

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Barnwell County

Honorable J. Cordell Maddox, Circuit Court Judge

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CHRISTIAN P. ROLLINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001250

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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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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**Jun 09 2020**

**S.C. SUPREME COURT**

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## **ISSUE PRESENTED**

Whether the PCR court erred in finding plea counsel effective where counsel advised Petitioner to enter a guilty plea without the benefit of having all of the evidence in the case, specifically the fingerprint analysis of the shell casing recovered from the victims' home, which could have shown that Petitioner was unarmed during the robbery, rendering Petitioner's plea unknowing and involuntary?

## STATEMENT OF THE CASE

Just after midnight on December 6, 2016, Shawn Payne arrived at the trailer of Mr. Finney Potts and Ms. Sabrina Anderson to purchase cocaine from Potts. As Payne left the residence Rommel Holmes and Petitioner, Christian Rollins, allegedly entered the home armed with handguns and demanded money. The men were not masked or in any type of disguise. The female victim, Anderson, recognized all three men, knew them by name and was actually related to Petitioner. App. 16-17.

During the robbery, one of the defendants allegedly discharged a handgun into the ceiling causing Anderson to begin screaming. The men fled the house. As they left one grabbed her purse, which contained \$600 and various important documents, and the other grabbed a bottle of pills from Potts. Potts, like Anderson, knew all three men by name. Anderson followed the men as they fled her home and saw them get into a red or burgundy color car and leave. App. 18.

The vehicle that the men left the scene in belonged to the cousin of Payne, who told law enforcement that Payne had returned the vehicle to him at around one o'clock on the morning of the robbery. Potts and Anderson were shown lineups containing the three suspects and both victims positively identified Holmes, Payne, and Petitioner as the individuals who robbed them at gunpoint. App. 19. A single .40 caliber shell casing was recovered from the scene. No handguns were ever recovered by police. App. 20, ll. 11-15.

Eventually all three men were arrested. Payne, upon his arrest, told police that he had driven Holmes and Petitioner to the residence and that the two men did go in and rob the victims. Payne never alleged that anyone was armed at the time of the robbery. Payne stated he came out of the home after purchasing cocaine from Potts to find Holmes and Petitioner waiting on the porch to "rush in" to the home. Payne waited for the other two men in the car and then drove

them all from the scene. Neither Holmes nor Petitioner gave statements to police after their arrest. App. 19.

During the January 2018 term of the Barnwell County grand jury Petitioner was indicted for armed robbery. App. 113-114. On January 16, 2018, Petitioner appeared before the Honorable Doyet A. Early, III, to enter a guilty plea.<sup>1</sup> App. 1. Petitioner was represented by Laura McCann. David Miller represented the state. Judge Early accepted Petitioner's guilty plea to armed robbery and sentenced him to the mandatory minimum ten years imprisonment. App. 26.

Petitioner filed an application for post-conviction relief on June 5, 2018, alleging his plea was involuntary because he was coerced into entering it by plea counsel. App. 28-34. The state filed a return and motion for a more definite statement dated October 4, 2018. App. 35-43. PCR counsel Nancy Fennell submitted an amended PCR application alleging, inter alia, that plea counsel was ineffective for recommending a plea agreement before receiving all of the necessary evidence, specifically the results of forensic testing from the shell casing that was recovered from the victims' home. App. 44-46.

An evidentiary hearing was convened before the Honorable J. Cordell Maddox on May 14, 2019. Nancy Fennel represented petitioner. Taylor Smith represented the state. App. 47. At the hearing Petitioner testified that plea counsel told him that it would help his case if his fingerprints were not found on the shell casing recovered from the scene. App. 56, ll. 7-12. Petitioner conceded that plea counsel did ask the state to fingerprint the shell casing, but he never saw the results of any testing. App. 57, ll. 6-12. Petitioner stated he was in the county jail for

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<sup>1</sup> Also present at the plea was Petitioner's co-defendant Rommel Holmes, who was represented by Ola Johnson. Halfway through the plea colloquy Holmes withdrew his plea. After a brief conference with counsel, Petitioner proceeded forward with his guilty plea to armed robbery. App. 1; App. 15.

over a year waiting on the results because that is how long plea counsel said it would take to get the test results back. App. 57, ll. 16-22.

Petitioner testified that he did not want to enter a guilty plea because he never had a gun on him the night of the incident and he did not take a purse. App. 59, ll. 18-23; App. 65, ll. 13-15. Petitioner stated that if he had not felt pressured to plead and had received all of the evidence, he would have gone to trial instead of entering a guilty plea. App. 60, ll. 18-22.

Plea counsel McCann testified that when she reviewed the case with Petitioner, Petitioner disagreed with three specific fact allegations: 1) that there were children present in the home, 2) that he took a purse, and 3) that he had or shot a gun. App. 73, ll. 1-4. Counsel McCann stated that Petitioner admitted he was at the scene the night of the incident, but he maintained he did not take a purse or have a gun and therefore he wanted to go to trial. App. 74, ll. 4-18; App. 76, ll. 7-13. McCann stated the discrepancies he had with the facts would not have been relevant to Petitioner's guilt or innocence and she believed he would be found guilty at trial because the state was proceeding under a "hand of one, hand of all" theory at trial. App. 76, ll. 14-17.

Counsel McCann testified that she brought up the possibility of fingerprint testing on the shell casing recovered from the scene. She asked Petitioner if his fingerprints would be on the shell casing because if they were, he would not be able to deny the state's allegations. Petitioner told her his prints would not be on the casing. Based on his statements, plea counsel made several requests of the state to fingerprint the shell casing recovered from the scene, but the state had decided to not perform forensic testing on the shell casing. The state believed it had enough evidence to proceed to trial and secure a conviction without performing any forensic testing on the shell casing. App. 76, l. 21-App. 77, l. 12. No forensic testing was ever performed on the shell casing.

At the end of the hearing Judge Maddox took the matter under advisement. App. 96. An order of dismissal was filed on June 27, 2019. App. 98-109. The PCR court found that plea counsel credibly testified that she requested the fingerprint evidence, but the state did not test the shell casing. The court further ruled that any analysis of the shell casing would have been largely irrelevant based on the witness testimony that would have been presented at trial and therefore it was reasonable to advise Petitioner to enter a plea without the fingerprint analysis. App. 106.

This petition for writ of certiorari follows.

## ARGUMENT

The PCR court erred in finding plea counsel effective where counsel advised Petitioner to enter a guilty plea without the benefit of having all of the evidence in the case, specifically the fingerprint analysis of the shell casing recovered from the victims' home, which could have shown that Petitioner was unarmed during the robbery, rendering Petitioner's plea unknowing and involuntary.

Counsel McCann informed Petitioner that it would be beneficial to his case if his fingerprints were not found on the shell casing recovered from the scene. If Petitioner was not armed the night of the robbery, as he alleged, any evidence that tended to prove that fact would have been pertinent to Petitioner's decision to enter a guilty plea and should have been obtained prior to Petitioner entering a plea.

It is well established that counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691 (1984). Therefore, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[A]t a minimum, counsel has the duty to...make an **independent** investigation of the facts and circumstances of the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (emphasis in original).

It appears from the record that once Counsel McCann was informed the state would not test the shell casing, she abandoned that piece of evidence. It was within her ability to have the shell casing independently tested and she offered no explanation for not having the shell casing

tested. The order of dismissal alleges that Counsel McCann testified that the lack of fingerprint evidence would not have yielded much benefit to Petitioner's defense, but this testimony is not in the record. Further, that conclusion was not supported by either Petitioner or Counsel McCann's testimony. Counsel McCann testified that finding Petitioner's fingerprints on the shell casing would not help Petitioner's case, but she never stated that a lack of fingerprint evidence would not have been beneficial.

"The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). 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).

In the present case Counsel McCann failed to obtain all pertinent evidence prior to advising Petitioner to enter a guilty plea. Without the benefit of all of the evidence Petitioner was unable to make an intelligent choice to enter a plea. Thus, his guilty plea was not knowing and voluntary. The failure of plea counsel to investigate a piece of evidence that she had highlighted to Petitioner as important was ineffective assistance of counsel.

In Kolle v. State, 386 S.C. 578, 690 S.E.2d 73 (2010)<sup>2</sup>, the South Carolina Supreme Court held that counsel was deficient in failing to procure pertinent discovery materials. Kolle was charged with trafficking in cocaine, twenty-eight to one hundred grams. The drugs were recovered during the execution of a search warrant of the apartment where Kolle was staying. Counsel challenged the search warrant but did so without pertinent discovery materials, in particular the call/dispatch logs and the search warrant. After failing obtain a favor ruling suppressing the drugs, counsel advised Kolle to plead guilty.

In determining prejudice, this Court explained that with the pertinent discovery materials counsel for Kolle had a stronger challenge to the validity of the search warrant which could have impacted the outcome of the suppression hearing. Further, counsel could have advised Kolle to proceed to trial in order to preserve the challenge to the validity of the search warrant on direct appeal. The Court noted that “Kolle entered his guilty plea without the benefit of all exculpatory information ... Because Kolle was unaware of this information, his claim of ineffective assistance of counsel clearly impinged upon the voluntariness and knowledge with which he entered his plea.” Id. at n. 5.

Petitioner, like Kolle, enter his guilty plea without the benefit of all of the evidence and information in his case. Being unaware of all the evidence in the case, which could have supported Petitioner’s claim that he was not armed, impacted the voluntariness of Petitioner’s guilty plea. As Petitioner stated at the PCR hearing, had he had the benefit of all of the evidence he would not have enter a plea but would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 56 (1985).

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<sup>2</sup>Abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 n.2 (2018) “We clarify that appellate courts review questions of law de novo, with no deference to trial courts.”

**CONCLUSION**

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

s/Jessica M. Saxon \_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of June, 2020.

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PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Christian P. Rollins 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 J. Cordell Maddox, which was held on May 14, 2019, 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 Christian P. Rollins.

Respectfully Submitted,

s/Jessica M. Saxon  
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Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 9th day of June, 2020.

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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.”

s/Jessica M. Saxon

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Appellate Defender

South Carolina Commission on Indigent  
Defense

Division of Appellate Defense

PO Box 11589

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ATTORNEY FOR PETITIONER

This 9th day of June, 2020.