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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Kershaw County

Honorable Diane Schafer Goodstein, Circuit Court Judge

JAMACIA SIMON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000086

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D. Gilliam
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 the PCR court erred in denying relief, where Petitioner did not have enough time to speak with plea counsel, where Petitioner felt rushed, and where Petitioner might have gone to trial had those two situations been remedied?

STATEMENT

In August 2019, a Sumter County grand jury indicted Petitioner for armed robbery. App. 98 – 99. He proceeded to a plea before the Honorable George M. McFaddin, Jr. App. 1. Katarzyna Timmons represented Petitioner, and William Corbett appeared on behalf of the state.

Petitioner pled guilty as indicted without recommendation or negotiation. App. 5 l. 21 – App. 6 l. 8. The facts alleged by the state were that Petitioner and two codefendants robbed a Speedway gas station on November 29, 2018. App. 11 l. 19 – App. 12 l. 6.

Judge McFaddin found Petitioner’s plea was freely, knowingly, voluntarily, and intelligently made, substantially supported by the facts, and accepted the plea. App. 13 ll. 18 – 22. Sentencing was deferred pending a co-defendant’s trial. On February 20, 2020, Judge McFaddin sentenced Petitioner to fifteen years’ incarceration. App. 36 l. 3.

In February 2021, Petitioner filed an application for post-conviction relief. App. 38. The state filed its Return and Motion to Dismiss or Motion for a More Definite Statement on or about October 5, 2021. App. 45 – 50. Through counsel, an amendment was filed on November 8, 2021. App. 52.

An evidentiary hearing was held virtually before the Honorable Diane Goodstein on November 17, 2021. App. 54. Timothy Griffith represented Petitioner, and William Ray appeared on behalf of the state. Petitioner and plea counsel testified at the hearing. Judge Goodstein took the matter under advisement at the conclusion of the hearing.

An Order of Dismissal was filed on January 19, 2022. App. 86. This appeal follows.

ARGUMENT

Whether the PCR court erred in denying relief, where Petitioner did not have enough time to speak with plea counsel, where Petitioner felt rushed, and where Petitioner might have gone to trial had those two situations been remedied?

Relevant facts

The amendment to Petitioner's PCR application filed through counsel alleged "Mr. Simon did not have time to talk to his attorney ... and only spoke to her 3 times in her office." App. 52. As a result, "[h]ad he had more time and information, he would not have [pled] guilty and would have gone to trial." *Id.* This contention was explored via Petitioner's testimony at the evidentiary hearing. App. 69 ll. 3 – 8.

Counsel was appointed to represent Petitioner. App. 66 ll. 2 – 9. According to Petitioner, she never explained to him 1) the offense he was charged with, 2) the logistics of a trial, or 3) what his rights were. App. 66 l. 18 – App. 67 l. 3. Petitioner felt counsel did not represent him "right." App. 68 ll. 6 – 7. He claimed she coerced him into pleading guilty. App. 68 ll. 8 – 9. Having never been charged with serious crimes before, Petitioner was unaware of the process. App. 68 ll. 10 – 12.

As a result, Petitioner felt pressured to plead guilty. App. 69 ll. 22 – 24. Had he been provided better representation, he would have gone to trial. App. 69 l. 25 – App. 70 l. 2. Unfortunately, counsel "never did really discuss the case" with him. App. 70 ll. 3 – 9. Had Petitioner been afforded more time to consider his options, he may not have pleaded guilty. App. 71 ll. 19 – 21. Instead, his attorney repeatedly directed him to plead guilty. App. 73 ll. 14 – 17.

The PCR court concluded Petitioner did not meet his burden of proving ineffective assistance of counsel. App. 92. Additionally, the PCR court refused to conclude Petitioner's plea was involuntarily made. App. 94. As a result, he failed to show any deficiency or prejudice. App. 95.

Discussion

“An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.” Wiggins v. Smith, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (citation omitted). “To establish deficient performance, a petitioner must demonstrate that counsel's representation ‘fell below an objective standard of reasonableness.’” Id. (quoting Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). “[T]o establish prejudice, a 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.” Id. at 534, 123 S.Ct. 2527 (quotations and citation omitted). In assessing prejudice, appellate courts “reweigh the evidence in aggravation against the totality of available mitigating evidence.” Id. Prejudice is established where “there is a reasonable probability that at least one juror would have struck a different balance.” Id. at 537, 123 S.Ct. 2527 (citation omitted). A “reasonable probability” is less than a preponderance of the evidence but still “a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 693–94, 104 S.Ct. 2052.

A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) that counsel's representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty but would have insisted on going

to trial. Hill v. Lockhart, 474 U.S. 52, 56-57, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 208-09 (1985). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

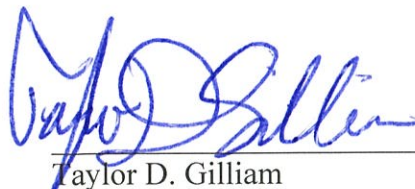
Petitioner's guilty plea was made unknowingly and involuntarily under Strickland v. Washington, 466 U.S. 668 (1984). "The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted). "In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered." Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 101, 102 (2013).

The appellate court must affirm the PCR court's decision when its findings are supported by any evidence of probative value. Cherry v. State, *supra*. However, the appellate court will not uphold the findings of the PCR court if there is no probative evidence to support those findings. Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

Petitioner's testimony at the PCR hearing established that he did not feel ready to plead guilty. Given more time, he would have elected to go to trial. This Court should reverse the PCR court.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant certiorari to allow further briefing.



Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of September, 2022.

STATE OF SOUTH CAROLINA

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamacia Simon 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 Diane Schafer Goodstein, which was held on November 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 Jamacia Simon.

Respectfully Submitted,

[Handwritten signature of Taylor D. Gilliam]

Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of September, 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 9th day of September, 2022.