

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 29 2022

S.C. SUPREME COURT

Certiorari to York County

Honorable Grace Gilchrist Knie, Post-Conviction Relief Judge

MAURICE L. ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000074

JOHNSON PETITION FOR WRIT OF CERTIORARI

Jessica M. Saxon
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South Carolina Commission on Indigent Defense
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ISSUE PRESENTED

Whether the PCR court erred in finding Petitioner's guilty plea was knowingly and voluntarily entered where counsel failed to fully advise Petitioner about his parole eligibility and Petitioner decision to plead was based on the limited advice?

STATEMENT

On November 29, 2017, Petitioner was pulled over in York County for various traffic violations. When officers approached the vehicle, they saw loose marijuana on and around Petitioner. App. 74, ll. 19-25. A search of the vehicle resulted in officers seizing 12.7 grams of loose marijuana, a scale, a cellphone, baggies, and approximately \$2100. App. 75, ll. 1-3; App. 88. A check of Petitioner's driving record revealed that Petitioner had been declared a habitual traffic offender on December 27, 2017. App. 19, ll. 4-11. Petitioner was arrested and subsequently indicted by the February 2018 York County grand jury for one count of possession with intent to distribute marijuana¹ (PWID) and one count of habitual traffic offender (HTO). App. 90-93.

On July 11, 2018, the State, represented by Marina Hamilton and Ryan Newkirk, called the case to trial before the Honorable Roger L. Couch and a jury. App. 1. Petitioner was represented by Devon Nielson. App. 1. Petitioner initially elected to plead guilty to the HTO charge and to proceed to trial on the PWID charge. App. 4, ll. 15-17. The trial court accepted Petitioner's plea to the HTO charge and deferred sentencing until the conclusion of the PWID trial. App. 18, ll. 19-23; App. 20, ll. 8-12. After accepting Petitioner's plea to the HTO charge, the parties selected a jury and the trial court heard pre-trial motions. App. 22-43; App. 47-66. The court recessed for lunch, and when it reconvened, Petitioner decided to enter a guilty plea to the PWID charge as well. App. 67, ll. 14-18; App. 74, ll. 11-13. Petitioner was sentenced to five years imprisonment on the HTO charge, concurrent to twelve years imprisonment on the PWID charge, suspended to ten years of service followed by probation for two years. App. 83, l. 20- App. 84, l. 14.

¹The PWID charge was enhanced to a third or subsequent offense based on Petitioner's prior record. App. 75, ll. 17-21.

Petitioner appealed his convictions and sentences, but the appeal was dismissed for failure to provide a sufficient explanation pursuant to Rule 203 (d)(1)(B)(iv), SCACR. App. 97; App. 104. The current application for post-conviction relief was filed on May 15, 2019. App. 96-102. The State filed a return and motion for a more definite statement dated September 10, 2019. App. 103-111. Petitioner's PCR counsel filed an amended application dated December 2, 2021, alleging that Counsel Neilson was ineffective for failing to advise Petitioner that his offense was not parole-eligible and failing to object or appeal the non-conforming sentence issued by Judge Couch. App. 112.

An evidentiary hearing was convened via WebEx before the Honorable Grace Knie on December 6, 2021. App. 113. Petitioner was represented by Jonathan Waller. The State was represented by Michael Davidson. App. 113. Petitioner testified that, from the beginning, he told Counsel Neilson that he did not want to enter a guilty plea to the drug charge. App. 123, ll. 6-11. The State offered Petitioner a plea deal for six years, but he rejected the plea offer. App. 130, ll. 1-9; App. 136, ll. 5-13. Petitioner maintained he was not distributing marijuana, and he wanted to challenge that charge at trial. App. 126, l. 17-App. 127, l. 4.

Petitioner testified that his offense was non-violent, which he understood meant he would be parole eligible. App. 130, l. 25-App. 131, l. 3. He stated that he discussed the plea with Counsel Neilson the day the trial was set to start. App. 131, ll. 10-17. He pled guilty because Counsel Neilson advised him it was a non-violent offense, and he would serve no more than five years in prison. App. 133, ll. 14-20; App. 141, ll. 6-11. Petitioner would have proceeded to trial if he had known his sentence was not going to be parole eligible. App. 135, ll. 6-13.

Counsel Neilson confirmed that Petitioner consistently denied ever distributing marijuana to others. App. 145, ll. 10-20. He also confirmed that the State offered Petitioner a plea deal for

six years that Petitioner rejected. App. 147, ll. 3-12. Counsel Neilson further testified that he believed he discussed with Petitioner that his sentence was not eligible for parole even though it was a non-violent offense. App. 151, ll. 5-20; App. 152, ll. 1-2. While Counsel Neilson believed they had discussed potential parole eligibility, he did not believe they discussed it in any detail. However, he recalled that he told Petitioner he would not be parole-eligible based on his record. App. 154, ll. 9-25.

At the end of the hearing, Counsel Waller argued that Petitioner did not have a clear understanding that he was pleading to an offense that was not parole-eligible which rendered Petitioner's plea involuntary. App. 160, ll. 5-22. The State argued that Counsel Neilson testified that he told Petitioner the offense was not parole-eligible, and Petitioner could not prove he was induced to plead guilty based on his understanding or misunderstanding of parole eligibility, because he pled "straight up." App. 161, ll. 1-24.

The PCR court took the matter under advisement, App. 163, ll. 6-25. An order of dismissal was filed on January 7, 2022. App. 166-174. In the order, the PCR court found that Counsel Neilson had credibly testified and that he advised Petitioner that the charge was not parole-eligible, and therefore he was not deficient. The PCR court additionally found that Petitioner's testimony was not credible, and that Petitioner had not presented any evidence to show that he was induced to plead based on his beliefs about his parole eligibility. App. 173.

ARGUMENT

The PCR court erred in finding Petitioner's guilty plea was knowingly and voluntarily entered where counsel failed to fully advise Petitioner about his parole eligibility and Petitioner decision to plead was based on the limited advice.

A PCR applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea 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 guilty but would have insisted upon going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC.

For a plea to be knowingly and voluntarily entered, a defendant must have a full understanding of what he is pleading to and the consequences of the plea. *See Boykin v. Alabama*, 395 U.S. 238 (1969). "A guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence." *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) *citing Brown v. State*, 306 S.C. 381, 412 S.E.2d 399 (1991). However, a defendant who is induced to plead guilty based on erroneous legal advice, even regarding a collateral consequence, may have a valid ineffective assistance of counsel claim. *See Hinson v. State*, 297 S.C. 456, 377 S.E.2d 338 (1989) (new trial granted where incorrect parole eligibility advice induced plea); *Kerrigan v. State*, 304 S.C. 561, 406 S.E.2d 160 (1991) (finding there was evidence in the record that PCR applicant was only guilty of lesser-included offense and holding PCR counsel was ineffective in failing to advise applicant of lesser offense before pleading guilty). Where a defendant alleges that counsel misinformed him about parole

eligibility, the defendant must prove he relied on the misinformation to receive relief. *Frasier* at 389, 570 S.E.2d at 174-75.

Counsel Neilson testified that he “believed” they discussed Petitioner’s parole eligibility but that they did not discuss it in any detail. That testimony, along with Petitioner’s belief that he was pleading to a parole-eligible offense, supported his claim that he was not properly advised regarding his parole status prior to entering his plea. Petitioner’s decision to plead was based on the belief that he would serve a limited amount of time before being paroled. Counsel Nielson did not clarify that the offense was both non-violent and not parole eligible. This was deficient performance.

Petitioner was clearly ready to proceed with trial, as they had picked a jury and the court had heard pre-trial motions. It was only at the very last minute, upon the advice of counsel, that Petitioner entered a guilty plea. Had counsel properly advised Petitioner that he would not have been parole-eligible, Petitioner would have continued with his trial, as he vehemently denied that he was a drug dealer. Petitioner’s decision to plead guilty was directly influenced by the advice given by Counsel Neilson. Petitioner has shown prejudice, in that he relied on the incomplete advice when entering his plea, and but for that advice he would not have pled but would have gone to trial.

CONCLUSION

Based on the forgoing arguments, Petitioner respectfully request this Court grant the writ of certiorari to allow full briefing on this issue.

 Jessica M. Saxon
Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of August, 2022.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Maurice L. Robinson 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 Grace Gilchrist Knie, which was held on December 6, 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 Maurice L. Robinson.

Respectfully Submitted,

Jessica M. Saxon
Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of August, 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.”

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This 29th day of August, 2022.