

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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May 09 2022

S.C. SUPREME COURT

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Certiorari to Aiken County

Honorable Jennifer B. McCoy, Circuit Court Judge

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WILLIAM A. SEAWRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001087

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

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Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR court err finding defense counsel was not ineffective where counsel failed to conduct reasonable investigation into petitioner's charge of failure to stop for a blue light resulting in death?

## STATEMENT

On June 11, 2018, an Aiken County grand jury indicted petitioner for failure to stop for blue light resulting in death and possession of a stolen vehicle. App. 124-28. On August 10, 2018 petitioner pled guilty to failure to stop for a blue light resulting in death and possession of a stolen vehicle before the Honorable William P. Keesley. App. 1. Victor Li represented petitioner and Sam Grimes, assistant solicitor, represented the state. App. 1. Judge Keesley sentenced petitioner to concurrent terms of twenty-five years for failure to stop for blue light resulting in death and thirty days for possession of a stolen vehicle. App. 21.

Thereafter, petitioner filed an application for PCR. App. 24-34. On June 2, 2021, an evidentiary hearing was held before the Honorable Jennifer B. McCoy. App. 50. Arthur Aiken represented petitioner and Michael Neubauer, assistant attorney general, represented the state. App. 50.

On August 9, 2021, Judge McCoy signed an order denying PCR. App. 97-123. Judge McCoy found defense counsel was not deficient where counsel testified that he hired a private investigator to speak with the family of the deceased and that he would “have engaged in more intensive trial preparation if the case had been in a trial posture.” App. 113-14. Judge McCoy also found petitioner failed to show evidence of prejudice. App. 114.

## ARGUMENT

The PCR court erred finding defense counsel was not ineffective where defense counsel failed to conduct reasonable investigation into petitioner's charge of failure to stop for a blue light resulting in death.

### **Relevant facts**

At petitioner's guilty plea hearing, the state alleged that on January 13, 2017, an officer was "running radar," and a vehicle, driven by petitioner, approached going a few miles over the speed limit. The vehicle sped up and the officer followed the vehicle. The officer ran the license plate number of the vehicle and discovered it was stolen. He initiated his lights and siren and the vehicle continued to speed up. Ultimately, petitioner lost control of the vehicle and hit a tree. The passenger died and petitioner lost both of his legs in the accident. App. 8-9.

At the PCR hearing petitioner's testimony reflected that, at best, he misunderstood many of the conversations he had with defense counsel regarding pleading guilty and, at worst, defense counsel failed to explain several things to him. Petitioner said that he did not want to plead guilty however, defense counsel told him that if he went to trial, he would get the maximum sentence of twenty-five years. App. 62. Petitioner believed if he pled guilty, he would be sentenced to a range of eight to fifteen years. App. 64, ll. 3-10. Petitioner testified that defense counsel did not explain community supervision to him, nor did petitioner understand that he could actually end up serving all twenty-five years. App. 65-66. Petitioner said that defense counsel investigated his case only "a little." App. 68, ll. 13-15.

Defense counsel testified that he discussed the indictments with petitioner and explained the elements of the charges against him. App. 76. Counsel maintained that petitioner never indicated that he did not understand the charges against him or his constitutional rights. App. 76.

Counsel said that most of his investigation in petitioner's case was for the charges the state ultimately dropped and that those cases were "garbage cases." 76-77. Counsel admitted regarding the charge of failure to stop for blue light resulting in death, the only investigation he did, outside of the state's discovery, was directing an investigator to contact the decedent's family in order to see how they felt about sentencing. App. 77, ll. 12-22. Counsel acknowledged that "there wasn't a ton of investigation." App. 78, ll. 1-5.

### **Discussion**

A two-prong test for determining effective assistance of counsel has been set forth by the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). First, an individual must show that counsel's performance was deficient. Under this prong, "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Id.* at 688. The second prong of *Strickland* requires a showing that the deficient performance prejudiced the individual to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The individual is required to overcome the presumption that counsel was effective in order to receive relief. *Id.*

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Strickland v. Washington*, 466 U.S. 668, 691 (1984).


Here, defense counsel had a duty to conduct a reasonable investigation in petitioner's case to be able to competently advise him whether to plead guilty or go to trial and he failed to fulfill

that duty to petitioner. *See Strickland*, 466 U.S. 688, 691. Counsel admitted at petitioner's evidentiary hearing that he did not do very much investigation into the very serious crimes that petitioner was charged with. Counsel sending an investigator to speak to the decedent's family was not investigation it was mitigation after counsel already advised petitioner to plead guilty. Counsel testified that the reason that he sent the investigator to speak to the decedent's family was to see how they felt about sentencing.

Counsel failed to do any investigation in petitioner's case resulting in petitioner pleading guilty and receiving a twenty-five-year sentence. Counsel's admitted failure to investigate petitioner's case any further that reviewing what was provided by the state during discovery was unreasonable. *See Strickland*, 466 U.S. 688, 691.

**CONCLUSION**

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

  
\_\_\_\_\_  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 9<sup>th</sup> day of May, 2022.

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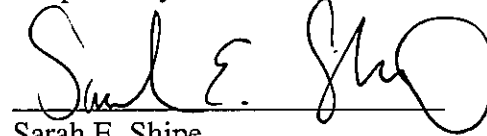
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for William A. Seawright states:

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 Jennifer B. McCoy, which was held on June 2, 2021, 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 William A. Seawright.

Respectfully Submitted,



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Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 9<sup>th</sup> day of May, 2022.

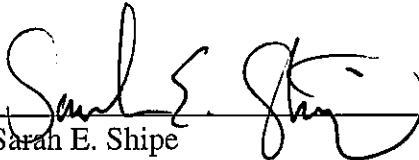
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CERTIFICATE OF COUNSEL

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."

  
Sarah E. Shipe  
Appellate Defender

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