

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Berkeley County

Honorable Roger M. Young, Circuit Court Judge

**RECEIVED**

APR 03 2019

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JULIE L. GORDON-GOOKINS,

PETITIONER  
S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001409

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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### **ISSUE PRESENTED**

Whether Petitioner's guilty plea was made involuntarily where plea counsel, a large male attorney, intimidated her into pleading guilty, and where Petitioner and plea counsel's relationship had so deteriorated that plea counsel, who was on notice that Petitioner wanted a new attorney appointed, should have requested to be relieved and have a new attorney appointed to Petitioner?

## STATEMENT

During the December 2014 term, the Berkeley County Grand Jury indicted Petitioner for attempted murder, possession of a weapon during the commission of a violent crime, kidnapping, and burglary in the first degree. App. 189 – 196.

After her arrest Petitioner was appointed plea counsel, Schwacke. Their relationship began poorly and only got worse as the representation continued. App. 104, ll. 2 – 22. Prior to the plea hearing, Petitioner complained to anyone who would hear her that she wanted a new attorney. App. 105, l. 12 – 107, l. 4. Petitioner wrote multiple letters to the public defender's office and to plea counsel himself where she requested that plea counsel be relieved and a new attorney be appointed. Id.; App. 152, l. 25 – 153, l. 4. Petitioner did not know that she could have filed a motion to the trial court to have her attorney relieved. App. 107, ll. 5 – 10; App. 153, l. 5 – 10.

At the plea hearing, Petitioner tried once more to get her complaints about plea counsel heard by giving a letter outlining her problems with plea counsel to Judge Harrington. App. 10, l. 22 – 11, l. 4; App. 123, l. 17 – 124, l. 7. Petitioner would later testify that she was so intimidated by, and fearful of, plea counsel that she could not bring herself to relay her complaints out loud at the plea hearing because he was standing right next to her. App. 124, ll. 14 – 20.

On October 28, 2016, Petitioner pled guilty to burglary in the first degree, kidnapping, and assault and battery of a high and aggravated nature (ABHAN) before the Honorable Kristi Harrington. App. 1. David Schwacke represented Petitioner. App. 2. Anne Williams represented the state. Id. In spite of her desire to go to trial, as seen *infra*, Petitioner pled guilty at the behest of plea counsel, who intimidated Petitioner into pleading guilty to these offenses. App. 4, ll. 6 – 18; App. 123, ll. 9 – 16.

Judge Harrington sentenced Petitioner to concurrent terms of thirty years' imprisonment for burglary in the first degree, twenty years' imprisonment for kidnapping, and twenty years' imprisonment for ABHAN. App. 38, ll. 6 – 18.

Petitioner filed an application for post-conviction relief (PCR) on October 6, 2017. App. 43 – 86. Petitioner added an amendment to the PCR application on November 21, 2017. Id. The state filed its return on March 7, 2018. App. 87 – 92. Petitioner then added a subsequent amendment to the PCR application that alleged her relationship with plea counsel deteriorated to the extent that plea counsel should have requested to be relieved so that new counsel can be appointed and his failure to do so induced Petitioner to plead guilty involuntarily. App. 94 – 95.

On May 25, 2018, Petitioner's PCR hearing was held in Charleston County in front of the Honorable Roger M. Young. App. 96. Lance Boozer represented Petitioner. Id. Kelly Oppenheimer represented the state. Id.

In an order filed on July 23, 2018, Judge Young rejected Petitioner's PCR allegation that her plea was involuntarily made because plea counsel, the man who intimidated Petitioner into pleading guilty, testified that he fully informed Petitioner of the circumstances of her case such that she made her own decision to plead guilty. App. 165 – 188; App. 187

## ARGUMENT

Petitioner's guilty plea was made involuntarily where plea counsel, a large male attorney, intimidated her into pleading guilty, and where Petitioner and plea counsel's relationship had so deteriorated that plea counsel, who was on notice that Petitioner wanted a new attorney appointed, should have requested to be relieved and have a new attorney appointed to Petitioner.

### **Relevant Facts**

The state alleged the facts as follows: On September 6, 2014, Petitioner, Julie Gordon-Gookins, arrived at the complaining witness' house. App. 12, ll. 22 – 25. While the complaining witness was unloading items from her car, Petitioner allegedly approached her with a firearm and threatened her. App. 12, l. 25 – 13, l. 8.

Petitioner led the complaining witness to Petitioner's car when a scuffle began between the two. App. 13, ll. 8 – 14. The complaining witness ran away, while a third party interjected himself into the situation and held Petitioner there until the police arrived. App. 13, ll. 15 – 17.

On October 28, 2016, Petitioner pled guilty to ABHAN, burglary in the first degree, and kidnapping. App. 1. On October 6, 2017, Petitioner then filed a PCR application. App. 43 – 86.

Petitioner testified at her PCR hearing that she did not want to plead guilty. App. 111, ll. 2 – 11. Petitioner stated that plea counsel intimidated her by yelling and cursing at her. App. 115, ll. 12 – 22. Petitioner explained, "I just kind of shut down and didn't know what else to do... I was scared if I didn't do what he told me that I was going to prison for the rest of my life." Id. Petitioner believed that, since their relationship had deteriorated to the extent Petitioner did not trust plea counsel to represent her and feared he would harm her if she did not cooperate, plea counsel should have moved to relieve himself and have a new attorney appointed. App. 152, l. 16 – 154, l. 8.

On cross-examination, Petitioner's said she could not tell the plea judge her complaints about plea counsel because she was, "intimidated beyond belief by [plea counsel]. [She] never had a good working relationship with him, and there was nothing that I could do for myself." App. 124, ll. 14 – 20. Petitioner waived her rights at the plea colloquy because plea counsel told her to waive them. App. 125, ll. 1 – 7. Furthermore, plea counsel instructed Petitioner to tell the judge that she was not threatened or coerced into pleading guilty and instructed Petitioner to, "say yes to everything." App. 125, ll. 9 – 17.

Plea counsel testified at the PCR hearing as well. App. 131, l. 11. He admitted that Petitioner and his relationship was not friendly. App. 138, ll. 8 – 15. Plea counsel also admitted he received at least one of Petitioner's letters that stated she did not want plea counsel to be her attorney. App. 139, ll. 2 – 9. However, he testified that although they were not friends, he believed the relationship had not been "so strained," that there was a "complete breakdown in trust." App. 142, l. 25 – 143, l. 7. He also claimed that he never told Petitioner how to answer during the colloquy. App. 144, ll. 1 – 10.

PCR counsel Boozer gave a closing argument where he reiterated Petitioner's allegations against plea counsel. App. 152, l. 16 – 154, l. 8. Specifically, PCR counsel argued that since plea counsel received notice of Petitioner's request for a new attorney, plea counsel had a duty to bring that request to the plea court's attention for a motion to relieve counsel. App. 153, ll. 11 – 17. PCR counsel also mentioned the fact that this was not a case where Petitioner had multiple attorneys and "was doing this again." App. 153, ll. 18 – 20. Rather, Petitioner only had one attorney throughout the entire process. Id.

In spite of the fact that plea counsel knew that Petitioner wanted a new attorney, because he received at least one letter from her requesting a new attorney; and in spite of Petitioner's

testimony at PCR that she only pled guilty because she was intimidated by plea counsel, Judge Young found that plea counsel did not provide ineffective assistance. App. 164 – 188. Judge Young found that Petitioner’s guilty plea was not induced by plea counsel’s intimidation and that plea counsel did not need to bring Petitioner’s request for a new attorney to the plea court’s attention. App. 187.

### **Discussion**

Petitioner’s guilty plea was not voluntarily made where she would not have pled guilty but for plea counsel’s intimidation, and where plea counsel was on notice that Petitioner wanted to relieve him and be appointed a new attorney but failed to inform the plea court of Petitioner’s request.

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) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him); accord State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) (finding 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);

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). 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.” Holden v. State, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

In this case, an “unsound result” occurred because Petitioner did not freely and intelligently plead guilty because her plea was caused by plea counsel’s intimidation. Moreover, plea counsel was aware Petitioner wanted a new attorney appointed but failed to bring that to the plea court’s attention. App. 105, l. 12 – 107, l. 4; App. 152, l. 25 – 153, l. 4.

Petitioner did not send a motion to the court to have plea counsel relieved because she did not know that was what was required. Once plea counsel read the letter that Petitioner sent him, where she asked him to relieve himself as her attorney, plea counsel had a duty to inform Petitioner that she needed to write a motion to the court to have him relieved. App. 105, l. 12 – 107, l. 4. While there is no express duty under the South Carolina Rules of Professional conduct to inform the court that a client wants to relieve you as counsel, the duty of diligence, competence, and communication required plea counsel to communicate to Petitioner the proper way to request that he be relieved as her counsel. Rules of Professional Conduct, Rule 1.1; Rule 1.3; Rule 1.4, RPC, Rule 407 SCACR.

The involuntariness of Petitioner’s guilty plea is further supported by her actions at the plea hearing and her testimony at the PCR hearing. Petitioner attempted to convey her complaints about plea counsel and her request for a new attorney when she gave Judge Harrington her letter at the plea hearing. App. 10, l. 22 – 11, l. 4; App. 123, l. 17 – 124, l. 7. Her actions at the plea hearing support the contention that Petitioner was so fearful of plea counsel she could not bring herself to air her complaints in front of him.

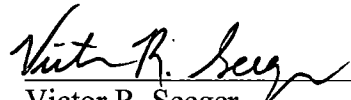
Petitioner explained, and plea counsel admitted, that plea counsel was on notice that Petitioner did not want him as her attorney and that plea counsel did not bring that to the

attention of the plea court. App. 105, l. 12 – 107, l. 4; App. 152, l. 25 – 153, l. 4. Finally, Petitioner testified at the PCR hearing that she pled guilty out of fear and intimidation from plea counsel. App. 123, ll. 9 – 16.

Therefore, the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty where plea counsel intimidated her into pleading guilty and was aware Petitioner wanted a new attorney but failed to inform the plea court of Petitioner's request. App. 123, ll. 9 – 16; App. 152, l. 25 – 153, l. 4; See Boykin, 395 U.S. 238 (finding a defendant's decision to plead guilty must be knowingly, voluntarily, and intelligently made).

**CONCLUSION**

By the reason of the foregoing arguments, Petitioner respectfully requests this Court vacate her guilty plea and remand the case to the circuit court for a new trial, or in the alternative, grant certiorari to allow for full briefing on this issue.

  
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Victor R. Seeger  
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of April, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Berkeley County

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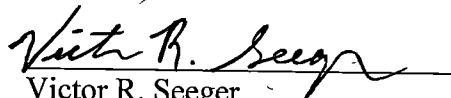
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Julie L. Gordon-Gookins 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 post-conviction relief hearing before Judge Roger M. Young, which was held on May 25, 2018, 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 Julie L. Gordon-Gookins.

Respectfully Submitted,

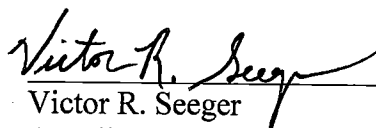


Victor R. Seeger  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 3rd day of April, 2019.

**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."

  
Victor R. Seeger  
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 3rd day of April, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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PETITIONER

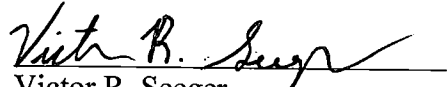
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STATE OF SOUTH CAROLINA,

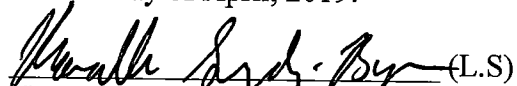
RESPONDENT

—————  
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 Benjamin Limbaugh, 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 Julie L. Gordon-Gookins, #370329, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 3rd day of April, 2019.

  
Victor R. Seeger  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 3rd day of April, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 26, 2028