

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Abbeville County

Brian M. Gibbons, Circuit Court Judge  
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**ORIGINAL**  
**RECEIVED**

MAY 20 2019

S.C. SUPREME COURT

SHAQUEAN NEWJEAN LEWIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000139  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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**INDEX**

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

Petitioner’s guilty plea was involuntarily, unknowingly, and  
unintelligently entered due to plea counsel rendering ineffective  
assistance by failing to investigate the facts and legal issues  
surrounding the charges and evidence against Petitioner. ....4

CONCLUSION.....10

PETITION TO BE RELIEVED AS COUNSEL.....11

**ISSUE PRESENTED**

Was Petitioner's guilty plea involuntarily, unknowingly, and unintelligently entered due to plea counsel rendering ineffective assistance by failing to investigate the facts and legal issues surrounding the charges and evidence against Petitioner?

## STATEMENT

In November 2014, Kami Granade began practicing law. App. 37, ll. 11-14. Less than a year later, someone robbed a bank in Calhoun Falls. App. 6, l. 4 – App. 7, l. 3. According to the state, the robber arrived just as two bank employees arrived to start their day. App. 6, ll. 4-11. The state claimed that “a man in a blue hoodie with his face masked and sunglasses on” approached a bank employee and forced her into the bank at gunpoint. App. 6, ll. 15-20.

Petitioner, who lived nearby, was a customer of the bank. App. 7, l. 4; App. 7, ll. 12-14. In fact, he had been in the bank a week prior to the robbery. App. 7, ll. 4-6. He was disputing a charge on his account. App. 59, l. 20 – App. 60, l. 8. The police swabbed the bank vault’s door, which was used as a scent for the tracking dog. App. 7, ll. 10-11. The dog allegedly alerted on the door to Petitioner’s home. App. 7, ll. 11-14. When Petitioner answered his door, the police immediately arrested him. App. 7, ll. 16-18.

Granade joined the Eighth Circuit Public Defender office on July 25, 2016. App. 37, ll. 22-23. On January 19, 2016, an Abbeville County grand jury indicted Petitioner for armed robbery (2016-GS-01-0078). App. 82-83. Initially, Yasha Patel with the Public Defender Office represented Petitioner. App. 38, ll. 4-6; App. 50, ll. 14-15. When Granade took over representation of Petitioner, she conducted “most of the investigation in th[e] case, if not all of it.” App. 38, ll. 7-9. Granade entered into plea negotiations with the state on Petitioner’s behalf. App. 40, ll. 4-18. The state offered to permit Petitioner to enter a guilty plea to the armed robbery charge in exchange for a negotiated sentence of fifteen years imprisonment and the dismissal of two related weapons charges and a kidnapping charge. App. 7, l. 22 – App. 8, l. 5; App. 25; App. 40, ll. 4-18; App. 71.

On October 3, 2016, two months after Granade joined the Public Defender Office, Petitioner appeared before the Honorable Donald Hocker to enter a guilty plea to the charge. App. 1; App. 37, l. 20 – App. 38, l. 6. Granade represented Petitioner, and Yates Brown represented the state. App. 1. During the plea colloquy, Petitioner indicated he did not agree with the facts as recited by the prosecutor. App. 8, ll. 9-15. The presiding judge informed Petitioner it was not necessary for him to “agree with every single detail.” App. 8, ll. 12-13. Instead, Petitioner need only agree that the state “substantially stated the facts.” App. 8, ll. 14-15. Judge Hocker sentenced Petitioner to fifteen years imprisonment. App. 12, ll. 22-25; App. 84.

On May 24, 2017, Petitioner filed an application for post-conviction relief (PCR). App. 15-23. On October 17, 2018, the matter proceeded to an evidentiary hearing before the Honorable Brian M. Gibbons. App. 31. Ashley McMahan represented Petitioner, and Janell Gregory represented the state. App. 31. By an order filed January 22, 2019, Judge Gibbons denied Petitioner relief. App. 71-81. On January 28, 2019, Petitioner served his notice of appeal. This petition for writ of certiorari follows.

## ARGUMENT

Petitioner's guilty plea was involuntarily, unknowingly, and unintelligently entered due to plea counsel rendering ineffective assistance by failing to investigate the facts and legal issues surrounding the charges and evidence against Petitioner.

### **Relevant facts**

During her two-month stint representing Petitioner, plea counsel did “most,” “if not all” of the investigation of the charges against Petitioner. App. 38, ll. 7-9. Plea counsel indicated that her investigation included a visit to the bank. App. 39, ll. 2-3. While there, she saw additional video cameras, and as a result of this observation, she “requested additional video.” App. 39, ll. 3-8. Additionally, Petitioner provided plea counsel with “a couple of names of people in the neighborhood who[m] he thought may be able to remember him being around during the time that the robbery was alleged to have occurred.” App. 42, ll. 22-25. Unfortunately, plea counsel was unable to locate any of these individuals. App. 43, ll. 1-3. Petitioner explained, however, that plea counsel’s records showed she did not accurately record what he told her. For example, Petitioner told plea counsel to contact “Bill Ryan,” but plea counsel wrote down “Brian Lewis.” App. 56, ll. 14-22.

Further, plea counsel indicated that because Petitioner told her he made a phone call approximately fifteen minutes after the robbery allegedly occurred, she had “an expert on standby to do a cell phone dump,” but she never received Petitioner’s phone. App. 39, ll. 9-15; App. 43, ll. 8-14. Plea counsel further claimed that Petitioner lived “roughly a half mile from the bank.” App. 43, ll. 19-20. In light of Petitioner claiming to have made a phone call at 8:30 a.m., and the robbery allegedly occurring at 8:16 a.m., plea counsel opined Petitioner “could have

traveled” the distance from the bank to his home “even before the phone call.” App. 43, ll. 17-22. Also, the phone “did not actually belong” to Petitioner. App. 43, ll. 23-24.

Plea counsel believed the phone “was registered to his mother and used by several family members.” App. 43, l. 24 – App. 44, l. 1. Thus, plea counsel discussed with Petitioner that he would be required to testify at trial to provide “proof of who actually made the phone call.” App. 44, ll. 1-2. However, Petitioner was not “comfortable” with testifying. App. 44, ll. 2-3. Petitioner explained the phone belonged to his grandmother, who died two weeks before the robbery. App. 56, l. 23 – App. 57, l. 1. He admitted that he had the phone for approximately three weeks and that other people used the phone, but that the phone call he made around the time of the robbery would have shown that he was the one using the phone because it was to Calhoun Family Practice about his asthma. App. 57, ll. 1-13. Additionally, Petitioner indicated that his time card would have shown he was at work at the time the bank was robbed, and that he was using the phone to call a loan company about a car loan. App. 60, ll. 15-21.

According to plea counsel, she conducted “some independent research and had articles prepped and prepared” regarding challenging the dog tracking evidence. App. 45, ll. 8-11. She had prepared cross-examination of the dog handler, “mostly in regard to the reliability” of dogs. App. 45, ll. 11-13.

The PCR judge recognized that attorneys have a duty to investigate. App. 77-78. However, the judge concluded that counsel’s “performance did not fall below the standard of professional norms.” App. 78. To support this conclusion, the PCR judge found “credible counsel’s testimony that she went to the bank, viewed the video of the incident, reviewed discovery provided by the state, and attempted to locate the potential witnesses provided” by Petitioner. App. 78. Further, the PCR court found “credible counsel’s testimony that she

researched issues on K-9 tracking reliability in preparation for trial.” App. 78. According to the PCR court, “counsel thoroughly investigated the facts and circumstances giving rise to [Petitioner]’s charges, as well as possible defenses, and therefore [Petitioner] failed to establish deficiency of counsel.” App. 78. Furthermore, the court found Petitioner “failed to establish prejudice” because he “failed to establish what additional investigation counsel should have performed as well as what benefit such investigation would have yielded.” App. 78.

### **Discussion**

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). The right to the effective assistance of counsel extends to the plea-bargaining process. Lafler v. Cooper, 566 U.S. 156, 162 (2012); Missouri v. Frye, 566 U.S. 133, 141 (2012); Padilla v. Kentucky, 559 U.S. 356 (2010); Hill v. Lockhart, 474 U.S. 52, 57-59 (1985); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), *overruled on other grounds by* Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). “The benchmark for judging any claim of ineffectiveness must be whether 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.” Strickland v. Washington, 466 U.S. 668, 686 (1984).

To prove ineffective assistance of counsel, “the defendant must show that counsel’s performance was deficient” and “that the deficient performance prejudiced the defense.” Id. “When a convicted defendant complains of the ineffectiveness of counsel’s assistance, the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” Id. at 687-688. “[T]he performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” Id. at 688. Concerning prejudice, “a defendant need not show that counsel’s deficient conduct more likely than not altered the

outcome in the case.” Rather, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694.

The two-pronged test adopted in Strickland “applies to challenges to guilty pleas based on ineffective assistance of counsel.” Hill v. Lockhart, 474 U.S. 52, 58 (1985). “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). “[I]n the context of determining the voluntariness of a guilty plea that is entered upon the advice of counsel,” the deficiency prong of the Strickland test requires “an inquiry into whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” Alexander, 303 S.C. at 542, 402 S.E.2d at 485. “The defendant’s undisputed testimony that he would not have pled guilty to the charges but for trial counsel’s advice is sufficient to prove that defendant would not have pled guilty.” Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006).

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* 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 434-435.

Without question, a trial attorney “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (quoting Strickland, 466 U.S. at 691). “[C]ounsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment.” Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” Id. at 265, 763 S.E.2d at 634 (quoting Ard v. Catoe, 372 S.C. 318, 331-332, 642 S.E.2d 590, 597 (2007)).

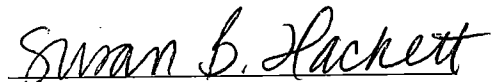
Although attorneys are not required to investigate every conceivable defense no matter how unlikely the effort would be to assist the defendant, the decision not to investigate must be reasonable. Wiggins v. Smith, 539 U.S. 510, 533 (2003) (holding counsel’s decision not to extend their investigation fell short of prevailing professional norms in light of their failure to retain a forensic social worker to prepare a social history report, which was standard practice in the state at the time, and their failure to investigate all reasonably available mitigating evidence); see also Von Dohlen v. State, 360 S.C. 598, 605, 602 S.E.2d 738, 742 (2004) (holding trial

counsel's investigation concerning Von Dohlen's mental state was not reasonable despite the fact that counsel made "some effort" where the defense psychiatrist testified during post-conviction proceedings that had he been provided with the additional medical and psychiatric records that post-conviction counsel uncovered, he would have testified Von Dohlen suffered from "major depressive episodes with severe symptoms of anxiety and possible prepsychotic features").

Plea counsel's failure to investigate the facts and circumstances surrounding the charges against Petitioner, which forced Petitioner to enter a guilty plea. Petitioner explained that he pled guilty on the day his trial was to begin because he "was not feeling too good about" the work that his lawyer had on his case. App. 62, ll. 10-21. Based on plea counsel's lack of preparation and investigation, Petitioner knew he had no chance at trial. App. 62, l. 22 – App. 63, l. 10. Plea counsel admitted she had been practicing law only two years when she was assigned to represent Petitioner. Further, plea counsel admitted she represented Petitioner for only two months prior to his plea date, which was the same date his trial was scheduled to start. During those two short months, plea counsel did the only – albeit minimal – investigation of Petitioner's charges. Her investigation consisted of a visit to the bank and request for additional videos. Plea counsel never found or interviewed any of Petitioner's witnesses, which was not surprising, in light of her notes not correctly identifying the names of the witnesses. Had plea counsel properly investigated Petitioner's case and prepared for trial, Petitioner would not have entered a guilty plea, but he would have insisted upon a trial. The PCR judge erred by denying Petitioner relief.

**CONCLUSION**

Petitioner respectfully requests this Court grant certiorari on the issue presented.

  
Susan B. Hackett  
Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of May, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Abbeville County  
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SHAQUEAN NEWJEAN LEWIS,

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PETITION TO BE RELIEVED AS COUNSEL

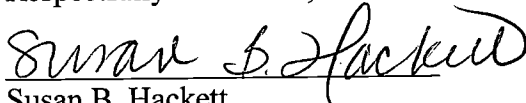
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Counsel for Shaquean Newjean Lewis states:

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 before Judge Brian M. Gibbons, which was held on October 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 Shaquean Newjean Lewis.

Respectfully Submitted,

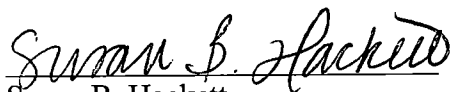


Susan B. Hackett  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 20th day of May, 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."



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ATTORNEY FOR PETITIONER

This 20th day of May, 2019.

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SHAQUEAN NEWJEAN LEWIS,

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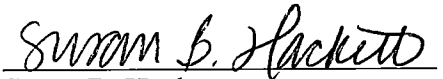
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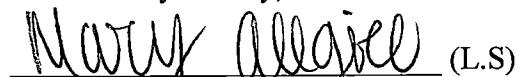
RESPONDENT

—————  
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 Janell Gregory, 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 Shaquean Newjean Lewis, #370044, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335, this 20th day of May, 2019.

  
Susan B. Hackett  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 20th day of May, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027