

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**ORIGINAL**

\_\_\_\_\_  
Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

\_\_\_\_\_  
CHARLES J. DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002066

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Taylor D Gilliam  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

**RECEIVED**  
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S.C. SUPREME COURT

**INDEX**

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT.....4

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL.....9

**ISSUE PRESENTED**

Whether the PCR court erred in denying relief, where Petitioner's plea was entered involuntarily, where counsel advised to Petitioner to plead guilty on an attempted murder charge with a recommended maximum sentence of twenty-five years, where Petitioner had previously declined an offer of fifteen years, and where counsel repeatedly suggested that Petitioner plead guilty and never discussed with him any applicable defenses?

## STATEMENT

Petitioner was indicted by a Florence County grand jury on October 3, 2013 on the charges of armed robbery, burglary in the first degree, attempted murder, and possession of a weapon during the commission of a violent crime. App. 102 – 104. On January 8, 2015, he was also indicted for two additional counts of attempted murder and possession of a weapon during the commission of a violent crime. App. 105 – 106. The two incidents were unrelated. App. 68 ll. 19 – 20. On June 9, 2014, Petitioner appeared before the Honorable William H. Seals, Jr. and pleaded guilty to one of the attempted murder charges. App. 1. John Jeperntinger appeared on behalf of the state, and Karen Parrott represented Petitioner.

The facts giving rise to the attempted murder charge as alleged by the state occurred on April 21, 2013. App. 7 l. 21 – App. 10 l. 3. Petitioner supposedly shot a woman four times in the throat and head area. Id. The solicitor indicated that Petitioner confessed and cooperated with law enforcement. Id.

The state recommended a maximum sentence of twenty-five years and dismissed the remaining charges. App. 5 l. 19 – App. 6 l. 8. The plea judge accepted the plea and found that it was made freely and intelligently. App. 10 ll. 20 – 22. Petitioner was sentenced to twenty-four years and received credit for time served. App. 14 ll. 21 – 22.

Petitioner filed a timely application for post-conviction relief on February 23, 2015. App. 16 – 28. It contained allegations of ineffective assistance of counsel and included a memorandum in support of his application. The state filed its Return and Motion for a More Definite Statement on or about December 19, 2017. App. 29 – 35.

An evidentiary hearing was convened on January 31, 2018 before the Honorable Michael G. Nettles. Jonathan Waller represented Petitioner, and Lindsey McCallister appeared on behalf

of the state. Petitioner and plea counsel testified at the hearing. The PCR court denied relief at the conclusion of the hearing and asked counsel for the state to prepare an order. App. 88 ll. 5 – 11. The Order of Dismissal was filed on October 18, 2018. The PCR court found Petitioner failed to prove that plea counsel's performance was deficient. App. 98.

This petition follows.

## ARGUMENT

**The PCR court erred in denying relief, where Petitioner's plea was entered involuntarily, where counsel advised to Petitioner to plead guilty on an attempted murder charge with a recommended maximum sentence of twenty-five years, where Petitioner had previously declined an offer of fifteen years, and where counsel repeatedly suggested that Petitioner plead guilty and never discussed with him any applicable defenses.**

### Relevant facts

Petitioner was unable to make bond while in jail following his arrest. App. 43 ll. 2 – 24. During the pendency of plea counsel's representation, she repeatedly told Petitioner that he needed "to plead guilty or [he is] going to get 130 [years] plus life." App. 45 ll. 2 – 6. Counsel never discussed with Petitioner what the state would have to prove in order for him to be found guilty at trial. App. 45 ll. 7 – 11. The two never spoke about any potential defenses that could have been raised at trial; counsel repeatedly suggested that Petitioner should plead guilty. App. 46 ll. 11 – 16; App. 48 ll. 12 – 18; App. 57 ll. 5 – 8; App. 63 ll. 12 – 15. According to Petitioner, trial was imminent at the time of his plea. App. 48 l. 22 – App. 49 l. 4. However, discussions had not yet taken place regarding the possibility of a trial at that point. App. 49 ll. 5 – 21. Counsel, appointed in Petitioner's case, only met with him two or three times. App. 52 ll. 19 – 24; App. 64 l. 23 – App. 65 l. 6. Petitioner never received a complete copy of discovery materials. App. 55 ll. 2 – 15.

Regarding the events giving rise to his arrest, Petitioner maintained that he never crossed the doorway at the home on the night in question such that the burglary charge should be dropped. App. 45 ll. 12 – 24. He correctly asserted that would have been a meritorious defense

had he gone to trial. App. 47 ll. 16 – 25. Accordingly, he elected not to plead guilty when offered a fifteen year sentence. App. 70 ll. 4 – 18.

At the evidentiary hearing, Petitioner proceeded on four grounds: failure to conduct a complete investigation, failure to prepare for trial, erroneously advising Petitioner to plead guilty, and failure to discuss potential defenses with Petitioner. App. 40 l. 8 – App. 41 l. 4. PCR counsel argued that the above failures resulted in an involuntary guilty plea. Id.

According to counsel, Petitioner “always admitted that he had shot her four times.” However, he indicated he was under duress and that “he had been ordered to do the hit or something would be happening to him.” App. 79 l. 4 – App. 80 l. 16. Plea counsel testified that law enforcement officers she had spoken with were “okay with a sentence in the 15 to 20 year range.” App. 82 l. 25 – App. 83 l. 10.

### Discussion

According to Petitioner, “[t]he only thing [plea counsel] ... kept saying was plead guilty.” App. 46 ll. 11 – 16. Plea counsel never discussed with Petitioner any applicable defenses at trial. Because he was unaware of available defenses, he simply chose to plead guilty. Plea counsel’s continual coercion left him with no choice but to plead guilty.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). To establish ineffective assistance of counsel, a PCR applicant must show: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense. Strickland, 466 U.S. at 687. To show deficient performance, an applicant must prove “counsel's representation [fell] below an objective standard of reasonableness.” Id. at 688. To demonstrate prejudice, an applicant must show “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.” Smith v. State, 386 S.C. 562, 565–66, 689 S.E.2d 629, 631 (2010) (quoting Strickland, 466 U.S. at 694).

An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The “prejudice,” requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

“In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial.” Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). The PCR court should also evaluate “the strength of the State's case in light of all the evidence presented to the jury.” Id. Generally, “the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice.” Id. However, “the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice.” Id. at 189, 810 S.E.2d at 844.

Counsel had an opportunity to convince Petitioner to take a plea with a recommended sentence of fifteen years. Based upon Petitioner's choice to decline that offer, it was evident that he likely wanted to proceed with a jury trial. If given the choice between a fifteen year and

twenty-four year sentence, he would have taken the former. However, because he did not have any knowledge of applicable defenses at trial, he chose to plead guilty. This was not a decision Petitioner made voluntarily; he was repeatedly advised by his appointed attorney to proceed with that route. It was as if trial was never an option. Therefore, based upon counsel's unprofessional errors, Petitioner received ineffective assistance of counsel. He pleaded guilty and received a lengthier sentence than originally offered. Had counsel provided effective representation, Petitioner would have pleaded guilty and received the fifteen year sentence or gone to trial to contest the charges.

**CONCLUSION**

Based on the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari and allow further briefing on the issue raised herein.

A handwritten signature in black ink, appearing to read "Taylor D Gilham", written over a horizontal line.

Taylor D Gilham  
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of August, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

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CHARLES J. DAVIS,

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PETITION TO BE RELIEVED AS COUNSEL

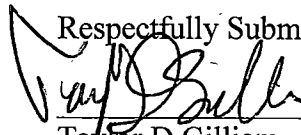
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Counsel for Charles J. Davis states:

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 Michael G. Nettles, which was held on January 31, 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 Charles J. Davis.

Respectfully Submitted,



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Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of August, 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."



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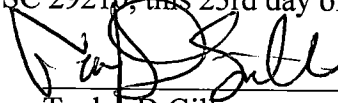
RESPONDENT

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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 Lindsey McCallister, 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 Charles J. Davis, #326311, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 23rd day of August, 2019.



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Taylor D Gilliam  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 23rd day of August, 2019.

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