

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County

S.C. SUPREME COURT

Honorable Thomas A. Russo, Circuit Court Judge  
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DEDERICK T. BRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000766  
\_\_\_\_\_

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

Jessica M. Saxon  
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

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The PCR court erred in finding that Petitioner’s guilty plea was knowingly and voluntarily made where Petitioner was coerced into accepting the plea and did not understand the elements of the charge against him, the consequences of entering the plea, or the constitutional rights he was waiving by entering the plea.....4

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**ISSUE PRESENTED**

Did the PCR court err in finding that Petitioner's guilty plea was knowingly and voluntarily made where Petitioner was coerced into accepting the plea and did not understand the elements of the charge against him, the consequences of entering the plea, or the constitutional rights he was waiving by entering the plea?

## STATEMENT

Petitioner was indicted on October 20, 2015, by a Charleston County Grand Jury for criminal sexual conduct with a minor, first degree. App. 115-116. On August 8, 2016, Petitioner pled guilty in front of the Honorable Benjamin Culbertson to the lesser included charge of criminal sexual conduct with a minor, second degree. App. 1; App. 3. Petitioner was represented by Charles Cochran. App. 1. Debbie Herring-Lash appeared on behalf of the state. App. 1.

Judge Culbertson conducted a plea colloquy with Petitioner. App. 3-10; App. 14. The facts alleged in support of the plea were that Petitioner picked up Minor, who was walking to a grocery store, and told Minor they would go find “some weed.” App. 11, ll. 12-17. While driving around Petitioner gave Minor alcohol, then parked at a Church’s Chicken and proceeded to “sexually assault”<sup>1</sup> Minor. App. 11, ll. 18-23. Minor reported the details of the incident to law enforcement the following day. App. 12, ll. 6-12. Minor was fifteen years old at the time of the incident. App. 11, ll. 6-7.

Petitioner agreed with the state’s presentation of the facts and the court accepted the guilty plea. App. 14, ll. 1-2; App. 20, ll. 11-16. Petitioner was sentenced to twelve years imprisonment. App. 20, ll. 17-18. Petitioner did not file an appeal of his guilty plea conviction or sentence. App. 24.

Petitioner filed a PCR application on August 31, 2017 alleging he was coerced into pleading guilty and that counsel had failed to investigate the case prior to the plea. App. 23-29. The state made its return on December 12, 2017. App. 30-35. PCR counsel Rodney Davis filed an amended PCR application on February 22, 2018, adding the additional allegation that plea

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<sup>1</sup> The Solicitor did not elaborate on what specific act or acts constituted the sexual assault.

counsel failed to ensure a substantial factual basis was presented by the state at the guilty plea. App. 36-37.

An evidentiary hearing was convened on February 17, 2018 before the Honorable Thomas Russo. App. 38. Petitioner was represented by Rodney Davis. App. 38. The state was represented by Rasheeda Cleveland. App. 38. Petitioner and plea counsel Cochran testified at the hearing. App. 39. The PCR court issued an order dismissing the application on April 16, 2019. App. 102-113. The PCR court reasoned that Petitioner knowingly and voluntarily entered a guilty plea, with the proper advice of counsel, that plea counsel provided representation within the “prevailing professional norms,” and that Petitioner suffered no prejudice. App. 102-133

This petition follows.

## ARGUMENT

The PCR court erred in finding that Petitioner's guilty plea was knowingly and voluntarily made where Petitioner was coerced into accepting the plea and did not understand the elements of the charge against him, the consequences of entering the plea, or the constitutional rights he was waiving by entering the plea.

### *Relevant Facts*

Petitioner, who was thirty-seven years old at the time of the PCR hearing, had some “mental deficiencies.” App. 46, ll. 13-16. He was in “resource” for reading and math while in school and stated his understanding is “delayed.”<sup>2</sup> App. 47, ll. 2-5; App. 67, ll. 5-10. It was important that things were explained slowly to Petitioner to ensure he understood them. App. 67, ll.11-13.

At the PCR hearing Petitioner testified that plea counsel never discussed the elements of criminal sexual conduct with a minor, first or second degree, with him and only told him that the penalty for second degree was “zero to twenty.” App. 51, ll. 1-14. Plea counsel never explained the trial process to Petitioner or told Petitioner about his trial rights. App. 54, l. 17-App. 55, l. 7. Petitioner further asserted that plea counsel did not explain the possibility of lifetime GPS monitoring or that the charge qualified as a “strike” offense and what constituted a “strike” offense. App. 56, l. 9-App, 57, l. 4.

When asked about defenses to the charge, Petitioner was told that he did not have any defense to the allegation. App. 52, ll. 16-18. Petitioner also stated plea counsel never discussed the merits of the case with him. App. 53, ll. 12-18. On the date of the plea, plea counsel told Petitioner that he was pleading to criminal sexual conduct, second degree and

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<sup>2</sup> PCR Counsel Rodney Davis described Petitioner's mental state as “educated but slow.” App. 93, ll. 15-16.

Petitioner said he was “not pleading to anything.” App. 58, ll. 20-24. Petitioner testified that plea counsel then told him he was pleading guilty, or they would go to trial in December. App. 58, l. 25-App. 59, l. 3. Petitioner requested to speak with his parents and plea counsel brought his father into the room. App. 59, ll. 11-12. Petitioner stated that his father had been coerced by plea counsel into convincing Petitioner to enter a plea. App. 59, ll. 12-14.

Petitioner testified that plea counsel did not make a recommendation about the plea but rather told petitioner that he was going to take it. App. 60, ll. 9-13. Petitioner thought that plea counsel was not “trying to do anything” for him and that counsel had not done anything to prepare for trial. App. 61, ll. 16-23. Had Petitioner seen counsel “actively defend him” he would have gone to trial instead of entering a guilty plea. App. 62, l. 23-App. 63 l. 24.

Petitioner testified that if plea counsel had not pushed him into the plea, had not gotten his father to put pressure on him to plea, and had given him enough time to think about the plea offer Petitioner would have gone to trial. App. 64, ll. 2-9. Petitioner and plea counsel spoke for fifteen to twenty minutes before entering the plea. App. 59, ll. 19-22; App. 60, ll. 22-24. At no point during the representation did Petitioner indicate that he wanted to plead guilty. App. 64, ll. 17-23.

Plea counsel testified that he did review Petitioner’s rights with him and that he explained the trial process just prior to Petitioner entering the plea. App. 75, ll. 19-25; App. 77, ll. 5-12. He further stated he had represented Petitioner before and was confident that Petitioner had understood their conversations. App. 82, ll. 10-21. However, plea counsel testified that Petitioner repeatedly expressed confusion about why he could not present a defense of consent. App. 82, ll. 22-25. Counsel asserted he told Petitioner several times that consent was not a defense because the alleged victim was only fifteen years old at the time of the incident. App.

82, l. 25-App. 83, l. 2. Plea counsel stated he had this discussion with Petitioner every time they met. App. 83, ll. 2-4. Plea counsel did not offer testimony that he counseled Petitioner on the collateral consequences of the plea such as the lifetime GPS monitoring or the fact that it was a “strike” offense. Plea counsel did admit that Petitioner never indicated he wanted to enter a plea prior to coming to court the day the plea was entered. App. 78, ll. 19-24.

### ***Discussion***

A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969). Additionally, before a plea can be accepted a defendant must be aware of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000).

Petitioner never understood the elements of the offense, the consequences of his plea, or the rights that he was waiving in entering a guilty plea. This lack of knowledge and understanding surrounding his guilty plea, combined with the coercive actions of plea counsel, and Petitioner’s mental deficiencies, rendered the plea unknowing and involuntary.

Petitioner testified that, on the day of the plea, he spoke with plea counsel for fifteen to twenty minutes just prior to going before the judge. It was during this meeting that plea counsel stated he explained Petitioner’s trial rights, the charge against him and what rights Petitioner would give up by entering a plea. Given Petitioner’s delayed understanding it is unreasonable to conclude that during this short meeting Petitioner was able to comprehend the advice, if it was in fact given, and fully appreciate the ramifications of his actions in accepting the plea. The same is true of the plea colloquy. While the judge fully informed Petitioner of the sentencing,

collateral consequences and constitutional rights, it is unlikely that Petitioner was able to understand this information, particularly if he was hearing it for the first time.

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. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); 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 (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).

Notably, Petitioner contended it was not under advice of counsel that he pled but under a mandate from counsel. Petitioner was told *he would be entering a plea* that day in court or going to trial. Considering Petitioner had not received adequate advice or assistance from plea counsel the threat of proceeding to trial with an ineffective advocate created a coercive environment that compelled him to enter the plea. More importantly, Petitioner maintained that had he understood the elements of the charge, the consequences of the plea, and his rights he would not have entered a plea but *would have proceeded to trial* on the original charge of criminal sexual conduct with a minor, first degree.

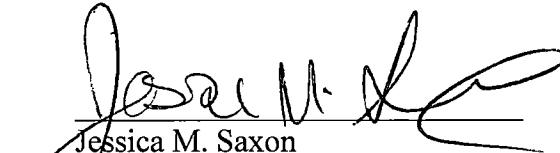
Finally, in the order dismissing Petitioner's PCR application, the PCR court found the plea transcript to be dispositive and did not take into consideration the testimony presented by Petitioner at the PCR hearing. App. 110. The only evidence from the PCR hearing that was considered was plea counsel's testimony that he did not coerce Petitioner into entering a guilty

plea. App. 110. “[T]he voluntariness of a guilty plea is not determined by an examination of the 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 the record of the post-conviction hearing.” Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

The failure to consider Petitioner’s testimony regarding his mental deficiencies and his understanding of what occurred was error. The record reveals that the only thing Petitioner fully understood was that he was facing “zero to twenty” years on a plea to criminal sexual conduct, second degree. He had no understanding of what the state needed to prove, how trial would proceed, what evidence could be used at trial, or of the numerous collateral consequences he faced as a result of the plea. This lack of understanding, combined with plea counsels’ threat of trial, created a coercive environment and led to an involuntary guilty plea.

**CONCLUSION**

For the foregoing reasons, this Court should grant Petitioner's writ of certiorari to allow full briefing on this issue.

  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 12th day of November, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County

Honorable Thomas A. Russo, Circuit Court Judge

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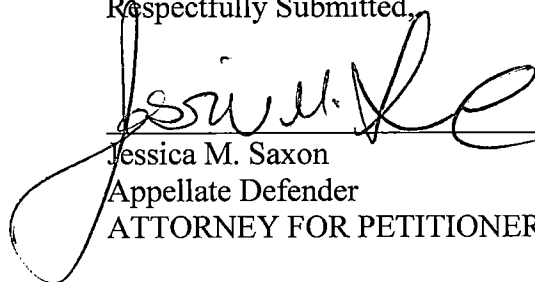
PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Dederick T. Bright 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 Thomas A. Russo, which was held on February 27, 2018, 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 Dederick T. Bright.

Respectfully Submitted,

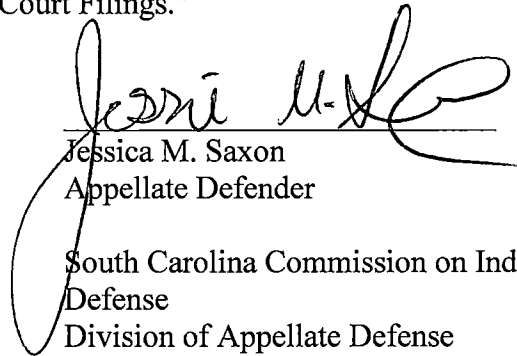


Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 12th day of November, 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."



Jessica M. Saxon  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 12th day of November, 2019.

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PETITIONER

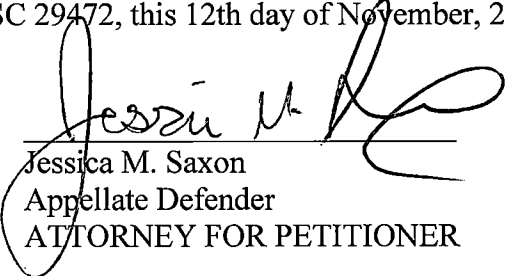
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STATE OF SOUTH CAROLINA,

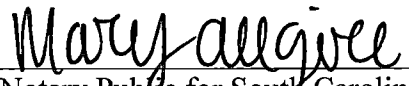
RESPONDENT

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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 Dederick T. Bright, #369263, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 12th day of November, 2019.

  
\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 12th day of November, 2019.

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