

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Mar 30 2022**

**S.C. SUPREME COURT**

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Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge  
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PANTELEIMON SPIRAKIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-000887  
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

DAVID ALEXANDER  
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

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT

Petitioner’s plea was unknowing and involuntary because of plea  
counsel’s failure to move to bifurcate his sexual assault trial to  
prevent a potential jury from knowing of his prior sexual assault  
conviction..... 3

CONCLUSION..... 6

PETITION TO BE RELIEVED AS COUNSEL ..... 7

**ISSUE PRESENTED**

Whether petitioner's plea was unknowing and involuntary because of plea counsel's failure to move to bifurcate his sexual assault trial to prevent a potential jury from knowing of his prior sexual assault conviction?

## STATEMENT

In October 2016, an Horry County grand jury indicted petitioner Panteleimon N. Spirakis for first-degree sexual exploitation of a minor, two counts of engaging a child for sexual performance, and two counts of first-degree criminal sexual conduct with a minor. App. 324 – 33. On August 20-21, 2018, the State called petitioner’s case to trial before the Honorable Larry B. Hyman, Jr. App. 1. Mary Ellen Walter and Leigh Andrew represented the State. App. 1. Ralph Wilson, Sr. represented petitioner. App. 1. Petitioner pled guilty after a jury was selected. App. 200 – 220. Judge Hyman sentenced petitioner to concurrent terms of seventeen years’ imprisonment on the CSC charges and seventeen years’ imprisonment on the sexual performance charges, and a consecutive three-year sentence on the sexual exploitation of a minor charge. App. 219, l. 11 – 220, l. 9.

On May 2, 2019, petitioner filed a PCR application. App. 222. On June 25, 2021, a hearing was held before the Honorable William H. Seals, Jr. App. 248. Carla F. Grabert-Lowenstein represented petitioner and William H. Ray represented the State. App. 248. On August 11, 2021, Judge Seals denied petitioner’s PCR application. App. 304. This petition follows.

## ARGUMENT

Petitioner's plea was unknowing and involuntary because of plea counsel's failure to move to bifurcate his sexual assault trial to prevent a potential jury from knowing of his prior sexual assault conviction.

Well before the State called petitioner's case for trial, attorneys in South Carolina were asking trial judges to bifurcate criminal sexual conduct cases in which the State sought to use a prior conviction to enhance the crime. See State v. Cross, Appellate Case No. 2013-002596, Op. No. 2016-UP-257 (S.C. Ct. App. June 8, 2016) reversed by State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019). The groundwork for the Supreme Court's decision in Cross requiring bifurcation of such trials was laid before petitioner was even indicted. Had plea counsel made the correct motion, petitioner likely would not have pled guilty and would have received the benefit of Cross on appeal had he been convicted.

Petitioner was indicted in October 2016. The Court of Appeals issued its Opinion in Cross in 2016 and the unpublished decision indicates Cross was tried in October 2013. Therefore, three years before petitioner was indicted, attorneys in South Carolina were seeking the bifurcation of criminal sexual conduct trials to protect their clients.

Plea counsel did not make such a motion. Using Rule 403, SCRE, he moved to force the State to accept a stipulation to petitioner's prior sex conviction. App. 74, l. 24 – 78, l. 17. The trial judge rejected the motion. App. 74, l. 24 – 78, l. 17. The notion of forcing the State to accept a stipulation involving a prior offense as an element of the current crime had not been viable since 1997. See State v. Hamilton, 327 S.C. 440, 486 S.E.2d 512 (Ct. App. 1997).

Plea counsel simply did not make the correct motion—asking for bifurcation. The PCR court held that petitioner did not allege or introduce “any evidence” that plea counsel was

ineffective for failing to move for bifurcation. App. 320, n.1. This holding was error because the record of the proceedings establishes this legal claim without the need for any additional evidence at the PCR hearing.

As plea counsel affirmed at the PCR hearing, petitioner always wanted to go to trial. App. 283, l. 22 – 24. Judge Hyman heard extensive pre-trial motions and selected a jury. The incorrect and outdated motion made by plea counsel is apparent from the trial and plea record. App. 74, l. 24 – 78, l. 17.

As Cross shows, “the inherently prejudicial stigma of a prior sex-related offense” is undoubted and vast. Cross at 478, 832 S.E.2d at 288. After Judge Hyman denied plea counsel’s deficient motion, petitioner knew that the jury would hear about his prior sex conviction in a trial involving salacious allegations concerning young children. Plea counsel testified that he had avenues to attack the State’s primary witness, Lindsey Honeycutt, and a strategy to undermine the children’s testimony, specifically their lack of ability to identify petitioner. Indeed, at the PCR hearing, Lindsey Honeycutt recanted her statements accusing petitioner of wrongdoing. App. 292, l. 2 – 297, l. 13. She admitted lying to law enforcement and to the court. App. 292, l. 2 – 297, l. 13.

Had the proper motion for bifurcation been made and granted, petitioner would have known he would not have been unduly prejudiced by the jury learning of his prior conviction and would have not pled guilty. Even if the motion had been denied, it is likely that petitioner still would have insisted on a trial and would have received the benefit of Cross on appeal. Petitioner was fifty-eight years old when he pled guilty. App. 216, l. 24 – 217, l. 3. As plea counsel said, even a ten-year sentence was a life sentence for petitioner given his age. App. 216, l. 24 – 217, l. 3.

Petitioner simply had no logical reason to plead guilty absent counsel's failure to make the proper motions. 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); Burnett v. State, 352 S.C. 589, 591, 576 S.E.2d 144, 145 (2003). Counsel's deficient performance rendered petitioner's plea involuntary. This Court should reverse petitioner's convictions and remand for a new trial.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari with the ultimate result of reversing petitioner's convictions and remanding for a new trial.

s/David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of March, 2022.

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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Panteleimon Spirakis 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 William H. Seals, which was held on June 25, 2021, 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 Panteleimon Spirakis.

Respectfully Submitted,

s/David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of March, 2022.

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S.C. SUPREME COURT

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.”

s/David Alexander  
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 30th day of March, 2022.