THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein

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S.C. SUPREME COURT

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Appellate Case No. 2021-000774

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Tellaferro Randolph, ……..Petitioner,

v.

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

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Whether trial counsel rendered ineffective assistance of counsel when he failed to provide Petitioner with all discovery in the case, rendering Petitioner without the opportunity to fully assess the case against him and thereby making his guilty plea unknowing and involuntary?

## STATEMENT OF THE CASE

Petitioner, Tellaferro Randolph, was indicted by the Orangeburg County grand jury for murder and attempted murder during the October 2015 term. On October 29, 2015, Petitioner appeared before the Honorable Edgar W. Dickson and pled guilty to the lesser included offenses of voluntary manslaughter and assault and battery of a high and aggravated nature. He was represented by Doug Mellard. Petitioner was sentenced to an aggregate term of fifteen years in prison (fifteen years for voluntary manslaughter and fifteen years for the assault and battery, to be served concurrently).

Petitioner did not appeal his conviction and sentence. On May 25, 2016, Petitioner filed an application for Post-Conviction Relief (PCR), citing ineffective assistance of counsel and lack of subject matter jurisdiction. The Court convened an evidentiary hearing on the matter in Dorchester County on December 13, 2017. The matter was heard by the Honorable Kristi Harrington, who has since retired from the bench and the matter remained under advisement and without ruling. The Honorable Diane S. Goodstein, acting in her capacity as resident judge of the First Judicial Circuit, signed an order of dismissal on July 1, 2021.

This petition for writ of certiorari timely follows.

## RELEVANT FACTS

On August 3, 2014, Petitioner arrived in the parking lot at a night club, Club Ambition (324 Nesses Camp Road), in Orangeburg County at approximately 2:00am. App. 10. When Petitioner drove into the parking lot he was looking for a space to park. One of the witnesses to the incident, Whitney Bonaparte, pulled in front of Petitioner and took the parking spot that he intended to occupy. App. 10. A verbal altercation ensued between Petitioner and Ms. Bonaparte. Two other witnesses, Ayesha Aiken, and Michael Davis (victim), joined in the ensuing argument. App. 11. Michael Davis and Petitioner appeared to have known each other because Mr. Davis addressed Petitioner by the nickname "Butney." App. 11. At some point during the verbal altercation, shots were fired. Two people were shot, Michael Davis and Travis Wilson. Mr. Davis was shot three times. He appeared to be the shooter's target. Mr. Wilson was shot twice. Mr. Davis was transported to Regional Medical Center in Orangeburg where he spent three weeks in the hospital. App. 12.

After interviewing the witnesses, it was unclear as to whether Mr. Wilson or Mr. Davis had a gun. One of the witnesses, Anthony Jamison, who was arrested a few days after the incident for being involved, claims that Mr. Davis had a small caliber handgun in his hand at the time of the incident. He also stated Petitioner only drew his weapon in response to Mr. Davis drawing his. Six different witnesses were able to either identify Petitioner by name or identify him in a photo lineup. After the incident, investigators were able to find shell casings matching two different guns, a .25 caliber handgun, and a .44 caliber handgun. An examination performed on Mr. Wilson's body by SLED found traces on gun powder residue on his right hand and his left palm. App. 14. Mr. Davis voluntarily admitted to owning a .25 caliber handgun. App. 14. After further investigation, not only was it found that his gun was in the car on the night of the incident, investigators also matched

the shell casing discovered the scene to Mr. Davis's gun. Investigators were able to conclude that Mr. Jamison and Mr. Wilson likely fired their weapons that night and that at some point Mr. Davis's .25 caliber was discharged at some point during the altercation. App. 14-15. After the parties discussed matters of guilt and pleadings, they ended up with the conclusion that Petitioner would likely be charged with voluntary manslaughter and assault and battery of a high and aggravated nature, to which Petitioner pleaded pursuant to *North Carolina v. Alford*,[1] 400 U.S. 25 (1970). App. 15.

[1] "An *Alford* plea-- a guilty plea accompanied by an assertion of innocence-- was held to be a constitutional admission of guilt in *North Carolina v. Alford*. The *Alford* court reasoned that so long as a factual basis exists for a plea, the Constitution does not bar sentencing a defendant who makes a calculated choice to accept a beneficial plea arrangement rather than face overwhelming evidence of guilt." *Zurcher v. Bilton*, 379 S.C. 132, 136, 666 S.E.2d 224, 227 (2008) (internal citations omitted).

## ARGUMENT

### I. Trial court rendered ineffective assistance of counsel when he failed to provide Petitioner with all the discovery in his case. Without the opportunity to fully assess the case against him, Petitioner's guilty plea was unknowing and involuntary.

Trial counsel rendered ineffective assistance of counsel when he did not share some of the evidence found in the discovery period with Appellant before Appellant decided to accept a guilty plea.

The Sixth Amendment guarantees every criminal defendant the reasonably effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 688, 683 (1984). In order to prevail on an ineffective assistance of counsel claim, defendant must prove: (1) counsel's representation fell below an objective standard of reasonableness and (2) but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different. Id at 687. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. at 694.

Trial counsel failed to render effective assistance of counsel when he did not provide Petitioner with the available discovery so he could reasonably assess the strength of the State's case against him. At the PCR hearing, Petitioner alleges that had he known the facts and evidence the state was going to present, he would have opted to take the case to trial. App. 55- 56. He only agreed to a plea because the thought of murder and the sentences that it carried "shook him up" App. 56-57. He did not agree with the facts the State presented. When question by the State about why he did not speak up about it during the plea hearing, he claimed that he did not know that he could. Petitioner testified at the PCR hearing his attorney did not provide him with all the evidence in his case. He claimed he did not receive any ballistics or autopsy reports. App. 53. Petitioner

testified that, had he received a full copy of his discovery, he would have taken his chances at trial because "both parties played a part in this situation." Tr. 56, ll. 1-3.

In *Boykin v. Alabama*, the Supreme Court held that it was error for a court to accept a guilty plea without an affirmative showing that it was intelligent and voluntary. *Boykin v. Alabama*, 395 U.S. 238, 240 (1969). To find a guilty plea is knowing and voluntarily entered into, the record must establish that the defendant had a full understanding of the consequences of his plea and the charges against him. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. *Id* at 34. A defendant who enters a plea on the advice of counsel may attack the voluntary and intelligent character of a plea only by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled but would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). The standard of validity of a guilty plea is whether plea represents voluntary and intelligent choice among alternative courses of action open to the defendant. *North Carolina v. Alford*, 400 U.S. 25, 31 (1970).

Here, Petitioner's plea pursuant to *Alford* cannot be considered to be knowing and voluntary. Petitioner did not know the full extent of the State's case against, and therefore could not rationally assess whether to plead guilty or go to trial. The fact that Petitioner pleaded guilty pursuant to Alford, where he was allowed to continue to protest his innocence even in light of entering a plea, shows that he entertained very significant doubts about admitting any involvement in the case. In *State v. Lawton*, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009) the South Carolina Court of Appeals found it prejudiced the defendant when the State failed to produce a letter written

by the defendant which was in the State's possession but not disclosed to the defendant prior to trial. The Court there found the disclosure of the letter was clearly material to the preparation of Lawton's defense because it likely would have affected his decision to testify, a fundamental right. *Id.* at 127, 457. Similarly, plea counsel had an obligation to provide discovery in his possession to his client so Petitioner could make an informed decision whether to plead guilty or go to trial, a fundamental right of Petitioner's. Respectfully, plea counsel rendered ineffective assistance of counsel when he failed to provide discovery to his client. His failure to do so prejudiced Petitioner because it rendered his plea under *Alford* involuntary. This Court should grant the petition for a writ of certiorari.

## CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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