

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Jun 07 2022**

S.C. SUPREME COURT

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Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

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DOUGLAS WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001468

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

Victor R Seeger  
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**

Whether Petitioner pled guilty involuntarily due to plea counsel's ineffective assistance of counsel because plea counsel did not properly defend Petitioner from the solicitor threatening to levy additional charges against Petitioner, and to have Petitioner's "known liar" co-defendant testify against him, if Petitioner proceeded to trial?

## STATEMENT

During the February 2019 term, the Spartanburg Grand Jury indicted Petitioner for three counts of possession of a firearm by a person convicted of a violent crime, two counts of first degree burglary, two counts of carjacking, petit larceny, and first degree assault and battery. App. 112 – 132.

On September 9, 2019, Petitioner pled guilty before the Honorable Grace G. Knie. App. 1. James Cheek represented Petitioner. Id. Spenser H. Smith represented the state. Id.

Judge Knie found a factual basis for Petitioner's guilty plea to carjacking, three counts of possession of a weapon during a violent crime, second-degree burglary as the lesser included offense of first-degree burglary, assault and battery in the first degree, and petit larceny. App. 13, l. 23 – 19, l. 21; App. 27, ll. 17 – 18. Petitioner was sentenced to twenty years' imprisonment suspended upon the service of ten years with probation for two years for carjacking; fifteen years' imprisonment suspended on the service of ten years for second-degree burglary; ten years' imprisonment for petit larceny; ten years' imprisonment for assault and battery in the first degree, and five years' imprisonment for possession of a weapon during the commission of a violent crime charges. App. 36, l. 4 – 37, l. 9. All Petitioner's charges ran concurrently. Id.

On July 31, 2020, Petitioner filed a post-conviction relief (PCR) application. App. 39 – 45. The state filed a Return and Motion to dismiss on January 7, 2021. App. 46 – 58.

On September 17, 2021, Petitioner's PCR hearing was held before the Honorable William A. McKinnon. App. 59. Rodney Richey represented Petitioner. Id. William Ray represented the state. Id.

In an order filed on November 14, 2021, Petitioner was denied relief. App. 101 – 111. The PCR court found that Petitioner did not plead guilty involuntarily. App. 108 – 110. The PCR court

pointed to plea counsel's testimony that Petitioner did not express a desire to go to trial and there was "nothing in the record to suggest that [Petitioner] would have proceeded to trial but for counsel's performance." App. 109 – 110.

This petition follows.

## ARGUMENT

Petitioner pled guilty involuntarily due to plea counsel's ineffective assistance of counsel because plea counsel did not properly defend Petitioner from the solicitor threatening to levy additional charges against Petitioner, and to have Petitioner's "known liar" co-defendant testify against him, if Petitioner proceeded to trial.

### **Relevant Facts**

On September 11, 2018, in Lyman, Petitioner allegedly carjacked a Ms. Pace with co-defendant Dillard. App. 21, l. 19 – 22, l. 17. After the alleged carjacking, Petitioner and co-defendant Dillard were purportedly involved in a home invasion at a residence on Holly Circle. App. 22, l. 18 – 23, l. 18. The solicitor speculated that Petitioner and Dillard arrived at the home “under the guise of buying marijuana but at some point it turn[ed] into pistols being drawn and trying to get money from the male occupant of the house.” Id. A female occupant left the home as the incident unfolded and went to the next-door neighbor's house. Id.

Petitioner allegedly left the house and knocked on the neighbor's door. Id. Petitioner later explained that he went to the neighbor's house to apologize to the woman and kids because he did not expect them to be present and did not want to scare them. Id.

Regarding the petit larceny charge, Petitioner and Dillard stayed at a Mr. Clary's home and Clary alleged two handguns were stolen. App. 23, l. 19 – 24, l. 20. Those two handguns were the handguns used in the aforementioned incidents. Id.

At Petitioner's PCR hearing, he testified that he was “bullied” into pleading guilty. App. 67, ll. 10 – 20. His guilty plea was entered involuntarily because his first attorney, counsel Neely did not effectively represent him because Neely let the solicitor “bully” him into taking the guilty plea. App. 72, l. 10 – 74, l. 25. The solicitor threatened Petitioner with two additional kidnapping

charges and two additional home invasion charges if Petitioner did not plead guilty. App. 75, ll. 1 – 22. Neely “never investigated” and “never did what he was supposed to do.” App. 80, l. 24 – 81, l. 10. Petitioner also explained that Neely did not fight the solicitor’s attempt to have Petitioner’s co-defendant, “a known liar,” testify against Petitioner. Id. Furthermore, Petitioner specifically stated that he told plea counsel Cheek he wanted to go to trial. App. 72, ll. 4 – 7.

Petitioner explained that plea counsel Cheek, who replaced Neely, did not have enough time to defend Petitioner such that Petitioner had to plead guilty. App. 80, ll. 3 – 10. By the time Cheek represented Petitioner, “it was either take the plea or go to the trial next week.” App. 81, ll. 17 – 24. Furthermore, Petitioner felt forced to plead guilty because he was stuck with the choice between pleading guilty or proceed to trial with Neely and, due to Neely’s ineffective assistance, Petitioner did not want to proceed to trial with Neely as his attorney. App. 82, l. 15 – 83, l. 13.

Plea counsel Cheek testified at the PCR hearing as well. App. 84, l. 8. Cheek admitted the relationship between Petitioner and Neely was “toxic.” App. 85, ll. 11 – 13. Cheek stated that Petitioner’s co-defendant was “going to throw [Petitioner] under the bus.” App. 86, l. 7 – 87, l. 21. Cheek also admitted that if Petitioner did not plead guilty, Neely would have represented him at trial. App. 88, l. 25 – 89, l. 3. Cheek denied that Petitioner requested to go to trial. App. 87, l. 22 – 88, l. 24. Cheek also alleged, without providing evidence, that Neely provided effective assistance of counsel. App. 95, l. 12 – 96, l. 3.

## **Discussion**

Petitioner was denied effective assistance of counsel because plea counsel Neely did not defend Petitioner from the solicitor “railroad[ing]” him by threatening to levy additional unsubstantiated charges against Petitioner if he did not plead guilty in this case. App. 80, l. 24 – 81, l. 10. Petitioner was prejudiced by Neely’s ineffective assistance of counsel because by the

time he was able to have plea counsel Cheek represent him it was too late to defend himself against the current charges at trial such that Petitioner was forced to plead guilty. App. 81, ll. 17 – 24.

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); accord State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) (finding the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea).

“The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984). To prove ineffective assistance of counsel, “the defendant must show that counsel’s performance was deficient” and “that the deficient performance prejudiced the defense.” Id. Concerning prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694.

The difference, “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.” Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.”

Hill v. Lockhart, 474 U.S. 52, 56 (1985) (internal quotations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984) to claims of the same against plea counsel).

First, “the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” Hill, at 56. On the other hand, the prejudice requirement focuses on whether “there is a reasonable probability that, but for counsel’s errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

In this case, Petitioner was forced to choose between pleading guilty and being represented by an attorney who did not defend him effectively. App. 82, l. 15 – 83, l. 13; App. 88, l. 25 – 89, l. 3. Petitioner only pled guilty because he did not want to proceed to trial with counsel Neely representing him. App. 72, l. 10 – 74, l. 25. Neely allowed the solicitor to threaten Petitioner with additional charges of kidnapping and home invasion as well as threatened to allow Petitioner’s “known liar” co-defendant to testify against him. App. 72, l. 10 – 74, l. 25; App. 80, l. 24 – 81, l. 10. Petitioner explained that by the time Cheek was representing him, there was not enough time for Cheek to properly defend him at trial such that Petitioner felt the only option was to enter the guilty plea and fight his case at PCR. App. 81, ll. 17 – 24.

Accordingly, Neely provided ineffective assistance of counsel as his representation fell below an objective standard of reasonableness. See Smalls v. State, 422 S.C. 174, 181 – 82, 810 S.E.2d 836, 840 (2018). That ineffective assistance prejudiced Petitioner because Petitioner pled guilty involuntarily to avoid proceeding to trial with Neely representing him. See Boykin, supra. Therefore, Petitioner’s guilty plea was entered involuntarily and should be vacated.

**CONCLUSION**

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

A handwritten signature in blue ink, reading "Victor R. Seeger", is written over a horizontal line.

Victor R Seeger  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7<sup>th</sup> day of June, 2022.

STATE OF SOUTH CAROLINA

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Counsel for Douglas James Wright 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 A. McKinnon, which was held on September 17, 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 Douglas James Wright.

Respectfully Submitted,



\_\_\_\_\_  
Victor R Seeger  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7<sup>th</sup> day of June, 2022.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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."



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This 7<sup>th</sup> day of June, 2022.