

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**ORIGINAL**

Certiorari to Lancaster County  
Honorable Paul M. Burch, Circuit Court Judge

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**RECEIVED**

JAN 06 2020

KEISHAWN MCMANUS,

S.C. SUPREME COURT  
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001042

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PETITION FOR WRIT OF CERTIORARI

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The PCR court erred in finding plea counsel effective where plea counsel misadvised Petitioner of the sentencing range and promised Petitioner a sentence of ten to fifteen years if he pled guilty to voluntary manslaughter where Petitioner ultimately received a sentence of twenty-one years imprisonment. ....7

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## **ISSUE PRESENTED**

### **I.**

Whether the PCR court correctly grant Petitioner a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), where the undisputed evidence showed Petitioner never knowingly and voluntarily waived his right to a direct appeal?

### **II.**

Whether the PCR court erred in finding plea counsel effective where plea counsel misadvised Petitioner of the sentencing range and promised Petitioner a sentence of ten to fifteen years if he pled guilty to voluntary manslaughter where Petitioner ultimately received a sentence of twenty-one years imprisonment?

## STATEMENT OF THE CASE

On April 14, 2016 Petitioner was indicted by a Lancaster County grand jury for murder and possession of a weapon during the commission of a violent crime. App. 92-93. The charge stemmed from an incident on December 23, 2014 where Petitioner's girlfriend, Quatavia Robinson, was shot. App. 9, l. 18- App. 10, l. 6. Petitioner initially asserted that he had discovered Robinson dead from apparent suicide. He had text messages from Robinson that indicated she was thinking of hurting herself. App. 10, ll. 3-8. Petitioner later told his mother that he was present when Robinson had been shot and her death was the result of an accident. App. 13, ll. 1-4.

During the autopsy of Robinson, no burning, charring, stippling or soot was found near the gunshot wound. The forensic pathologist opined that the physical characteristics of the wound, the flight path of the bullet, and the position Robinson was found in did not support a self-inflicted injury but rather that someone else had shot and killed Robinson. App. 10-12. Law enforcement's investigation led them to suspect the boyfriend, Petitioner. He was arrested a year later and charged with murder. App. 13, ll. 18-19.

On December 19, 2017, Petitioner appeared before the Honorable Brian M. Gibbons to enter a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). App. 1; App. 3. The state was represented by Lisa Collins. Creighton Coleman represented Petitioner. App. 1. Petitioner pled guilty to the lesser included charge of voluntary manslaughter. App. 3. He received a twenty-one-year sentence in the department of corrections. App. 26.

Petitioner filed an application for post-conviction relief on April 13, 2018. App. 28-34. The state filed a return dated October 24, 2018. App. 35-41. An amended PCR application, dated November 13, 2018, was filed by PCR Counsel Donae Minor alleging, inter alia, that

counsel had failed to file a direct appeal of the guilty plea and that Petitioner had been promised a lower sentence in exchange for the plea. App. 42-43.

An evidentiary hearing was convened on January 23, 2019 before the Honorable Paul M. Burch. Petitioner was represented by Donae Minor. The state was represented by Samuel Key. App. 44. Petitioner and Counsel Coleman testified at the hearing.

Testimony revealed that after the plea Petitioner requested that Counsel Coleman file an appeal on his behalf. Further, when Petitioner was returned to the county jail after court the day of the plea, he also put the request for an appeal in a letter to Counsel Coleman. App. 53, ll. 19-25. Counsel Coleman admitted that Petitioner did ask for an appeal but that “it slipped through the cracks” and was not filed. App. 64, ll. 6-9.

Petitioner testified that Counsel Coleman guaranteed him that he would get a sentence between ten and fifteen years. Further, Counsel Coleman told Petitioner that the charge of voluntary manslaughter carried zero to twenty years. App. 54, ll. 4-15. Petitioner only found out that the charge carried two to thirty years when he was entering the plea. App. 52, ll. 16-18. Petitioner stated that if he had known of the higher sentencing range and that he would get more than the promised fifteen years, he would have gone to trial instead of entering a plea. App. 54, ll. 16-19.

Counsel Coleman testified that he met with the judge and solicitor to work out a resolution to the case. App. 63, ll. 15-16. He remembered the judge stating that twenty years would be a fair sentence, but it would ultimately depend on what happened during the plea. Counsel Coleman stated he told Petitioner that the judge was considering twenty years, but he could get more or less than twenty years because it was a straight up plea without negotiations or recommendations. App. 68, ll. 7-16. Counsel Coleman admitted that Petitioner was correct that

he told Petitioner he could get a lower sentence than twenty years but stated he never promised Petitioner an exact number. App. 63, l. 24-App. 64, l. 2.

The PCR court found that, based on the testimony at the evidentiary hearing, Petitioner did not knowingly and voluntarily waive his direct appeal right. Petitioner was therefore entitled to a belated appeal. App. 80. Judge Burch's order granting belated appellate review pursuant to White v. State was filed on June 11, 2019. App. 73-91.

Judge Burch denied all of Petitioner's other claims with prejudice. Id. Specifically, regarding the promise of a lower sentence, the PCR court ruled that Petitioner knowingly accepted a recommended plea of twenty years, without coercion or promises, based on the advice of counsel. Id.

Petitioner now files this petition simultaneously with a brief addressing the direct appeal issues, as required by Rule 243(i), SCACR.

## ARGUMENT

### I.

The PCR court correctly granted Petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), where the undisputed evidence showed Petitioner never knowingly and voluntarily waived his right to a direct appeal.

“[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” *Simuel v. State*, 390 S.C. 267, 271, 701 S.E.2d 738, 739-740 (2010); *Clark v. State*, 396 S.C. 164, 719 S.E.2d 708 (2011). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.E.2d 493 (1967).” *Simuel* at 270.

The PCR judge’s ruling that Petitioner was entitled to a belated appeal is supported by the testimony from the evidentiary hearing. No evidence was presented to show that an intelligent and voluntary waiver of Petitioner’s right to an appeal occurred. In fact, Petitioner testified that he told Counsel Coleman both orally and in writing, right after the plea occurred, that he wanted Counsel Coleman to file an appeal.

Importantly, Counsel Coleman admitted that Petitioner requested an appeal be filed on his behalf right after the guilty plea. Further, Counsel Coleman admitted he made a mistake and failed to file an appeal. Failure of Counsel Coleman to follow the clear and reasonable

instructions from Petitioner to file a direct appeal was error. As such, the PCR court correctly found that Petitioner was entitled to a belated appeal pursuant to White v. State, supra.

## II.

The PCR court erred in finding plea counsel effective where plea counsel misadvised Petitioner of the sentencing range and promised Petitioner a sentence of ten to fifteen years if he pled guilty to voluntary manslaughter where Petitioner ultimately received a sentence of twenty-one years imprisonment.

At the PCR hearing Petitioner testified that he entered the plea based on counsel's advice that the sentencing range was zero to twenty years and on the guarantee that he would be sentenced to ten to fifteen years. Petitioner stated if he had known the actual sentencing range prior to entering the plea, along with the likelihood that he would receive more than fifteen years incarceration, he would not have pled guilty but gone to trial. Considering Petitioner's considerable health problems<sup>1</sup> it is understandable that the lower sentencing range and guarantee of a lower sentence would induce him to enter a plea.

The United States Supreme Court has held that "sentencing is a critical stage of the criminal proceeding at which [a defendant] is entitled to the effective assistance of counsel." Gardner v. Florida, 430 U.S. 349, 358 (1977). The Sixth Amendment provides a right to counsel during sentencing in both noncapital and capital cases. Lafler v. Cooper, 566 U.S. 156, 165 (2012). "Even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in Strickland prejudice because *any amount of additional jail time has Sixth Amendment significance.*" Id. (internal quotations and alterations omitted) (quoting Glover v. United States, 531 U.S. 198, 203 (2001)) (emphasis added).

Further, the Supreme Court has held that "[g]uilty pleas are no more foolproof than full

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<sup>1</sup> Petitioner suffers from a severe form of sickle cell anemia. At the plea hearing his mother stated that the doctor's told them Petitioner was not expected to live to be thirty. App. 19-22.

trials to the court or jury... Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him); see also Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding a defendant must understand the sentencing consequences of his plea for it to be considered voluntarily given).

In the present matter, Petitioner was induced to plead guilty pursuant to Alford because he thought that he would receive a ten to fifteen-year sentence on a charge that carried a maximum of twenty years. Had Petitioner known that he was facing up to thirty years imprisonment, and that he would likely receive a sentence of more than fifteen years, he would not have pled guilty. See Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (holding that a 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). Accordingly, plea counsel's erroneous sentencing advice constituted ineffective assistance of counsel as Petitioner was unable to understand the actual consequences of his Alford plea. See Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991) (finding ineffective assistance of counsel when plea counsel erroneously advised the defendant about his potential sentence prior to his guilty plea).

Further, counsel's erroneous advice was not cured by the information conveyed at the plea hearing. See Moorehead v. State, 329 S.C., 496 S.E.2d 415 (1998). While the plea judge did convey the proper sentencing range to Petitioner there was nothing conveyed during the plea colloquy that overcame the guarantee from plea counsel of a ten to fifteen-year sentence.

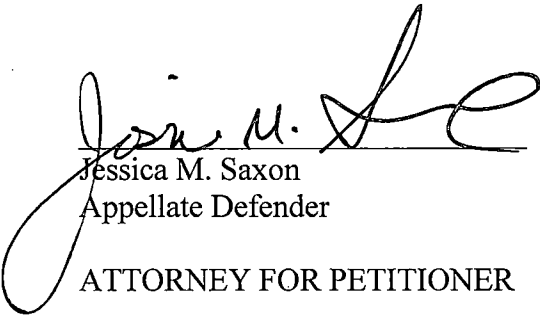
Regardless of the sentencing range that Petitioner ultimately faced, the main impetus for his plea was the guarantee of a sentence that would not exceed fifteen years imprisonment. There was nothing in the transcript that could cure this erroneous advice.

In fact, even the PCR court misapprehended the parameters of the plea since in the order of dismissal, the PCR court repeatedly referred to an offer from the state for a recommended twenty-year plea. That was incorrect. At the beginning of the plea the state clarifies that the plea is “straight up” to the lesser included charge of voluntary manslaughter. At the PCR hearing Petitioner testified he was told by counsel that the sentencing range was zero to twenty years but that he would get ten to fifteen years. Plea counsel testified that he told Petitioner the judge was thinking about twenty years but also that he told Petitioner he could get less than twenty years. The PCR court confuses this testimony to mean there was a recommendation before Petitioner and that he knew twenty years would be the likely sentence. However, there was never a recommendation or negotiation *from the state*.

Petitioner went into the plea hearing under the impression that he was facing a maximum sentence of twenty years, and that he would receive a sentence of between ten and fifteen years which was entirely incorrect. Counsel’s errors in conveying the wrong sentencing range to Petitioner and guaranteeing Petitioner a particular sentence constituted ineffective assistance of counsel. Had Petitioner been properly informed he would not have entered a plea but would have gone to trial. Petitioner has suffered further prejudice in that his sentence was six years more than he was guaranteed. See Hill v. Lockhart, 585 U.S. 52 (1985); Lafler v. Cooper, 566 U.S. 156, 165 (2012).

**CONCLUSION**

Petitioner respectfully requests this Court affirm the PCR court's ruling that he is entitled to a belated direct appeal. Petitioner likewise request that this Court grant his petition for writ of certiorari to allow full briefing on Issue II.

  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 6th day of January, 2020.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lancaster County

Honorable Paul M. Burch, Circuit Court Judge

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KEISHAWN MCMANUS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

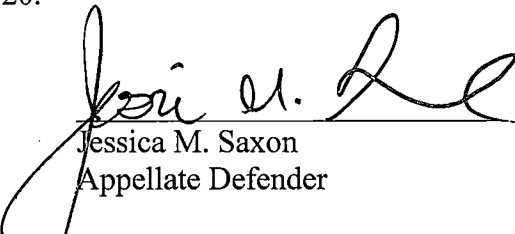
RESPONDENT

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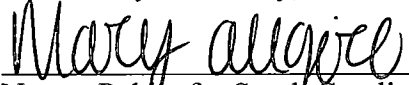
CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true copy of the 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 Petition for Writ of Certiorari and a copy of the Appendix have been served on Keishawn Omar McManus, #375011, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 6th day of January, 2020.

  
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Jessica M. Saxon  
Appellate Defender

SUBSCRIBED AND SWORN TO before me / ATTORNEY FOR PETITIONER  
this 6th day of January, 2020.

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