

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge

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ROBERT L. STEADMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000074

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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**Sep 18 2020**

S.C. SUPREME COURT

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**ISSUE PRESENTED**

Did the PCR judge err in failing to find plea counsel ineffective for failing to file a motion to reconsider sentence when Petitioner waived grand jury presentment, pled guilty and received a sentence five years longer than the sentence cap recommended by the State?

## STATEMENT

On August 26, 2014, Petitioner, Robert Lee Steadman, appeared before the Honorable Roger L. Couch, waived grand jury presentment and pled guilty to assault and battery third degree, resisting arrest and child abuse with great bodily injury, indictments #14-GS-42-3566, 3567, 3953. (App. pp. 42-47). Michael Morin represented Petitioner at the plea. Scott Spivey and Meghan Moricle prosecuted the case. The State recommended a cap of fifteen (15) years for the child abuse charge. (App. p. 14, lines 19-20; p. 16, lines 7-14). Judge Couch refused to follow the recommendation and instead sentenced Petitioner to twenty years for child abuse, one year concurrent for resisting arrest and time served for assault and battery third degree. (App. pp. 48-52). Petitioner did not appeal his sentence or conviction. At the evidentiary hearing, however, Petitioner testified that plea counsel told him, his girlfriend and his family that he would file an appeal. (App. p. 85, line 24 – p. 86, lines 1-12). An affidavit from the girlfriend was attached to the application for post-conviction relief. (App. p. 62).

On November 13, 2018, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 53-70). The State filed a return on July 14, 2019. On October 8, 2019, an evidentiary hearing was held before the Honorable G. Thomas Cooper. Rodney Richey represented Petitioner at the PCR hearing. Jason Isenberg represented the State. In a written order filed January 6, 2020, Judge Cooper denied relief and dismissed the application. A timely notice of intent to appeal was served on January 14, 2020. This appeal follows.

## ARGUMENT

**The PCR judge erred in failing to find plea counsel ineffective for failing to file a motion to reconsider sentence when Petitioner waived grand jury presentment, pled guilty and received a sentence five years longer than the sentence cap recommended by the State.**

Petitioner waived grand jury presentment and pled guilty to assault and battery third degree, resisting arrest and child abuse with great bodily injury. (App. p. 15, line 9 – p. 16, lines 1-21). The State recommended a cap of fifteen (15) years. (App. p. 14, lines 19-20; p. 16, lines 7-14). Judge Couch refused to follow the recommendation and instead sentenced Petitioner to twenty years for child abuse, one year concurrent for resisting arrest and time served for assault and battery third degree. (App. pp. 48-52). At the evidentiary hearing Petitioner testified that plea counsel told him, his girlfriend and his family that he would file an appeal. (App. p. 85, line 24 – p. 86, lines 1-12). An affidavit from the girlfriend was attached to the application for post-conviction relief. (App. p. 62). When plea counsel was asked if Petitioner requested an appeal, plea counsel answered, “Not that I remember, but I don’t have – I don’t have a recollection one way or another on that.” (App. p. 92, lines 16-17). When asked if he would have filed a notice of intent to appeal had he been asked, plea counsel answered, “Yes.” (App. p. 92, line 21). The failure to file a notice of intent to appeal is not challenged in this petition. Instead, Petitioner challenges the plea counsel’s failure to file a motion to reconsider sentence. Plea counsel admitted that he and Petitioner were surprised by the maximum sentence imposed. (App. p. 93, lines 20-22). Despite the surprise that the judge refused to follow the fifteen (15) year sentence cap recommended by the State and instead sentenced Petitioner to the maximum twenty (20) years, trial counsel failed to file a motion to reconsider sentence. Trial counsel was ineffective in failing to move for a motion to reconsider sentence.

In the order of dismissal the PCR judge wrote:

Here, Counsel testified he does not remember Applicant making a request to file notice of appeal. Moreover, Counsel stated he would have filed an appeal if Applicant made such a request. Counsel also testified he did not see anything appealable in Applicant's case. Therefore, Counsel does not believe they had this discussion. Applicant testified he only took issue with the sentence. He testified he understood it was within the range of potential punishment and he agreed with the facts presented at the hearing.

Accordingly, this Court finds Applicant understood he received a sentence within the statutory range. Furthermore, this Court finds Applicant understood he received a sentence based upon the facts of the case. This Court finds Counsel presented credible testimony that no discussions about filing an appeal happened. Therefore, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in failing to file an appeal.

(App. p. 106). The PCR judge erred. While counsel may not have been deficient in failing to file the notice of intent to appeal, he was deficient for failing to file a motion to reconsider sentence when the judge refused to accept the fifteen-year sentence cap recommended by the State and instead imposed a sentence of twenty years, the maximum for the abuse charge, without taking into consideration the fact that Petitioner waived grand jury presentment and pled guilty.


A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by

counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Plea counsel was ineffective in failing to file a motion to reconsider sentence after the judge refused to accept the fifteen-year sentence cap recommended by the State and instead imposed the maximum twenty-year sentence. The judge failed to consider that Petitioner waived grand jury presentment and pled guilty. There is a reasonable probability that if counsel had moved for reconsideration of the sentence, the judge would have granted the motion and sentenced Petitioner pursuant to the recommendation by the State.

**CONCLUSION**

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18<sup>th</sup> day of September, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Robert L. Steadman 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 October 8, 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 Robert L. Steadman.

Respectfully Submitted,

  
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Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 18<sup>th</sup> day of September, 2020.

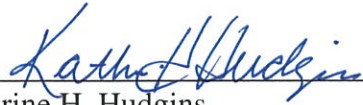
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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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This 18<sup>th</sup> day of September, 2020.