner was prejudiced because he would not have pled guilty but for counsel's undue pressure, this petition for writ of certiorari follows.

## ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel improperly coerced and pressured Petitioner to give a false confession and ultimately to plead guilty, and where Petitioner was prejudiced because he would not have pled guilty but for counsel's undue pressure, particularly where Petitioner initially invoked his constitutional right to remain silent upon his arrest and insisted for over two years that he wanted to exercise his right to a jury trial.

Petitioner did not knowingly, intelligently, and voluntarily plead guilty. He only pled guilty because plea counsel improperly coerced and pressured him to give a false confession and ultimately to plead guilty due to what counsel perceived as "extremely damning evidence" against Petitioner. Petitioner initially invoked his constitutional right to remain silent upon his arrest and insisted for over two years that he wanted to exercise his right to a jury trial. Petitioner was prejudiced by counsel's deficient performance because he testified would not have pled guilty but for counsel's undue pressure.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "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." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. In the context of a guilty plea, a petitioner must show that counsel's performance was deficient, and "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). This Court has held that a "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, 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." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "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 v. Lockhart, 474 U.S. 52, 56 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

Petitioner did not knowingly, intelligently, and voluntarily plead guilty. Petitioner testified that counsel arranged for him to be transported to the Aiken Department of Public

Safety without his knowledge and once there, threatened to move to be relieved as counsel if Petitioner did not cooperate with law enforcement. Plea counsel also told Petitioner that he would not represent him at trial if Petitioner decided to exercise his right to a jury trial. In addition to these threats by counsel, Petitioner was under the impression that his friend and codefendant Brian Morton had already given a statement to the police. Given these circumstances, Petitioner felt he had no choice but to cooperate, and ultimately gave a false confession to the police. Petitioner later pled guilty as indicted due to counsel's threats and pressure.

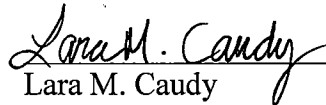
Petitioner was prejudiced by counsel's deficient performance because he testified he would not have pled guilty but for counsel's undue pressure. App. 109, ll. 2-23; See Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (A "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty."). Petitioner's assertion that he would not have pled guilty is supported by plea counsel's testimony that Petitioner repeatedly insisted on a jury trial during the course of counsel's representation.

Because Petitioner did not knowingly, intelligently, and voluntarily plead guilty, this Court should reverse his convictions and sentence and remand for a new trial.

**CONCLUSION**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

  
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Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of November, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Aiken County  
Honorable R. Scott Sprouse, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

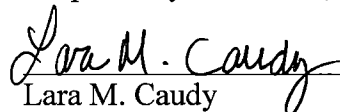
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Counsel for Leon Jacob Simmons states:

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 post-conviction relief hearing, which was held on May 7, 2018 before the Honorable R. Scott Sprouse, and, in her opinion, seeking certiorari from the order of dismissal is without merit.
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 Leon Jacob Simmons.

Respectfully Submitted,

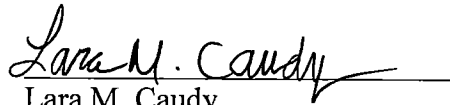
  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of November, 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."



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ATTORNEY FOR PETITIONER

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STATE OF SOUTH CAROLINA  
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PETITIONER

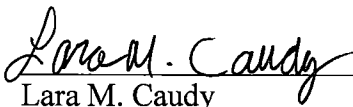
V.

STATE OF SOUTH CAROLINA,

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 have been served upon Megan Harrigan Jameson, 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 upon Leon Jacob Simmons, #366048, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 26th day of November, 2018.

  
\_\_\_\_\_  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 26th day of November, 2018.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina

My Commission Expires: September 27, 2028.