

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

Honorable Kristi F. Curtis, Circuit Court Judge  
\_\_\_\_\_

JAMES LAMAR TRAPP,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000848  
\_\_\_\_\_

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**

Did the PCR judge err in denying Petitioner PCR relief where his plea counsel failed to file a motion to reconsider Petitioner's sentence after he requested her to do so?

## STATEMENT

Petitioner was indicted by the Richland County grand jury in December of 2015 for two counts of armed robbery, two counts of kidnapping, and one count of attempted armed robbery. He was also indicted by the Richland County grand jury in February 2017 for two counts of kidnapping, and two counts of armed robbery. App. 101 – 114. The state served Petitioner with notice of its intent to seek a sentence of life without parole (LWOP) pursuant to S.C. Code § 17-25-45 based upon his prior conviction for four counts of attempted armed robbery. App. 6, ll. 3 – 5.

Petitioner was called to trial on April 10, 2017 before the Honorable Clifton Newman on one count of attempted armed robbery and one count of armed robbery. App. 6, ll. 6 – 17. After beginning pretrial motions, the trial judge interrupted defense counsel, Megan Eigenbrot, and asked to speak directly with Petitioner. After this colloquy, Petitioner was permitted to speak with his mother and he then decided to plead guilty. App. 8, l. 17 – 13, l. 10.

Petitioner then pled guilty to four counts of armed robbery, four counts of kidnapping, and one count of attempted armed robbery. App. 13, ll. 6 – 10. The state withdrew its intention to seek a sentence of LWOP and instead agreed to a negotiated sentencing range of forty-five to fifty years imprisonment. App. 13, ll. 11 – 13. The judge sentenced Petitioner to an aggregate sentence of forty-five years imprisonment. App. 26, l. 24 – 27, l. 3.

Petitioner filed an application for PCR on January 17, 2018. App. 29. The state made its Return on May 31, 2018. App. 37. Petitioner then filed an amended application for PCR on September 6, 2018 through his attorney, Jonathan Waller. App. 35.

An evidentiary hearing was held on February 21, 2019 before the Honorable Kristi Curtis. App. 43. Petitioner was represented by Jonathan Waller and the state was represented by

Samuel Key. App. 43. Petitioner testified on his own behalf and his plea counsel, Megan Eigenbrot, also testified. App. 44.

Petitioner testified that after pleading guilty he asked Eigenbrot to file a motion for the judge to reconsider his sentence but was unsure if she ever did so. App. 59, l. 10 – 60, l. 3. Eigenbrot testified that she did not believe Petitioner asked her to file a motion to reconsider his sentence. App. 77, ll. 1 – 3.

The PCR judge found Petitioner's testimony that he requested Eigenbrot to file a motion to reconsider his sentence to be not credible. App. 94. The PCR judge further found that Petitioner failed to show prejudice because he was sentenced to the minimum of the negotiated range agreed upon by him and the state. App. 95. The PCR judge denied Petitioner's application. App. 99.

This petition for writ of certiorari follows.

## ARGUMENT

The PCR judge erred in denying Petitioner PCR relief because his plea counsel failed to file a motion to reconsider Petitioner's sentence after he requested her to do so.

In order to prove ineffective assistance of counsel, Petitioner must show that "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); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient," meaning that it fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) citing Strickland, 466 U.S. at 688. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) citing Strickland, 466 U.S. at 668. Criminal defendants have a right to effective assistance of counsel during the plea negotiating process. Missouri v. Frye, 566 U.S. 134, 144 (2012).

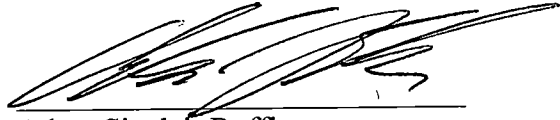
Here, Petitioner testified under oath that he asked Eigenbrot to file a motion to reconsider his sentence. Eigenbrot did not directly refute this claim, she only stated that she did not believe that he had asked her to do so. She did acknowledge that, in preparation for the plea, she advised Petitioner that he could file a motion to reconsider the sentence if he wanted to.

In State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981), this Court held that “the authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion.” Furthermore, in State v. Higgenbottom, 344 S.C. 11, 17, 542 S.E.2d 718, 721 (2001), this Court found that it was a violation of due process for a sentencing judge to *increase* a defendant’s sentence after he moved for the judge to reconsider the sentence where the judge “failed to put on the record objective reasons for the harsher sentence.”

Since it was extremely unlikely that the judge would have increased Petitioner’s sentence, it was illogical for Eigenbrot not to abide by Petitioner’s wishes and move for a reconsideration of Petitioner’s sentence. Eigenbrot’s failure to move for a reconsideration of Petitioner’s sentence after he requested her to do so constituted ineffective assistance of counsel and therefore, the PCR judge erred in denying Petitioner’s application. See State v. Higgenbottom, 344 S.C. 11, 542 S.E.2d 718 (2001).

**CONCLUSION**

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented.



Adam Sinclair Ruffin  
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of November, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

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Counsel for James Lamar Trapp 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 Kristi F. Curtis, which was held on February 19, 2019, 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 James Lamar Trapp.

Respectfully Submitted,



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Adam Sinclair Ruffin  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 27th day of November, 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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This 27th day of November, 2019.

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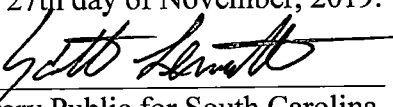
RESPONDENT

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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 Samuel Key, 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 James Lamar Trapp, #347026, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of November, 2019.

  
\_\_\_\_\_  
Adam Sinclair Ruffin  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 27th day of November, 2019.

  
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(L.S)  
Notary Public for South Carolina  
My Commission Expires: September 27, 2028.