STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Aiken County

Honorable Clifton Newman, Circuit Court Judge

APPELLATE CASE NO. 2022-000578

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State of South Carolina, Respondent,

v.

Rayquan McCorkle, #378805, Appellant.

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# PETITION FOR WRIT OF CERTIORARI

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## ISSUES PRESENTED

I. Did the PCR court err in finding that Petitioner Rayquan McCorkle failed to meet his burden to establish ineffective assistance of counsel prior to and leading up to his guilty plea?

II. Did the PCR court err in finding that Petitioner Rayquan McCorkle's guilty plea was entered into knowingly and voluntarily?

## STATEMENT

During the January 2018 term, Petitioner was indicted for Murder, two counts of Attempted Murder, Burglary 1st Degree, and Armed Robbery in Aiken County General Sessions. Petitioner was initially charged as a juvenile, due to the Petitioner being fifteen years old at the time of the alleged crime. Petitioner was originally represented by Ola Johnson. Following the findings of Family Court, the case was transferred to the Aiken County Court of General Sessions where Petitioner was represented by Keith Johnson. Solicitor James Strom Thurmond, Jr. prosecuted the case for the State.

Petitioner pled guilty on January 10, 2019 to Murder, Attempted Murder, Armed Robbery and Burglary 1st Degree as indicted. Petitioner was represented by Counsel during the plea. This was a negotiated plea for a sentence of thirty-five (35) years on the charge for Murder and thirty (30) years on the remaining charges, all be run concurrent. The Honorable Clifton Newman sentenced Petitioner according to the negotiated Plea agreement. Petitioner did not appeal his sentence or plea.

The incident in question took place on November 18, 2016, where a robbery took place at the part-time residence of Connor Clemmons, an alleged marijuana dealer. Petitioner and his co-defendant, Undraize Dixon, were invited over by Clemmons and are alleged to have devised a plan to rob Clemmons of money and narcotics. Dixon knocked on the door of the apartment but was told that Clemmons was not home by the two minors who answered the door. Dixon then returned to the vehicles, where Petitioner and other co-defendants were waiting. Petitioner and co-defendants are alleged to have then rushed into the apartment with handguns, dressed in all black with bandanas and masks. During the alleged incident, Petitioner is alleged to have shot the victim,

Jordan Shores, in the head with a 40-caliber Sig Sauer pistol and then attempted to shoot another resident of the apartment. Petitioner and co-defendants then fled the scene in the vehicles. Petitioner is alleged to have taken a PS4 video game system from the apartment. One of the vehicles was driven by Dixon, which was later stopped following a high-speed chase, at which time two of the co-defendants were arrested. Petitioner was a minor at the time of this incident and fled the scene with multiple co-defendants. Petitioner was not arrested as part of this case, but three (3) days later while at school. Petitioner's cell phone was seized upon his arrest at the school.

Petitioner filed an application for PCR on January 9, 2020 by his retained Counsel, James R. Snell, Jr. In this application, Petitioner stated that he was held in custody unlawfully due to ineffectiveness of counsel. Petitioner stated that Plea Counsel failed to interview witnesses disclosed by the Petitioner, did not seek or retain a ballistics expert, and failed to review all discovery with Petitioner. Petitioner filed an amended application for PCR on January 19, 2022 to add that Plea Counsel failed to retain an expert forensic psychologist or obtain a comprehensive psychological examination prior to Petitioner's plea.

The State filed a Return on September 1, 2020 via Brianna L. Schill, Esq. with the South Carolina Attorney General's Office, requesting an evidentiary hearing to be held regarding Petitioner's claims of ineffectiveness of counsel. At the evidentiary hearing Petitioner, argued claims from the original application for PCR and amended application for PCR. The Court dismissed the application for PCR with prejudice and ordered Petitioner be remanded into custody of the State. The application for PCR was dismissed by the Court on April 11, 2022, filed on April 18, 2022, and provided to Counsel for Petitioner on April 29, 2022.

## ARGUMENT

I. The PCR Court erred in finding that Petitioner Rayquan McCorkle failed to meet his burden to establish ineffective assistance of counsel prior to and leading up to his guilty plea.

Conflicting testimony was presented at the PCR hearing as to whether Petitioner's Plea Counsel failed to interview witnesses, failed to obtain experts to aid in Petitioner's defense, failed to advise Petitioner on all discovery materials, and failed to have Petitioner psychologically evaluated.

For guilty pleas, a Petitioner for Post-Conviction relief must show a reasonable probability that, but for counsel's alleged errors, he should not have pled guilty and would insist on going to trial. Hill v. Lockhart, 474 U.S. 52 (185); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). At the hearing, Petitioner was asked by Retained Counsel if he understood that he would be receiving thirty-five years when he pled guilty, to which he responded, "I mean, he just told me that the best thing for me to do is to take the plea, so I – listened to him." (Appendix P. 114, lines 9-10). Petitioner was then asked by Retained Counsel if he knew how much time he was facing, to which he stated, "Not really." (Appendix P. 114, lines 13). The Petitioner was simply trusting his attorney to make the decision for him due to him being young and not understanding exactly what evidence was against him or what consequences he was facing.

Petitioner was then asked, "Did you at least understand sort of the – the seriousness of the charges against you and what it meant?.." (Appendix P. 120, lines 23-24), to which he responded, "Not really." (Appendix P. 121, lines 1). Petitioner was then asked, "Did you –did you or did you

not know if convicted at least of murder, you – you could face life in prision without the possibility of parole?" and he responded, "He – he never explained that to me." (Appendix P. 121, lines 2-5). Petitioner's Counsel then asked, "...did he ever discuss with you trial strategy and how this would go if it were a trial, what would happen at trial? Did he discuss that?" to which he replied, "No, we never – we never talked about trial." (Appendix P. 127, line 25, P. 26, lines 1-3). Petitioner then further stated, "I mean, like all he was saying about it was that I shouldn't – I shouldn't go to trial because there was no way for me to win." (Appendix P. 128, lines 7-9).

It is Counsel's or Plea Counsel's responsibility to their client to fully inform them of the evidence against them, any forms of defense, and what exactly the outcomes could be. It is evident that, although the Petitioner did plead and stated he understood his rights, there existed a clear miscommunication between Petitioner and his Counsel as to what Petitioner understood and what he was facing. Although a negotiated plea agreement to thirty-five (35) years is better than a possible life sentence, Petitioner was unaware of any defense his attorney could present on his behalf besides being told by his counsel that he should just plead because he could not win at trial. This is further verified by the fact that when asked at the PCR hearing by his Retained Counsel, "But you – did you understand why the evidence was strong or kind of what it was and why the State had strong evidence against you?" to which he said, "No, ma'am." (Appendix P. 143, lines 6-12). When further asked, "...are you telling Court that you relied on the advice of your attorney–", Petitioner's response was, "Yes, ma'am." (Appendix P. 143, lines 6-12). Petitioner was clear at his evidentiary hearing that he did not understand the evidence against him and was just relying on what Plea Counsel told him to do. Petitioner did not understand and was only told that pleading to thirty-five (35) years was better than a possible life sentence.

In Addition to the failure of Counsel to review all discovery and defense options with Petitioner, Counsel also did not seek or retain either a ballistics expert nor forensic psychologist, even to have Petitioner evaluated. Based on the evidence provided by the State, the key pieces of evidence regarding the underlying case were ballistic evidence regarding the gun used to kill the alleged victim and the shell casings found with Petitioner's fingerprints and the alleged victims blood on them. It was Petitioner's understanding that as part of the retainer of Plea Counsel, experts would be provided through that retainer, including a ballistics expert. The Petitioner stated he was told that, "Yes, he told me he obtained a ballistic expert out of Atlanta, I think, but he told me he retained a ballistic expert though." (Appendix P. 133, lines 19-21). Petitioner later stated that he never saw a report or anything from a ballistic expert. With this being a key part of the State's evidence against Petitioner, an expert would have been necessary to verify that the State's evidence was in fact true. This is particularly important as there were other alleged shooters present at the incident. When the State crossed Petitioner at the evidentiary hearing, the State asked, "When you and Mr. Johnson was talking about ballistics and the bullet and the Google searches, did he ever tell you that if you went to trial you could challenge that and try to keep it from being introduced at trial?" and Petitioner's response was, "No." (Appendix P. 147, lines 21-25). Petitioner was only ever instructed that the ballistics and DNA were strongly against him and that a plea deal was better. Petitioner was never made aware that the key pieces of evidence against him could be challenged at trial.

A key concern for Petitioner, as well as his mother, who retained Plea Counsel on Petitioner's behalf, was for Petitioner to receive a psychological evaluation. At the time of the alleged incident, Petitioner was fifteen years old. Petitioner stated that he had received in-patient psychological treatment when he was around ten (10) years old at a mental health facility and then

regularly visited Aiken-Barnwell Mental Health for about two (2) years on an out-patient basis. Petitioner's mother later clarified that Petitioner was admitted to the in-patient facility when he was eight (8) years old, not ten (10) years old, as Petitioner recalled it. At the evidentiary hearing, Petitioner was asked about a psychological evaluation by Retained Counsel, "Is there anything else you talked to Mr. Johnson about that you thought would be useful for the prosecutor to consider in – in terms of getting you a plea deal? Did you tell him, hey, look into this or that, this might help?" and he responded "My age and if I could get an evaluation." (Appendix P. 129, lines 8-13). When asked if he had ever brought up why he wanted an evaluation, the Petitioner stated, "I was just telling him that I used to go to the – to this mental health hospital and I had to take counseling, but he was just telling me that that's not really nothing that can help me because– because of what the State has." (Appendix P. 133, lines 22-25 & P. 133, line 2). It was Plea Counsel's belief that a psychological evaluation was not necessary to have the evaluation due to the evidence and because, as he stated, "I don't recall ever being told about any mental health treatment, nor in my interactions with Rayquan did I note that he was mentally deficient or having trouble understanding my role or the Court's role or the evidence in the case." (Appendix P. 180, lines 18-22). Petitioner's mother, Sharon Patterson, testified at the evidentiary hearing about Petitioner's Juvenile Attorney, Ola Johnson, "Ola went and had me sign papers and he went and got all the paperwork that was needed from Aurora, and the mental health place." (Appendix P. 158, lines 9-11). However, Plea Counsel failed to get these records from Ola Johnson and when asked if he ever reached out to Ola Johnson, he responded, "You know what, I was going through my file and I do have a business card from her {sic} that was scanned into our file, so I must have had some contact with her, but I don't have an individual conversation that sticks out about any substantive issue with the case." (Appendix P. 191, lines 15-19). Even though Plea Counsel had

a business card belonging to Ola Johnson, he was not sure if he had talked to Ola Johnson. Petitioner's Retained Counsel had to point out that Ola Johnson was in fact a male, not a female as Plea Counsel had testified, at the evidentiary hearing. When then asked, "To your knowledge, sir, did Ola Johnson, his former attorney, ever reach out to you when you took – when you took on the case?" and he responded, "I don't recall." (Appendix P. 191, lines 22-250). Plea Counsel's vague recollection on whether he may have called Ola Johnson but didn't think anything was substantial, but he did not recall if Ola Johnson called him, showed that the Plea Counsel most likely never spoke with the previous Counsel for Petitioner, nor did he get a copy of Petitioner's file, which would have contained Petitioner's mental health records. When further asked if Petitioner's mother ever expressed to Plea Counsel her concerns about Petitioner's competency and mental fitness, his response was, "No. I mean, she told me that he tried to stab one of his siblings at some point with some scissors or something, but it was more along the lines of behavioral issues, not comprehension, competency issues. More – more along the lines that he's acted out in the past." (Appendix P. 192, lines 7-11). Even though Petitioner was alleged to have threatened or attempted to harm a sibling, and the fact that both Petitioner and his mother stated that they wanted Petitioner to be psychologically evaluated, Plea Counsel ignored their wishes and did not have Petitioner psychologically evaluated because he believed he was competent and comprehensive. This psychological evaluation could have been substantial to Petitioner's defense or potentially Petitioner incompetent to stand trial. However, this was not done by Plea Counsel.

Petitioner also states that Plea Counsel failed to interview relevant witnesses disclosed by Petitioner. It was Petitioner's understanding that a Private Investigator was hired to interview witnesses, but he had not seen a report from one. (Appendix P. 134, lines 5-10). Additionally, there was a Facebook post regarding the alleged incident that Petitioner had informed Plea Counsel

about, but to Petitioner's knowledge, nothing was done about it nor did a Private Investigator look into the post. Plea Counsel did state that he interviewed the witnesses Petitioner gave him, as well as their mothers, but also stated that they would not testify to their statements. Additionally, Plea Counsel stated that when they were interviewed by other counsel, their statements changed, thus he did not pursue using their statements to assist in Petitioner's Defense.

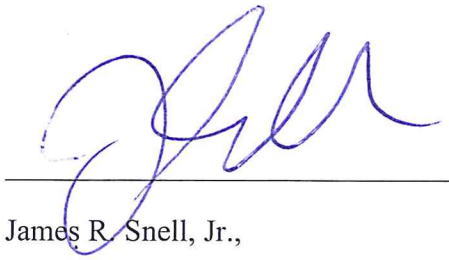
II. The PCR court erred in finding that Petitioner Rayquan McCorkle's guilty plea was entered into knowingly and voluntarily.

A Defendant who pleads guilty simultaneously waives several constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury and the right to confront his accusers. State v. Patterson, 278 S.C. 319, 332, 295 S.E.2d 264, 265 (S.C. 1982). For such a waiver to be valid under the due process clause, it must be intentional relinquishment or abandonment of a known right or privilege. Further, the record must clearly establish waiver. See also Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

Petitioner was improperly advised as to his legal rights by Plea Counsel. Therefore, Petitioner was pressured in his decision to plead guilty. Petitioner relied on the advice of counsel and believed he had no other legal theory of defense available to him due to not being able to meet with Plea Counsel to discuss all of the discovery. When Petitioner was asked, "Considering all the evidence in this case against you, did you understand that once you went in front of the judge and you pled guilty, did you understand that you could not later review or challenge that evidence again?", to which he replied, "No, I didn't understand that." (PCR Transcript P. 39, lines 22-25, & P. 40, line 1). Petitioner was further improperly advised as to these legal rights by Plea Counsel when he was told that if he didn't take the negotiated plea, he would get life imprisonment. Additionally, at the time of meeting Plea Counsel Petitioner was a minor and at the time of the plea, was barely the legal adult age. As a result of Plea Counsel's failure to properly advise Petitioner, Petitioner's plea could not have been freely and voluntarily entered.

## CONCLUSION

Based on the foregoing certiorari should be granted, Petitioner's conviction and sentence reversed, and the case be remanded.



James R. Snell, Jr.,

ATTORNEY FOR PETITIONER

This 1st day of June, 2022