

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

\_\_\_\_\_  
KRISTOPHER BLOCK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000480

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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## **ISSUE PRESENTED**

Whether the PCR court erred where it found counsel provided effective representation where there was evidence that petitioner asked counsel to have DNA evidence tested, since petitioner would not have pleaded guilty but would have exercised his right to trial if he had the opportunity to view the DNA results?

## STATEMENT

On July 15, 2015, a Richland County Grand Jury indicted petitioner for the offenses of criminal sexual conduct with a minor in the first degree and trafficking in persons under the age of eighteen. App. 86 – 89.

On January 12, 2016, petitioner appeared before the Honorable Clifton G. Newman for a plea hearing. App. 1. Petitioner was represented by Taylor Bell and the state was represented by Heather Weiss. App. 1. At the hearing, petitioner pleaded guilty to trafficking in persons under the age of eighteen, and he entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), on the charge of criminal sexual conduct with a minor in the first degree.<sup>1</sup> Petitioner was also charged with promoting prostitution and resisting arrest, and those charges were dropped as part of the plea bargain. App. 3, ll. 16-19.

Petitioner entered these pleas pursuant to a negotiated plea offer from the state that specified a sentencing range of between ten and fifteen years of incarceration. App. 3, l. 25 – 4, l. 2. The court accepted petitioner's pleas and sentenced him to concurrent terms of fifteen years on each charge. App. 16, ll. 9-13. Petitioner received credit for four hundred and five days of pretrial incarceration. App. 16, ll. 14-18. No direct appeal was taken.

On March 8, 2016, petitioner filed an application for post-conviction relief (PCR). App. 19 – 25. The state made its return and partial motion to dismiss on December 16, 2016. App. 26 – 32. On July 10, 2017, petitioner filed an amended application for PCR. App. 33 – 34.

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<sup>1</sup> Although the minor in the case was fourteen years old, petitioner was charged with first degree criminal sexual conduct based on his prior record. App. 9, l. 22 – 10, l. 16.

On July 21, 2017, a hearing was held on the matter before the Honorable G. Thomas Cooper. App. 35. Jonathan Waller represented petitioner and Jessica Kinard represented the state. App. 35. The court heard testimony from petitioner and from his plea counsel. App. 36.

Petitioner testified that DNA swabs were taken in his case, but the DNA was never tested. App. 44, ll. 11-20. Petitioner did not confess to having sex with the minor, and, as noted above, he pleaded pursuant to *Alford* on the criminal sexual conduct charge. App. 8, ll. 20-21. Petitioner explained to the PCR judge that he wanted to see the DNA results, and that when he went to court on the day of his pleas, he even hoped to obtain the results while in court. App. 46, l. 12 – 48, l. 10. Petitioner offered that he did asked his plea counsel to have the DNA tested. App. 46, l. 22.

Petitioner said that DNA testing would prove that he did not have sex with the minor. App. 54, ll. 4-8. Petitioner maintained that if counsel had properly investigated the case, he would have exercised his right to trial. App. 51, ll. 5-9. Conversely, plea counsel testified that he did discuss the possibility of getting DNA testing done, but he claimed that petitioner instead wanted to seek a speedy plea offer. App. 58, l. 9 – 59, l. 2. According to counsel, petitioner did not ask him to have the DNA evidence tested. App. 61, l. 24 – 62, l. 1.

On April 18, 2018, the PCR court issued an order of dismissal. App. 72 – 85. The order noted petitioner’s testimony that he wanted to see the results of DNA testing. App. 76. “He testified he wanted to review the DNA results to disprove the allegation that he had sexual intercourse with the victim.” App. 76. Nevertheless, the court denied petitioner relief.<sup>2</sup> App. 85.

This petition for writ of certiorari follows.

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<sup>2</sup> The order also noted plea counsel’s testimony that petitioner did not wish to review DNA results, and his claim that petitioner instead wanted to seek a plea bargain. App. 83. The order stated the PCR court found plea counsel’s testimony on this matter was credible and petitioner’s testimony on this allegation was not credible. App. 83.

## ARGUMENT

The PCR court erred where it found counsel provided effective representation where there was evidence that petitioner asked counsel to have DNA evidence tested, since petitioner would not have pleaded guilty but would have exercised his right to trial if he had the opportunity to view the DNA results.

Counsel provided deficient representation when he advised petitioner to plead guilty even though petitioner asked counsel to seek DNA testing of evidence that petitioner maintained would be exculpatory. This resulted in the entry of pleas that were not knowingly, voluntarily, and intelligently tendered.

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). A defendant is entitled to the effective assistance of competent counsel before deciding whether to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985).

“In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) counsel’s deficient performance prejudiced the applicant’s case.” *McKnight v. State*, 378 S.C. 33, 40, 661 S.E.2d 354, 357 (2008) (citing *Strickland*, 466 U.S. at 687). “[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill*, 474 U.S. at 58.

A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) that counsel’s representation fell below an objective standard of reasonableness and (2) that there is a reasonable

probability that but for counsel's errors, the defendant would not have pleaded guilty but would have insisted on going to trial.

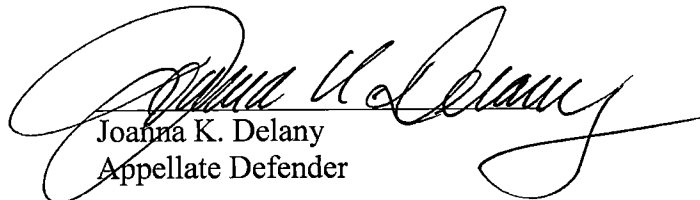
*Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997).

To establish prejudice when challenging a guilty plea, a PCR applicant must prove "there is a reasonable probability that, but for, counsel's errors, the defendant would not have pled guilty, but would have gone to trial." *Harden v. State*, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). "The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial." *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018).

Here, counsel's representation fell below an objective standard of reasonableness. Petitioner established prejudice through his testimony that he would have exercised his right to trial had counsel investigated this exculpatory evidence.

**CONCLUSION**

Based on the foregoing argument, petitioner respectfully requests that a writ of certiorari be granted to allow full briefing of this issue.



Handwritten signature of Joanna K. Delany in black ink, written over a horizontal line.

Joanna K. Delany  
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of October, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

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KRISTOPHER BLOCK,

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PETITION TO BE RELIEVED AS COUNSEL

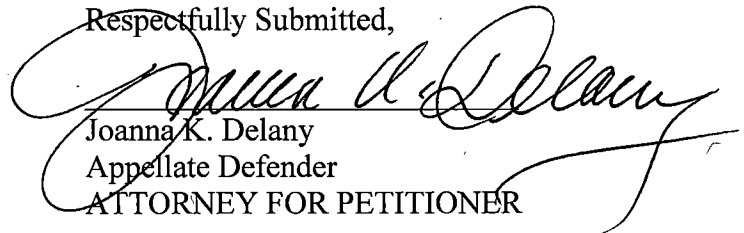
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Counsel for Kristopher Block states:

1. She is 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 G. Thomas Cooper, which was held on July 21, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
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 Kristopher Block.

Respectfully Submitted,

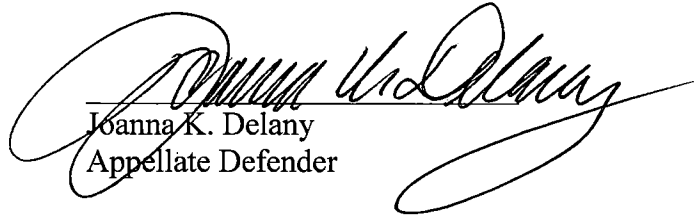


Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 8th day of October, 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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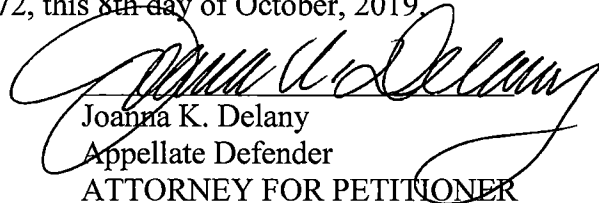
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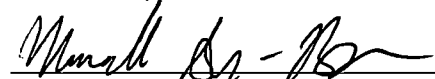
RESPONDENT

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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 Kristopher Block, #355461, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 8th day of October, 2019.

  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 8th day of October, 2019.

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