

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 19 2022

On Petition for Writ of Certiorari to Aiken County
Doyet A. Early III, Plea Judge
Jennifer B. McCoy, Post-Conviction Relief Judge

S.C. SUPREME COURT

Appellate Case No. 2021-001249

KAYLA MOORE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

Was the guilty plea to murder, entered without negotiations or recommendations, rendered involuntary by counsel's failure to obtain and provide Petitioner with the results of forensic analysis of weapons believed to have been used in the crime?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON CERTIORARI

Did the post-conviction relief court properly find that Petitioner failed to establish any constitutional deprivations entitling her to post-conviction relief based on a claim that counsel failed to obtain and provide Petitioner with the results of forensic analysis of weapons used to commit the horrific beating death of the elderly victim where the record firmly establishes Petitioner entered a knowing, intelligent, and voluntary plea with the advice of competent counsel who fully investigated the case, explained to Petitioner that forensic analysis was still forthcoming, and, despite this, Petitioner ultimately elected to plead guilty as soon as possible to resolve the case rather than wait for the pending results which were ultimately not exculpatory?

STATEMENT OF THE CASE

Petitioner Kayla Moore is presently incarcerated following her guilty plea in Aiken County. On April 22, 2017, Petitioner and one of her childhood friends, Jason Miles, brutally beat a seventy-four-year-old man to death with hammers and a knife before setting the home and his body on fire and fleeing the state in the victim's car. At the time of the vicious, fatal attack, the victim, who had known Petitioner and her family, was allowing Petitioner to live on his property rent-free following her release from incarceration on a prior strong arm robbery conviction. Following a "be-on-the-lookout" alert for the victim's car, Petitioner and her co-defendant were found in Georgia wandering on the road near the victim's abandoned car. A subsequent search of the car revealed a hammer covered in the victim's blood, as well as other items used in the incident. After being apprehended in Georgia, Petitioner's co-defendant gave a statement implicating both of them in the crime. Digital messages between Applicant and Miles revealed the attack had been premeditated.

In May of 2018, Petitioner was indicted by the Aiken County Grand Jury for murder (2018-GS-02-01067) Assistant Public Defender C. David Hayes of the Aiken County Public Defender's Office was appointed to represent Petitioner. Assistant Solicitor Samuel B. Grimes of the Second Circuit Solicitor's Office prosecuted the case. During pre-trial proceedings, the Honorable Doeyt A. Early, III and the Honorable R. Knox McMahon issued orders that Petitioner be evaluated for competency and criminal responsibility. Petitioner underwent evaluations at the South Carolina Department of Mental Health to determine if she was competent to stand trial and was criminally responsible. The evaluations revealed she was both competent and criminally

responsible.¹

On July 26, 2018, Petitioner appeared before Judge Early and pled guilty to murder without any negotiations or recommendations. Following a thorough colloquy with Petitioner, Judge Early found the plea was knowingly, voluntarily, and intelligently entered and accepted the guilty plea. Over the objection from counsel on behalf of Petitioner, Judge Early deferred sentencing and ordered a pre-sentencing report be prepared to assist him in determining the appropriate sentence for Petitioner due to her young age and the heinous nature of the crime.

On December 13, 2018, all parties reconvened for a sentencing proceeding before Judge Early. The State presented victim impact statements from numerous family members of the victim. During the victim impact statements, Petitioner callously responded that the statement provided by the victim's brother was "cute" and Petitioner failed to show any remorse for her actions. During the sentencing proceeding, Judge Early repeatedly remarked how brutal and vicious the beating of the victim was and how trouble he was by the crime. Following presentations by the State and defense counsel, Judge Early sentenced Petitioner to life imprisonment without the possibility of parole.

Upon Petitioner's request, plea counsel filed a notice of appeal on her behalf. Following Petitioner's submission of a Rule 203, SCACR, response, the South Carolina Court of Appeals dismissed the appeal based on failure to provide a sufficient explanation as to why the appeal from the plea should go forward pursuant to Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on March 1, 2019.

Petitioner then initiated this action with the filing of her *pro se* application for post-

¹ Reports from these evaluations were entered as Court's Exhibit No. 1 and No. 2 at Petitioner's guilty plea proceeding before Judge Early on July 26, 2018.

conviction relief on May 28, 2019, asserting the following claims:

1. "Ineffective Assistance of Counsel"
 - a. "deficient performance"
2. "Involuntary Guilty Plea"
 - a. "Not knowing because of missing discovery"
3. "Incomplete Discovery / newly discovered evidence"
 - a. "forensics"

As relief sought, Petitioner stated she was seeking a new trial.

Nancy C. Fennell, Esquire, was thereafter appointed by the Aiken County Clerk of Court to represent Petitioner pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court (S.C. Sup. Ct. Order filed Oct. 6, 2008) and Rule 71.1(d), SCRCF (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing).

In response to the application, Respondent filed a return and motion for a more definite statement, requesting Petitioner file an amended return with specific allegations and supporting facts to comply with filing requirements as set forth in the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-50, and the Rule 8(a) of the South Carolina Rules of Civil Procedure. Attached to this return and before the post-conviction relief court were the records from the Aiken County Clerk of Court regarding Petitioner's underlying general sessions matter, the transcripts from Petitioner's guilty plea and sentencing proceedings, the records from Petitioner's direct appeal, Petitioner's inmate records from the South Carolina Department of Corrections, and the records from this current action.

On September 24, 2020, Petitioner, through counsel Fennell, filed an amended application, setting forth the following additional claims:

- Ineffective assistance of counsel for failure to adequately investigate all available defenses.
- Ineffective assistance of counsel for failure to adequately investigate all available

defenses including any available defense related to the fact that Petitioner lived at the location of the alleged incident.

- Ineffective assistance of counsel for failure to discuss with her any available defenses.
- Ineffective assistance of counsel for failing to request a change of venue in response to the media exposure regarding Petitioner's charges.
- Ineffective assistance of counsel for failure to provide Petitioner with her discovery motion.
- Ineffective assistance of counsel for failing to request a speedy trial.

An evidentiary hearing on this action was convened June 3, 2021, before the Honorable Jennifer B. McCoy, circuit court judge, utilizing the virtual courtroom on the Cisco WebEx platform accordance with the Chief Justice's administrative memorandum, Court Operations, dated September 14, 2020, and supplemented January 8, 2021.² Petitioner appeared virtually along with her counsel. Respondent was represented by undersigned counsel, Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Petitioner proceeded forward on the claims raised in her amended application. The post-conviction relief court heard testimony from Petitioner and her plea counsel, C. David Hayes. At the conclusion hearing, the court to the matter under advisement.

Following the hearing, the post-conviction relief court issued a written order filed on September 27, 2021, finding Petitioner failed to establish any constitutional violations or deprivations entitling her to relief and denying the application with prejudice to S.C. Code Ann. § 17-27-80. Petitioner then initiated this instant appeal.

² See S.C. Sup. Ct. Memorandum dated September 14, 2020 ("Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. . . Please use WebEx, the conferencing platform supported by the Judicial Branch.").

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly found that Petitioner failed to establish any constitutional deprivations entitling her to post-conviction relief based on a claim that counsel failed to obtain and provide Petitioner with the results of forensic analysis of weapons used to commit the horrific beating death of the elderly victim because the record firmly establishes Petitioner entered a knowing, intelligent, and voluntary plea with the advice of competent counsel who fully investigated the case, explained to Petitioner that forensic analysis was still forthcoming, and, despite this, Petitioner ultimately elected to plead guilty as soon as possible to resolve the case rather than wait for the pending results which were ultimately not exculpatory.

On appeal, Petitioner asserts the post-conviction relief court erred in rejecting her claim that her guilty plea was voluntary based on her assertions that plea counsel was ineffective for failing to obtain and provide her with the results of forensic analysis of a weapon used in the murder. Specifically, Petitioner asserts that she would not have pled guilty had she known that the forensic report of the bloody hammer, which was found in the victim's car that Petitioner and her co-defendant Miles used to flee the state immediately following the brutal murder, did not have her fingerprints or DNA on it. Petitioner avers that, "[w]hile the forensic report on the hammer was not exculpatory, it was not inculpatory and could have been used to impeach Miles' testimony at trial." (PWC p. 6). However, the record firmly establishes that Petitioner entered her voluntarily entered her guilty plea knowing that the forensic analysis of several items found in the victim's car had not been completed because she was so eager to resolve the case by guilty plea as soon as possible that she did not even want to wait for a pre-sentencing report as recommended by counsel and ordered by the court. The record also firmly establishes she entered this knowing, intelligent, and voluntary guilty plea with the advice of competent counsel who properly investigated her case and correctly advised her as to the available defenses and options to resolve her case. The post-conviction relief court properly determined counsel was not constitutionally ineffective in his representation of Petitioner and Petitioner's plea was knowing, voluntary, and intelligent. These

findings are not controlled by an error of law and are supported by the record. This Court should deny certiorari.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Petitioner, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below

the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest

in the finality of guilty pleas.”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

“[I]t is the prerogative of any person to [waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999).

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him or her and the consequences of his or her plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. Id. at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, in order to knowingly

and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman, 337 S.C. at 599, 524 S.E.2d at 624.

However, it is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The standard 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.” Id. at 31.

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see also Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his or her guilty or the trial judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the trial judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The voluntariness of a guilty plea, however, “is not determined by an examination of the

specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres, 282 S.C. at 133, 318 S.E.2d at 361. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 485 S.E.2d at 370; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [Applicant] would not have pled guilty, but would have insisted on going to trial.” Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In this case, the post-conviction relief court properly found that Petitioner failed to meet her burden of proof of establishing his counsel was ineffective or her plea was not knowingly, voluntarily, or intelligently entered based on her assertions that she was improperly advised to plead guilty without full access to discovery, including forensic analysis that was still forthcoming when she entered her plea. The record from the general sessions proceeding and the post-conviction relief proceeding all establish Petitioner entered a knowing, voluntary, and intelligent plea with the advice of competent counsel, who thoroughly investigated Petitioner’s case to the best of his ability despite the restrictions Petitioner placed upon him (including a restriction that counsel speak with no one about her case). (App. 126-27). Counsel utilized a private investigator,

reviewed all discovery available with Petitioner, and formulated possible defenses with Petitioner based on this investigation and preparation. (App. 137-39). Counsel also properly advised Petitioner of the potential pitfalls of these possible defenses and why they would likely be unsuccessful at trial. (App. 124-26, 135-3).

Counsel also acted in accordance with Petitioner's explicit instructions, including her demands that he attempt to negotiate a plea agreement on her behalf as quickly as possible. (App. 128-29). When the State was unwilling to entertain a plea agreement based on the heinous nature of this brutal crime and Petitioner's readily-apparent lack of remorse, counsel then followed Petitioner's express instructions to file a motion for a speedy trial and arranged for Petitioner to plead guilty as soon as possible. (App. 128-29). He also advised her that forensic analysis regarding items recovered from the victim's car, including the hammer, was not complete by the time she wanted to enter her plea and the implications of this. (App. 124-26, 135-38). Specifically, counsel advised Petitioner that the results of the forensic analysis would be of minimal probative value and would not likely have an impact on her case because Petitioner readily admitted she was present at the crime scene and the evidence already known at the time of the plea showed that she was at the very minimum a willing participant in the brutal attack of the victim, defeating any mere presence or duress defenses they had explored. (App. 124-26, 135-38). The record establishes that Petitioner was in such a hurry to get her case resolved that she asked counsel to waive a pre-sentencing report against his advice, which counsel did based on Petitioner's express demand. (App. 19-20, 132). The post-conviction relief court properly found that counsel provided effective representation of Petitioner, which is supported by the record from the general sessions proceedings including the plea and sentencing transcripts.

In contrast, Petitioner's testimony, which she relies upon to support her claims on appeal, is inherently inconsistent, incredible, and was properly rejected by the post-conviction relief court. For example, Petitioner first stated that she did not discuss anything but potential sentences with counsel but then later acknowledges that she discussed defenses and viewed discovery with counsel. (App. 95-96, 99-102). Petitioner also claimed that she never discussed the lack of forensic reports in her discovery with counsel but also testified she raised this very issue with counsel and he "ignored" her and changed the subject. (App. 98, 104-05, 118). Petitioner also claimed that she was not aware of the results of the forensic testing until months following her sentencing proceeding, an assertion that is directly contradicted by the record from the sentencing proceeding where the prosecutor discusses those results with Petitioner present. (App. 37-38, 105). While Petitioner now asserts she would not have pled guilty without DNA or fingerprint testing on the items recovered from the car, the fact remains that Petitioner did indeed plead guilty without any such forensic testing and the record indicates she was aware these reports were not complete at the time of her plea.

In sum, Petitioner's claims, both during the evidentiary hearing and now on appeal, lack credibility and strain credulity. Petitioner requested her counsel get her case resolved as soon as possible and counsel did so in accordance with Petitioner's express wishes. Petitioner's life sentence is not the result of any error or omission on the part of counsel, but rather, is a reflection of the horrifically brutal crime and Petitioner's lack of any remorse whatsoever, as evidenced by her mocking of the victims during sentencing. (App. 51-52, 58-59, 120, 134-35).

The post-conviction relief court properly found counsel was sufficiently prepared and rendered effective assistance of counsel. The court further found the record clearly established

Petitioner's plea was knowing, voluntary, and intelligent. Ample evidence supports these findings. The post-conviction relief court properly denied relief and this Court should deny certiorari.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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