

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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CERTIORARI TO RICHLAND COUNTY

**SC Court of Appeals**

The Honorable J. Derham Cole, Circuit Court Judge

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Appellant Case No. 2019-000320

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Zacoata Lopey,..... Petitioner,

v.

State of South Carolina,..... Respondent.

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AMENDED PETITION FOR WRIT OF CERTIORARI

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1.

The PCR court erred by finding that Petitioner had a clear understanding that he had to proceed to trial in order to appeal the family court waiver, that he voluntarily and intelligently chose to enter a guilty plea, and, implicitly, that Petitioner was provided effective assistance of counsel where PCR hearing testimony indicated that Petitioner was not informed that he would need to go to trial in order to appeal his family court waiver hearing issues.....11

2.

The PCR court erred in 1) finding that Counsel Delany’s and Counsel Davis’ testimony was credible with respect to whether they informed Petitioner that he would not be able to appeal his waiver hearing issues unless he went to trial, 2) finding not credible Petitioner’s testimony that he was not informed that he could only appeal the family court waiver hearing issues if he went to trial, and would not have plead guilty if he had know that, and 3) using those findings as a basis for finding the Petitioner plead voluntarily and that PCR counsel was not ineffective; where the order incorrectly stated Counsel Delany’s testimony as maintaining that she had told Petitioner that he would need to go to trial to appeal the waiver when her actual testimony was that she did not remember talking to him about the waiver.....15

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## **ISSUES PRESENTED**

1.

Whether the PCR court erred by finding that Petitioner had a clear understanding that he had to proceed to trial in order to appeal the family court waiver, that he voluntarily and intelligently chose to enter a guilty plea, and, implicitly, that Petitioner was provided effective assistance of counsel where PCR hearing testimony indicated that Petitioner was not informed that he would need to go to trial in order to appeal his family court waiver hearing issues?

2.

Whether the PCR court erred in 1) finding that Counsel Delany's and Counsel Davis' testimony was credible with respect to whether they informed Petitioner that he would not be able to appeal his waiver hearing issues unless he went to trial, and 2) finding not credible Petitioner's testimony that he was not informed that he could only appeal the family court waiver hearing issues if he went to trial, and would not have plead guilty if he had know that, and 3) using those findings as a basis for finding the Petitioner plead voluntarily and that PCR counsel was not ineffective; where the order incorrectly stated Counsel Delany's testimony as maintaining that she had told Petitioner that he would need to go to trial to appeal the waiver when her actual testimony was that she did not remember talking to him about the waiver?

## STATEMENT

Petitioner is presently confined in the South Carolina Department of Corrections. Petitioner was initially charged in Family court for armed robbery (2010-JU-40-1520), first-degree burglary (2010-JU-40-1521), kidnapping (2010-JU-40-1522), and first-degree criminal sexual conduct (2010-JU-40-1523). Waiver hearings were held before the Honorable James F. Fraley, Jr., family court judge, on February 21-22, 2012, and March 27-March 29, 2012. Petitioner was present at those hearings and represented by James H. May, Esquire, and Joanna K. Delany, Esquire. Judge Fraley issued a written order on April 11, 2012, transferring the case to the court of general sessions and finding it was in the best interest of Petitioner and the community to transfer jurisdiction. In April 2012 Richland County Grand Jury indicted Petitioner for first-degree burglary (2012-GS-40-01922), armed robbery (2012-GS-40-01923), kidnapping (2012-GS-40-01924), and first-degree criminal sexual conduct (2012-GS-40-01925). Joanna K. Delany and Jennifer C. Davis represented Petitioner on these charges. On March 12, 2013, Petitioner appeared before the Honorable Thomas W. Cooper, Jr., circuit court judge, and plead guilty as indicted to all charges. Prior to accepting the Petitioner's guilty plea Judge Cooper questioned the Petitioner his understanding of his rights. Petitioner responded that he understanding his charges and the potential penalties, that he had not been coerced, threatened or promised anything to plea, and that he was pleased with services of his attorneys. App. pp. 410-411. Petitioner also indicated that he understood he was waiving his right to a trial, to testify, to remain silent, to call witnesses on his behalf. App. pp. 407-408. Finally, the Court informed Petitioner that he had ten days to appeal the plea and sentence to a higher court. App. pp. 411. The plea court did not question the Petitioner regarding whether he was aware that he was

waiving his ability to appeal his family court waiver issues prior to accepting Petitioner's guilty plea. App. pp. 407-429.

At the guilty plea the State alleged that on December 14, 2010 Elaine Henrick (Victim) was sexually assaulted by Petitioner and his co-defendant Larry Prophet. App. pp. 412-414. Petitioner informed law enforcement officers he was responsible for these crimes, along with Prophet. App. p. 416. Petitioner's semen was found on the of Victim. App. p. 418.

At the guilty plea Counsel Davis made it a part of the record that Petitioner was waived up from family court. App. p. 401. Further Counsel Davis requested that the Court consider remanding Petitioner back to family court, which was within the court's discretion. App. p. 401. Counsel Davis also objected on the record to Petitioner being placed on the sex offender registry and electronic monitoring as unconstitutional, a violation of his due process rights, and a violation on the prohibition on cruel and unusual punishment. App. p. 447.

Judge Cooper sentenced Petitioner to concurrent terms of imprisonment of thirty years for first-degree burglary, thirty years for armed robbery, and thirty years for first-degree criminal sexual conduct. Judge Cooper also sentenced Petitioner to a consecutive term imprisonment of fifteen years for kidnapping. App. pp. 479-480.

Petitioner filed a timely notice of appeal, and Appellate Defender Susan B. Hackett, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed an *Anders* brief on Petitioner's behalf. App. pp. 579-592. On appeal, Petitioner raised the issue of whether the Petitioner's due process rights pursuant to Fourteenth Amendment of the United States Constitution and Article I, Section three of the South Carolina Constitution were violated by the statutory requirement that he register for life as a sex offender and provided no judicial

review after a term of years to determine whether [Petitioner] should remain on the registry. App. pp. 586-592.

The South Carolina Court of Appeals dismissed Petitioner's appeal and granted appellate counsel's request to withdraw by unpublished opinion on January 14, 2015. *State v. Lopey*, Op. No. 2015-UP-012 (S.C. Ct. App. filed January 14, 2015). The Remittitur was issued on March 10, 2015. App. pp. 596-597; 617-618.

Petitioner filed an application for post-conviction relief on February 15, 2015. App. pp. 598-604. Petitioner alleged 1) ineffective assistance of counsel, 2) after-discovered evidence, and 3) cruel and unusual punishment in trying and sentencing a minor as an adult. App. pp. 600-602. Petitioner later filed an amended application for post conviction relief on August 31, 2015. App. pp. 624-625. Petitioner's amended application alleged ineffective assistance of trial and appellate counsel. Petitioner alleged that trial counsel was ineffective for failing to have the Petitioner testify as to his statement regarding the charges during the underlying waiver hearing. App. p. 624. Petitioner alleged that appellate counsel failed to properly argue the statement for basis of appeal, including but not limited to, the selective application of the solicitor's office to waive the Petitioner being tried as an adult. App. p. 624. At the hearing the Petitioner raised, and the Court ruled on the issue of whether or not the Petitioner was informed of the affect of his guilty plea on his right to appeal his waiver from family court. App. pp. 692-693.

The state filed the Return on June 10, 2015. App. pp. 619-623. This Return noted many of the petitioner's allegations of ineffective assistance of trial counsel. App. p. 620.

An evidentiary hearing was convened on February 1, 2016, before the Honorable J. Derham Cole. App. p. 626. Petitioner was represented by Anna R. Good. The state was represented by Assistant Attorney General James Clayton Mitchell III. App. p. 626.

At the evidentiary hearing, Petitioner testified on his own behalf and presented the testimony of plea counsel Joanna K. Delany (Counsel Delany). App. pp. 402-422. Respondent presented testimony from plea counsel Jennifer C. Davis (Counsel Davis). App. pp. 663-670.

Petitioner testified that at the time of his arrest he was fourteen years old and in the ninth grade at Spring Valley High School. App. p. 630. He testified at the time, he was in self-contained classes. App. p. 631. He also testified he understood the reasoning behind the waiver hearing on his charges. App. p. 631. He further testified there was a *Jackson v. Denno*<sup>1</sup> hearing in family court as to the admissibility of a statement he gave while in the school resource officer's classroom. App. p. 631. He also testified there was a pre-trial hearing involving the solicitor's decision to waive him up to the court of general sessions. App. p. 635. He testified that hearing focused on the fact the Richland County Solicitor's Office had not waived up a Caucasian defendant since 1992 and every defendant who had been waived up was African-American. App. p. 635. He further testified his counsel argued that point in great detail, but the judge ruled against them. App. p. 635.

Petitioner testified on direct that if he had been aware of that he had to go to trial in order to appeal any of his waiver-hearing issues then he would not have plead guilty, and he would have gone to trial. App. p. 636.

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<sup>1</sup> 378 U.S. 368 (1964).

On cross examination Petitioner reaffirmed several times that he would not have plead guilty if he had known that he would be unable to appeal the family court rulings including the equal protection issues. App. p. 639.

Petitioner further elaborated that he was not familiar with whether or not counsel advised him he would not be able to raise his appellate issues if he plead. App. p. 644.

Following Petitioner's testimony, Counsel Delany testified in front of the PCR court. App. 138. She testified she represented Petitioner; and he was initially charged in family court because he was fourteen years old, but the Solicitor's Office filed a waiver for Petitioner. App. p. 645. She testified she was lead counsel in family court and remained on the case as second chair in the court of general sessions. App. p.651.

Counsel Delany testified that there were several issues that she felt were particularly concerning to her related to the waiver hearing in family court. App. p. 645.

She testified that one of those issues was the Equal Protection argument that they presented at the waiver hearing. App. pp. 646-647. She testified that the Solicitor's Office had filed waivers for white children in the past but would then withdraw the waiver and allowed the white child to plead in family court. App. p. 646. She further testified that the DJJ records of all the children who had been waived up in Richland County confirmed that every defendant who was waived up was either African-American or Latino. App. p. 646. She testified that she believed the Equal Protection argument was a strong issue. App. p. 646. She further testified she made a number of motions on this issue and filed memoranda with the court. App. pp. 646-647.

She testified that had this case proceeded to trial, she would have raised and made the same record regarding this issue in the court of general sessions as she did in family court. App. p. 653. She further testified that she had included this issue in her notice of appeal. App. p. 647. That she had discussed this issue with an attorney at appellate defense after counsel filed the notice of appeal. App. p. 647. Further, Counsel Delaney testified that in her opinion she had set this issue up for an appeal and that it should have been appealed. App. pp. 647-648.

She testified another issue raised at the waiver hearing was that since there was no uniform application in waiving up defendants the waiver statute was unconstitutional. App. p. 653. She explained she relied on *Bush v. Gore*<sup>2</sup> in making this argument. App. p. 653. She further explained there are no standard guidelines instructing the solicitor which cases apply for waiver, and that the solicitor determines whether or not to waive a defendant. App. p. 653. Counsel Delaney testified had the case proceeded to go to trial, she would have raised this issue, and she was prepared to raise that issue if Petitioner had not plead guilty. App. p. 654.

When asked if she had told Petitioner that he could not appeal any of his waiver-hearing issues if he plead guilty Counsel Delaney testified, “it is hard for me to remember.” App. p. 650. She went on to state “I think we talked about jurisdiction, that you can raise jurisdiction at any stage of the case. But I don’t remember anything.” App. p. 650. When questioned further she testified that she believed she had seen a case recently from 2013 that required you to go to trial in order to appeal the waiver. She then elaborated “I think we told him that, but I don’t remember if that – I know that case came out after he --- after he plead. And I don’t – I don’t remember if there was a prior case...” App. p. 650.

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<sup>2</sup> 531 U.S. 98 (2000).

Counsel Delany testified that she and co-counsel did talk about an appeal with Petitioner. App. p. 658. She testified that she typically advises all of her clients it is very unlikely to get an appeal granted from a guilty plea, “but beyond that, I don’t remember specifically that we discussed about appeal.” App. p. 658. She further testified that she and co-counsel “put a lot of things on the record during the plea just trying to preserve them without knowing that that was possible, just giving it a try.” App. p. 658. Counsel Delany reiterated on cross examination that she and co-counsel both knew that you could not reserve issues for appeal unless Petitioner went to trial, but that she does not remember whether she and co-counsel told Petitioner that information. App. p. 659.

On redirect Counsel Delany testified that she filed a notice of appeal on behalf of Petitioner. App. p. 662. She testified that she included the following appeal issues in her notice of appeal: 1) motion to strike the waiver statute as violating equal protection on the grounds of systematic racial bias on the part of the solicitor’s office, 2) motion in general sessions made to keep Petitioner in family court, 3) the arbitrariness of the application of the waiver statute under *Bush v. Gore*, 4) an Eighth Amendment violation based on his sentencing in general sessions due to his age, and 5) that the sex offender registry was unconstitutional because there had not been a determination that the Petitioner was likely to reoffend. App. p. 662. She testified, in her opinion, the Equal Protection issue, in particular, should have been raised on appeal, and that many of the issues she argued in her notice of appeal were not raised and should have been. App. p. 662.

Following Counsel Delany’s testimony, Petitioner rested and Respondent presented the testimony of Counsel Davis. App. p. 663.

She testified she was appointed to represent Petitioner once the waiver hearing was conducted and he was waived up to general sessions. App. pp. 663-664.

She testified that she explained to Petitioner that if they proceeded to trial and lost the motion to suppress, that it could be an appellate issue, but they would have to go to trial in order to preserve that issue. App. pp. 665-666. She testified she did not have any notes stating that they told the Petitioner one-way or the other if he could appeal the waiver hearing issues from family court if he plead guilty. App. pp. 667-668. She testified there was no discussion with Petitioner about a conditional plea. App. p. 667. However, Counsel Davis goes on to testify that at the plea “[we] objected and tried to preserve anything that we could and put that in the appeal.” App. p. 668. She further testifies that she objected at the plea and put the issues from the family court waiver hearing on the record at the guilty plea in order to potentially preserve them for appeal. App. p. 668.

On cross-examination Counselor Davis testified that she filed the notice of appeal. App. p. 669. That she believed the issues listed in the notice of appeal were, in fact, appealable issues. App. p. 670. That those appealable issues listed in the notice of appeal included the issues raised at the waiver hearing. App. p. 670. Further she testified that she spoke to an attorney at appellate defense about appealing those issues, and that she felt those issues would have been taken up on appeal. App. p. 670.

During final argument PCR counsel stated to the court that it was clear from the testimony of both Counsel Delany and Counsel Davis that they were not sure whether they had discussed Petitioner’s ability to appeal his family court issues if he plead guilty, and that it was unclear whether Petitioner was able to make a voluntary decision to plea without that information. App. p. 674.

An Order of Dismissal was filed on February 19, 2019. App. p. 677. Citing State v. Trusedale, 278 S.C. 368, 370, 296 S. E. 2d 528, 529 (1982), the order stated that conditional pleas were not recognized in South Carolina. Further the order stated that a guilty plea constitutes a waiver of non-jurisdictional defects and constitutional violations. State v. Rice, 401 S.C. 330, 331-32, 737 S. E. 2d 485, 485 (2013). App. p. 692. Because of this in order to challenge the transfer from family court a juvenile must proceed to trial. App. p. 692.

The court found that the Petitioner had testified that had he known that he could not appeal the family court waiver issues unless he went to trial, he would not have plead guilty. App. p. 692. The court found that Counsel Davis testified that she did not recall whether or not she explained to Petitioner that he would only be able to appeal the family court waiver issues if he went to trial. App. p. 692. Finally, the court found that Counsel Delany testified that she told Petitioner that he would need to proceed to trial if he wanted to appeal the waiver. App. p. 692.

The Court further found that Counsel Delany's and Counsel Davis' testimony was credible with respect to this issue, but that Petitioner's testimony was not credible. App. p. 692. Finally, the Court found that Petitioner had a clear understanding that he had to proceed to trial in order to appeal the family court waiver and voluntarily and intelligently chose to enter a guilty plea. App. p. 693.

The court implicitly found based on the above findings that Petitioner was not provided ineffective assistance of counsel.

From this order, petitioner is seeking a writ of certiorari pursuant to Rule 243 of the SCACR.

## ARGUMENT

1.

The PCR court erred by finding that Petitioner had a clear understanding that he had to proceed to trial in order to appeal the family court waiver, that he voluntarily and intelligently chose to enter a guilty plea, and, implicitly, that Petitioner was provided effective assistance of counsel where PCR hearing testimony indicated that Petitioner was not informed that he would need to go to trial in order to appeal his family court waiver hearing issues

The Petitioner was a 14-year-old child when this incident occurred. He was originally charged as a minor in family court. Petitioner was eventually waived up to general sessions after a vigorous defense by counsel at the family court waiver hearing during which an extensive record was created for appeal.

Petitioner testified that he understood the reasoning and issues argued at the family court waiver hearing. App. pp. 631, 635. Petitioner testified repeatedly that he did not know that he would be barred from appealing the family court waiver hearing issues if he plead guilty. App. pp. 636, 639, 644. He further stated that he would have gone to trial if he had known. App. pp. 636, 639.

Neither Counsel Delany nor Counsel Davis remembered whether they had told Petitioner that he would only be able to appeal the issues from the family court waiver hearing if he went to trial. App. pp. 650, 658-659, 667-668. During Petitioner's guilty plea the plea court did not independently address the issue of whether the Petitioner was aware that was waiving his right to appeal his family court waiver issues by pleading guilty. App. pp. 407-429. The plea court did inform Petitioner that he would have (10) ten days to appeal his guilty plea. App. p. 411.

Neither counsel nor co-counsel could recall or had any notes indicating that they had told Petitioner that he would lose his right to appeal the waiver hearing issues if he plead guilty. Counsel stated clearly that they felt that the issues raised in the family court waiver hearing were strong issues, that those issues were strong enough to be raised again at a general sessions trial, and that the issues were strong appellate issues. Counsel further stated that they believed these issues should have been appealed. In addition Counsel also 1) put the family court waiver hearing issues on the record at the guilty plea, 2) included the waiver hearing issues in the notice of appeal, and 3) contacted appellate counsel about the notice of appeal.

There are no conditional guilty pleas in South Carolina. State v. Truesdale, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982). In South Carolina, a guilty plea constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 332, 737 S.E.2d 485, 486 (S.C. 2013); see Hyman v. State S.C. 35, 723 S.E.2d 375 (2012) (citing Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975)). Specifically in Rice the court held that “an erroneous order transferring a juvenile to general sessions court would be a judicial error – not a jurisdictional error” further stating that “our law disallowing conditional pleas ...applies equally to juveniles and adults.” Rice, at 401 S.C. at 333, 737 S.E.2d at 486-87.

However, all of the above statements and actions on the part of Counsel indicate that Counsel believed that these issues were potentially appealable from a guilty plea, and it is unlikely that they would have been able to advise Petitioner that the family court waiver hearing issues were not appealable since they seemed unaware of that fact. This deficiency was not remedied by the plea court during the questioning of the Petitioner.

In fact, the plea court, correctly, informed the Petitioner that he had ten days to appeal; potentially feeding into Petitioner's reasonable belief that he would be able to appeal the issues placed on the record during the guilty plea.

Petitioner has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). With respect to guilty plea counsel Petitioner must show that counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Hill v. Lockhart, 474 U.S. 52 (1985). To satisfy the prejudice requirement the Petitioner must show that there is a reasonable probability that, but for counselor's alleged errors, he would not have plead guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

Petitioner has met both prongs of the test laid out in Hill to demonstrate that plea counsel provided ineffective assistance of counsel. Hill v. Lockhart, 474 U.S. 52 (1985). In failing to inform Petitioner of the consequences of his plea and the loss of his ability to appeal the issues created at his waiver hearing counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.

Petitioner has also satisfied the prejudice requirement from Hill in that Petitioner has testified that if he had known that he could not appeal the waiver hearing issues then he would not have plead guilty and would have insisted on going to trial.

This was error entitling the Petitioner to have his guilty plea set aside under Hill.

The PCR judge erred in finding that Petitioner had a clear understanding that he had to proceed to trial in order to appeal the waiver as there was no evidence presented that Petitioner knew or had ever been informed that he would not be able to appeal his family court waiver hearing issues. The PCR judge erred, in finding that Petitioner had voluntarily and intelligently chosen to enter into a guilty plea, and implicitly finding that defense counsel's failure to inform Petitioner of the consequences of his plea was not ineffective assistance of counsel, as Petitioner stated several times at the PCR hearing that if he had know he could not appeal the issues from the waiver hearing he would have insisted on going to trial, and there was no evidence submitted to the court that Petitioner had been informed of those consequences. Further, Petitioner's understanding and belief that he would be able to appeal the issues from the waiver hearing was particularly reasonable due to defense counsel's actions in placing the waiver issues on the record during the guilty plea, defense counsel's demonstrated belief that those issues were appealable and should have been appealed by appellate counsel from the guilty plea, and the plea court's instructions that he had ten days to appeal the guilty plea. In addition, it appears that Petitioner's plea was intended by counsel to be condition, and potentially should not have been accepted by the plea court judge. As such Petitioner's convictions based on a conditional plea should be set aside and the case remanded.

There was also extensive testimony from both counsel and co-counsel about the strength of the appellate arguments related to the issues from the waiver hearing. The behavior and

testimony from defense counsel certainly seemed to indicate that they believe that the waiver issues were strong, well preserved, and that had Petitioner been heard on those issues on appeal had a strong chance of being successful. Petitioner's convictions should be set aside and the case remanded for a new trial.

2.

The PCR court erred in 1) finding that Counsel Delany's and Counsel Davis' testimony was credible with respect to whether they informed Petitioner that he would not be able to appeal his waiver hearing issues unless he went to trial, and 2) finding not credible Petitioner's testimony that he was not informed that he could only appeal the family court waiver hearing issues if he went to trial, and would not have plead guilty if he had know that, and 3) using those findings as a basis for finding the Petitioner plead voluntarily and that PCR counsel was not ineffective; where the order incorrectly stated Counsel Delany's testimony as maintaining that she had told Petitioner that he would need to go to trial to appeal the waiver when her PCR transcript testimony reflected that she did not remember talking to him about the waiver.

The Order of Dismissal in this case quoted Counsel Delany saying "she testified, however, in order to appeal the waiver, a defendant has to proceed to trial, which she explained to Petitioner" and "Counsel Delany testified that she explained to Petitioner he would need to proceed to trial if he wanted to appeal the waiver." App. p. 686, 692.

However, in the PCR transcript Counsel Delany's testimony was that "it is hard for me to remember." App. p. 650. "I think we talked about jurisdiction, that you can raise jurisdiction at any stage of the case. But I don't remember anything." App. p. 650. When questioned further she

testified that she believed she had seen a case recently from 2013 that required you to go to trial in order to appeal the waiver. She then elaborated “I think we told him that, but I don’t remember if that – I know that case came out after he --- after he plead. And I don’t – I don’t remember if there was a prior case...” App. p. 650.

Counsel Delany testified that she and co-counsel did talk about an appeal with Petitioner. App. p. 658. She testified that she typically advises all of her clients it is very unlikely to get an appeal granted from a guilty plea, “but beyond that, I don’t remember specifically that we discussed about appeal.” App. p. 658.

The PCR court found Counsel Delany’s testimony credible in the Order of Dismissal. App. p. 692. However, the testimony the court listed as the basis for this finding was not consistent with the testimony recorded in the PCR transcript and is unsupported by the record. This finding of credibility was listed as a basis for the court’s additional findings that Petitioner had a clear understanding that he had to go to trial in order to appeal the waiver, that his plea was voluntarily and intelligently made, and the court’s implicit finding that counsel was not ineffective for failing to disclose the appellate consequences of the guilty plea to Petitioner. App. p. 692-693. Petitioner case should be remanded back to the PCR court for a new hearing and proper findings of fact and conclusion of law on this issue. See Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337 (2008).

**CONCLUSION**

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on these issues. In the alternative, petitioner respectfully submits this case should be remanded to the Richland County Court of Common Pleas for a new PCR hearing.

Respectfully Submitted,

This 8<sup>th</sup> Day of December, 2020

s/ Sarah M. Henry

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THE STATE OF SOUTH CAROLINA  
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**Dec 08 2020**

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CERTIORARI TO RICHLAND COUNTY

The Honorable J. Derham Cole, Circuit Court Judge

Appellant Case No. 2019-000320

Zacoata Lopey,..... Petitioner,

v.

State of South Carolina,..... Respondent.

CERTIFICATE OF SERVICE

I certify that a copy of the Amended Petition for Writ of Certiorari and Amended Appendix in the above referenced case has been served upon Michael D. Davidson, Esquire, Assistant Attorney General, by email to [michaeldavidson@scag.gov](mailto:michaeldavidson@scag.gov) on December 8, 2020.

This 8<sup>th</sup> Day of December, 2020

s/ Sarah M. Henry

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