

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**ORIGINAL**

\_\_\_\_\_  
Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

\_\_\_\_\_  
MICHAEL D. MADDOX,

PETITIONER

V.

STATE OF SOUTH CAROLINA;

RESPONDENT

APPELLATE CASE NO. 2019-000414

\_\_\_\_\_  
JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Victor R Seeger  
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

**RECEIVED**

NOV 04 2019

S.C. SUPREME COURT

**INDEX**

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

The PCR court erred when it found that Petitioner’s plea pursuant to North Carolina v. Alford was made voluntarily where he only entered the Alford plea because plea counsel erroneously promised Petitioner that he would only receive ten years’ imprisonment if he pled.....3

Relevant Facts.....4

Discussion.....5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL.....9

**ISSUE PRESENTED**

Whether the PCR court erred when it found that Petitioner's plea pursuant to North Carolina v. Alford was made voluntarily where he only entered the Alford plea because plea counsel erroneously promised Petitioner that he would only receive ten years' imprisonment if he pled?

## STATEMENT

During the October 2013 term, the Florence County Grand Jury indicted Petitioner for criminal sexual conduct with a minor in the first degree. App. 66 – 67.

On July 18, 2014, Petitioner pled pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), before the Honorable Michael G. Nettles. App. 1. Daniel Jordan represented Petitioner. Id. Todd Tucker represented the state. Id.

The court accepted Petitioner's Alford plea as freely and voluntarily entered into. App. 11, ll. 18 – 24. Petitioner was sentenced to twenty-five years' imprisonment. App. 12, l. 22 – 13, l. 2.

On April 9, 2015, Petitioner filed an application for post-conviction relief (PCR). App. 15 – 21. Petitioner alleged that his Alford plea was made involuntarily because plea counsel provided Petitioner with erroneous sentencing advice that Petitioner would receive ten years' imprisonment if he entered an Alford plea. Id. On November 1, 2016, the state filed its Return. App. 22 – 27.

On April 6, 2018, Petitioner's PCR hearing was held before the Honorable George M. McFaddin. App. 29. Jonathon Waller represented Petitioner. Id. Lindsey McCallister represented the state. Id.

In an order filed on March 4, 2019, Judge McFaddin denied Petitioner relief. App. 56 – 65. The court found that plea counsel informed Petitioner about his the potential defenses Petitioner could raise, and the possible penalties he could face, prior to the guilty plea hearing. App. 64 – 65.

## ARGUMENT

The PCR court erred when it found that Petitioner's plea pursuant to *North Carolina v. Alford* was made voluntarily where he only entered the *Alford* plea because plea counsel erroneously promised Petitioner that he would only receive ten years' imprisonment if he pled.

### **Relevant Facts**

On May 14, 2013, an incident occurred at Petitioner's mother house, where he also resided. App. 6, l. 6 – 8, l. 12. Petitioner's sister, Stephanie Mack, dropped her four-year-old daughter, Minor, off that morning to be babysat while she went to work. Id. Petitioner and Petitioner's mother were at the home that day. Id.

“At some point,” Mack calls the house to check on Minor. Id. Minor told Mack that Petitioner “kissed her on the lips and... said a couple other things that alarmed Ms. Mack.” Id. Minor alleged that Petitioner had her perform oral sex and have intercourse with him. Id.

Mack alerted the police and took Minor to the emergency room. Id. A medical exam was conducted the following day and the doctor discovered “physical findings consistent with [the Minor's allegations].” Id. Petitioner was sixteen at the time of the incident. Id.

Petitioner testified during his PCR hearing that he did not know he was going to get twenty-five years' imprisonment until he got into court on the day of the plea hearing. App. 35, l. 1 – 36, l. 3. Petitioner explained that plea counsel told him if he pled pursuant to Alford, he would receive ten-years' imprisonment. Id. Petitioner also stated that he had no understanding of the law and relied on plea counsel's advice. App. 40, ll. 1 – 7.

Petitioner pled pursuant to Alford because he was scared of going to trial and facing a life sentence. App. 39, ll. 9 – 12. After Petitioner found out he was not going to get ten years'

imprisonment, during the plea hearing, Petitioner asked plea counsel if they were going to go to trial and plea counsel told him to take the plea. App. 39, ll. 1 – 8; App. 40, ll. 1 – 7.

Plea counsel also testified at the PCR hearing. He claimed that Petitioner asked him to go into plea negotiations with the state to try to “work out a plea deal to criminal sexual conduct in the second degree.” App. 46, ll. 4 – 17. Plea counsel said he tried to get the charge reduced but that the state never offered to drop Petitioner’s charge down to criminal sexual conduct in the second degree. App. 46, ll. 21 – 24. Plea counsel said he told Petitioner that he could not get the charges reduced and that the negotiated sentence was for twenty-five years’ imprisonment. App. 47, ll. 13 – 25.

### **Discussion**

At the PCR hearing, Petitioner stated that based on plea counsel’s sentencing advice he believed he was going to receive a sentence of no more than a ten years’ imprisonment. App. 35, l. 1 – 36, l. 3. Petitioner also testified that he asked plea counsel to go to trial at the plea hearing, after he found out he was going to get more than ten years’ imprisonment. App. 40, ll. 1 – 7; 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); see also Ray v. State, 303 S.C. 374, 376, 401 S.E.2d 151, 153 (1991) (finding defendant’s guilty plea was not intelligently and voluntarily made based on plea counsel’s erroneous sentencing advice). Moreover, Petitioner was only sixteen at the time of the incident and had no understanding of the law. App. 36, ll. 19 – 20; App. 39, ll. 22 – 25. Thus, the PCR court erred in finding that plea counsel provided effective assistance of counsel. App. 56 - 65; See Hill v. Lockhart, 474 U.S. 52 (1985) (applying the Strickland v. Washington, 466 U.S. 668 (1984) standard to guilty plea challenges based on ineffective assistance of counsel).

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full 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 Missouri v. Frye, 566 U.S. 134 (2012), the United States Supreme Court noted that the, “Sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of the criminal proceedings[, which] . . . include arraignments, postindictment interrogations, postindictment line ups, and the entry of a guilty plea.” Id. at 141 (citations and internal quotation omitted). The Court further emphasized that “[i]n today’s criminal justice system, . . . the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.” Id. (emphasis added). Accordingly, “[a]nything less [than effective counsel during plea negotiations] . . . might deny a defendant ‘effective representation by counsel at the only stage when legal aid and advice would help him.’” Id. at 144 (citing Massiah v. United States, 377 U.S. 201 (1964)) (quotation citation omitted).

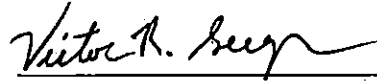
In this case, an “unsound result” occurred because plea counsel’s erroneous sentencing advice prevented Petitioner from being able to understand the sentencing consequences of his Alford plea. Petitioner went into the plea hearing under the impression, given by plea counsel, that he was facing ten years’ imprisonment if he pled pursuant to Alford. App. 35, l. 2 – 36, l. 3.

Petitioner asked plea counsel to take his case to trial when he discovered he would receive twenty-five years' imprisonment at the plea hearing. Id.; App. 40, ll. 1 – 7.

Petitioner would not have pled guilty had he known he would receive more than ten years' imprisonment. Id.; 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). Thus, Petitioner was prejudiced by plea counsel's deficient performance because Petitioner could not knowingly, intelligently, and voluntarily plead pursuant to Alford due to the erroneous sentencing advice provided by plea counsel. See Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made in light of the erroneous advice given by plea counsel). Accordingly, the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty when "there is a reasonable probability that, but for counsel's errors, [Petitioner] would not have pled guilty and would have insisted on going to trial." Hill, 474 U.S. at 57 – 59; See Boykin, 395 U.S. 238.

**CONCLUSION**

By reason of the foregoing arguments, Petitioner respectfully requests that this Court grant certiorari to allow for full briefing on this issue.



---

Victor R Seeger  
Appellate Defender

ATTORNEY FOR PETITIONER

This 4<sup>th</sup> day of November, 2019.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

---

MICHAEL D. MADDOX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

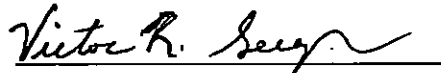
---

Counsel for Michael D. Maddox 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 George M. McFaddin, which was held on April 6, 2018, 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 Michael D. Maddox.

Respectfully Submitted,

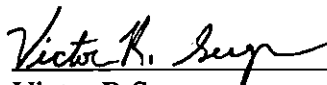


Victor R Seeger  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 4<sup>th</sup> 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."



Victor R Seeger  
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

This 4<sup>th</sup> day of November, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

\_\_\_\_\_

MICHAEL D. MADDOX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

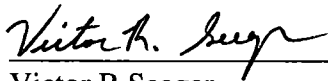
RESPONDENT

\_\_\_\_\_

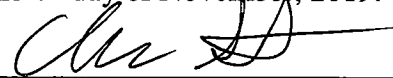
CERTIFICATE OF SERVICE

\_\_\_\_\_

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 Lindsey McCallister, 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 Michael D. Maddox, #360685, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 4<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
Victor R Seeger  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 4<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
(L.S)

Notary Public for South Carolina

My Commission Expires: September 30, 2029

RECEIVED  
NOV 04 2019  
S.C. SUPREME COURT