

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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ORIGINAL

Certiorari to Greenville County  
Carmen T. Mullen, Circuit Court Judge

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JAN 15 2019

S.C. SUPREME COURT  
PETITIONER

TYLER J. HILL,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2018-001400

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT

Petitioner’s plea was involuntary due to plea counsel’s ineffective assistance where counsel failed to review evidence with Petitioner showing one of his codefendants indicated during his own guilty plea that Petitioner was not involved in the crime, and Petitioner testified he would not have entered a plea if he had been aware of that fact..... 3

CONCLUSION ..... 9

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

**ISSUE PRESENTED**

Was Petitioner's plea involuntary due to plea counsel's ineffective assistance where counsel failed to review evidence with Petitioner showing one of his codefendants indicated during his own guilty plea that Petitioner was not involved in the crime, and Petitioner testified he would not have entered a plea if he had been aware of that fact?

## STATEMENT

On March 22, 2016, a Greenville County Grand Jury indicted Petitioner for armed robbery, conspiracy, and first-degree assault and battery. App. 63–70. On December 14, 2016, Petitioner appeared before the Honorable C. Victor Pyle, Jr., and entered a plea of guilty to each charge. App. 1. Lauren Taylor represented Petitioner. App. 1. Katryna Salisbury represented the State. App. 1.

The judge sentenced Petitioner to ten years' imprisonment for armed robbery, five years' imprisonment for conspiracy, and five years' imprisonment for first-degree assault and battery, to run concurrently. App. 9, lines 7–14.

Petitioner then filed an application for post-conviction relief (PCR) on July 21, 2017. App. 11–18. The Honorable Carmen T. Mullen presided over an evidentiary hearing on April 17, 2018. App. 24. DeShawn Mitchell represented the State, and Susannah Ross represented Petitioner. App. 24.

By an order filed on June 21, 2018, Judge Mullen denied Petitioner relief from his convictions and sentences. App. 52–62. This petition for writ of certiorari follows.

## ARGUMENT

Petitioner's plea was involuntary due to plea counsel's ineffective assistance where counsel failed to review evidence with Petitioner showing one of his codefendants indicated during his own guilty plea that Petitioner was not involved in the crime, and Petitioner testified he would not have entered a plea if he had been aware of that fact.

### **Relevant Facts**

At the plea hearing, the State alleged Petitioner was part of a group of four to six individuals who attacked a woman on her front porch and dragged her into her home, continuing to attack other people inside the home before stealing items of value and fleeing from the residence in two stolen cars. App. 6, line 15–App. 7, line 8. The State informed the court that all of the codefendants had pled guilty and been sentenced. App. 7, lines 8–10.

After the State reviewed its version of the facts for the plea judge, the judge engaged in the following with Petitioner:

The Court: All right. Mr. Hill, you've heard the facts related. Is that what happened?

[Mr.] Hill: Yes, sir.

App. 7, lines 13–15. Thereafter, the judge accepted the plea as being voluntarily made and as having a sufficient factual basis. App. 7, lines 16–18.

During the PCR hearing, Petitioner explained that his attorney, Lauren Taylor, met with him two times and did not give him the items he requested. App. 32, line 14–App. 33, line 5. Specifically, Petitioner never saw a transcript of his codefendant's guilty plea until September 7, 2017, almost a year after Petitioner's guilty plea. App. 33, line 6–App. 34, line 15. In the transcript, codefendant Jakobe German was asked whether he was willing to acknowledge that Petitioner participated in the September 2 home invasion where several people were injured, and

he answered, "No, ma'am." App. 29, line 5–App. 30, line 17. On cross-examination during the PCR hearing, the State asked Petitioner whether that meant German was saying Petitioner was not involved in the crime, and he answered that it did. App. 35, lines 9–20. When asked why he told the judge at the plea proceeding that he was satisfied with his lawyer, he explained that he did not know about the new information until after he had already pled guilty. App. 36, lines 16–24. He testified that if he had known about it, he would not have pled guilty but would have gone to trial. App. 36, line 25–App. 37, line 4.

Plea counsel's failure to advise Petitioner of this information amounted to ineffective assistance rendering his plea involuntary.

Plea counsel, on the other hand, claimed she read the guilty plea transcript of Jakobe German and interpreted it as German simply saying he would not state on the record that Petitioner was not involved in the crime. App. 41, line 18–App. 42, line 4. When PCR counsel asked whether she met with German after reading the plea transcript, she explained that she did not. App. 45, line 20–App. 46, line 2. However, plea counsel did discuss it with German's attorney, Alex Kornfeld, and he did not indicate to her that German was going to say Petitioner was not involved. App. 46, lines 3–16.

Plea counsel Taylor testified that she provided the other codefendants' transcripts to Petitioner and that Petitioner's name was mentioned in the State's sets of facts. App. 42, lines 5–12. She testified that the codefendants' statements were consistent with their version of events. App. 42, lines 13–23. She further testified it was Petitioner's decision to plead guilty, after he had already been scheduled for trial. App. 43, lines 1–4. She even remembered that she had first asked the judge to allow Petitioner to serve his sentence on the home incarceration program, and the judge declined and asked Petitioner if he would still like to continue with the guilty plea in

light of that; Petitioner agreed to go forward. App. 43, lines 9–20. Counsel testified that she believed the guilty plea was in Petitioner’s best interest. App. 43, lines 21–23.

The judge filed an order of dismissal denying Petitioner relief. App. 52–62. In the order denying relief, the PCR judge found Petitioner’s testimony not credible regarding his allegation that Jakobe German stated in his own guilty plea transcript that Petitioner was not involved in the crime. App. 59. The PCR judge did find plea counsel’s testimony credible regarding her speaking to German’s attorney and not hearing any indication that German was going to say Petitioner was not involved. App. 59. The PCR judge found Petitioner’s plea was entered freely, voluntarily, knowingly, and intelligently. He noted the plea judge explained the charges and penalties to Petitioner, went through his constitutional rights, and determined he was giving them up to plead guilty. Petitioner testified at the plea proceeding that he was guilty and that he was satisfied with his attorney. App. 60.

After making these findings, the PCR judge concluded Petitioner “failed to present compelling evidence that Counsel committed either errors or omissions in h[er] representation of” Petitioner. App. 60. The judge also concluded Petitioner failed to show he was prejudiced by plea counsel’s performance. App. 60.

### **Discussion**

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove that counsel’s performance was deficient and fell below reasonable professional norms and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). 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 upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); see also *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 687–88.

In the context of a guilty plea, a petitioner must show that counsel was ineffective and that there is a reasonable probability but for counsel’s errors, he would not have pled guilty. *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); *Hill v. Lockhart*, 474 U.S. 52, 58–59 (1985).

In *Kolle v. State*, 386 S.C. 578, 590–91, 690 S.E.2d 73, 79–80 (2010), this Court held “plea counsel was deficient in failing to procure pertinent discovery materials, in particular the call/dispatch logs and search warrant.” This Court explained these materials would have enabled counsel to effectively cross-examine the officers at the suppression hearing, point out the time discrepancies, and point out other discrepancies in the documents material to the charges against Kolle. *Id.* at 591, 690 S.E.2d at 80. According to this Court, had counsel “adequately attacked the credibility of the officers, there is a reasonable probability this would have influenced the trial judge’s decision regarding the existence of exigent circumstances, *i.e.*, affected the outcome of the suppression motion.” *Id.*

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); *see also* *Burnett v. State*, 352 S.C. 589, 591, 576 S.E.2d 144, 145 (2003). 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 by 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).

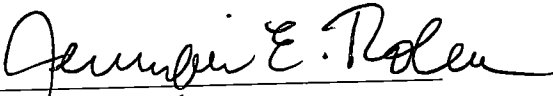
In order for a defendant to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea. *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980)). The judge must question the defendant about the possible punishment that could be imposed. *Id.* at 434–35, 405 S.E.2d at 392. This Court has held that a defendant 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.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991); *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980)). A guilty plea is rendered involuntary, unknowing, and unintelligent when a defendant pleads guilty to a crime without knowing the direct consequences of the guilty plea. *Hazel*, 275 S.C. at 394, 271 S.E.2d at 603.

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)).

As Petitioner explained at the PCR hearing, if his lawyer had made him aware that Jakobe German had been asked during his own guilty plea proceeding to acknowledge Petitioner's involvement in the crime and had refused to do so, he would have insisted on going to trial instead of pleading guilty. At the PCR hearing, plea counsel testified that the way she interpreted German's statement when she read his plea transcript was that he was not willing to put on the record that Petitioner was involved. However, she did not give Petitioner a chance to read the transcript and decide for himself how to interpret that statement. Petitioner may have decided that if he went to trial and German was a witness for the defense, the jury might find him not guilty. Regardless, trial counsel should have disclosed the important plea transcript information to Petitioner. Plea counsel's failure to inform Petitioner of this exculpatory evidence was deficient performance, and it was prejudicial because Petitioner testified he would have pled not guilty and insisted on going to trial if he had known about it.

CONCLUSION

Petitioner respectfully requests this Court grant the petition and order full briefing on this issue.

  
Jennifer E. Roberts  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of January, 2019.

STATE OF SOUTH CAROLINA  
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Carmen T. Mullen, Circuit Court Judge

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TYLER J. HILL,

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Tyler J. Hill states:

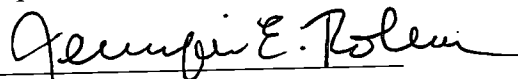
1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent Petitioner.

2. She has reviewed the record of Petitioner's guilty plea hearing before the Honorable C. Victor Pyle, Jr., on December 14, 2016, and the PCR hearing before the Honorable Carmen T. Mullen on April 17, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), she has briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Tyler J. Hill.

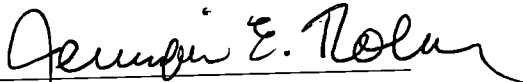
Respectfully Submitted,

  
Jennifer E. Roberts  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 15th day of January, 2019.

**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."

  
Jennifer E. Roberts  
Appellate Defender

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

ATTORNEY FOR PETITIONER

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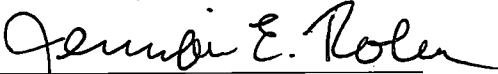
RESPONDENT.

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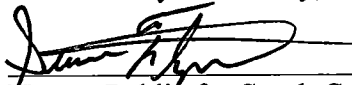
CERTIFICATE OF SERVICE

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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 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 on Tyler J. Hill, #370893, at Kershaw Correctional Institution, 4848 Gold Mine Hwy., Kershaw, SC 29067, this 15th day of January, 2019.

  
\_\_\_\_\_  
Jennifer E. Roberts  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 15th day of January, 2019.

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