

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Oct 14 2022

S.C. SUPREME COURT

Certiorari to Aiken County

Honorable Clifton Newman, Circuit Court Judge

Robert J. Bonds, Post-Conviction Relief Judge

APPELLATE CASE NO. 2022-000578

State of South Carolina,

Respondent,

v.

Rayquan McCorkle, #378805,

Petitioner.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

JAMES R. SNELL, JR.

LAW OFFICE OF JAMES R. SNELL,
JR., LLC

123 Harmon Street
Lexington, SC 29072

P: (803) 359-3301

F: (800) 567-6249

ATTORNEY FOR PETITIONER

INDEX

Statement.....1

Arguments2

 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.....2

 II. THE PCR COURT ERRED IN FINDING THAT PETITIONER RAYQUAN
 MCCORKLE’S GUILTY PLEA WAS ENTERED INTO KNOWINGLY AND
 VOLUNTARILY.....6

Conclusion.....8

STATEMENT

Petitioner pled guilty to murder as indicted for a negotiated sentence of thirty-five years with a concurrent thirty-year sentence on the remaining charges as indicted, with the dismissal of the weapons charge only under advisement of retained counsel Keith B. Johnson, Esquire. During the representation of this case, counsel failed to interview witnesses, failed to obtain expert witnesses to aid Petitioner's defense, failed to review and advise Petitioner on all discovery materials, and failed to have Petitioner psychologically evaluated.

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.

The Appellate Court must reverse the decision of a 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). An error of law is present when ineffective assistance of counsel is shown by a preponderance of the evidence. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Under the two part-test laid out in Strickland, and extended to post-conviction relief claims in Hill, applicants must show that counsel was deficient in their assistance and that counsel's deficiency prejudiced the defendant into pleading guilty. Strickland v. Washington, 466 U.S. 668, 668 (1984); Hill v. Lockhart, 474 U.S. 52 (1985). For the first prong of the test, counsel's deficiency is examined under the objective standard of reasonableness required of all attorneys in criminal matters. Hill, 474 U.S. at 58-59. For the second prong of the test, the defendant must be so prejudiced by counsel's deficiency that there is a reasonable probability shown that defendant, rationally under the circumstances, would not have pled guilty. Id. at 59; Padilla v. Kentucky, 559 U.S. 356, 372 (2010).

As to counsel's failure to obtain expert witnesses, Respondent argues that Petitioner's claim fails on the grounds of Petitioner's failure to present the names of specific expert witnesses. Respondent's Return, pg. 11. While it is true that Petitioner did not present the specific names, potential testimony, or opinions of such expert witnesses, he did testify at the post-conviction relief hearing 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,” as well as testifying that he was never shown a report or provided any other information regarding a ballistics expert. Appendix P. 133, lines 19-21. Petitioner was never afforded the information by his counsel to be able to present the specific names, potential testimony, or opinions of expert witnesses during a post-conviction relief hearing. Additionally, Respondent argues that Petitioner’s claim fails on the grounds of Petitioner’s failure to demonstrate that it is reasonably probable that obtaining expert witnesses would have changed the outcome of a trial. Respondent’s Return, pg. 11. Petitioner testified at the post-conviction relief hearing that he was never advised by counsel that forensic evidence could be challenged during a trial. Appendix P. 147, lines 21-25. While Petitioner may not have proven by a reasonable probability that the results of his conviction would have been different at trial with the testimony of an expert witness, he certainly was able to prove by a reasonable probability that he would not have taken the guilty plea had he been made aware of potential expert witness testimony or opinions or the ability to challenge forensic evidence presented against him at trial.

As to counsel’s failure to have Petitioner psychologically evaluated, Respondent argues that Petitioner’s claim fails on the grounds of Petitioner’s failure to show with reasonable probability that he was incompetent at the time of entering the guilty plea. Respondent’s Return, p 13. However, Petitioner’s argument for the need for a psychological evaluation was never solely based on the issue of competency alone, but rather that his history of in-patient and out-patient treatment only five years prior would be a mitigating factor. Appellate P. 129, lines 8-13. Petitioner was directed by counsel that it would not be helpful. Appellate P. 133, lines 22-25. Counsel testified not just to that mental health records would not be helpful, but that no discussion of Petitioner’s mental health history occurred at all, because counsel did not believe Petitioner was “mentally deficient”. Appellate P. 180, lines 18-22. Counsel never obtained the mental health records

possessed by Petitioner's juvenile attorney Ola Johnson, despite acknowledging that the attorney's business card was found in counsel's case records "so I must have had some contact with her." Appendix P. 158, lines 9-11. Counsel further testified that Petitioner's mother did not indicate a history of mental health issues, "but it was more along the lines of behavioral issues." Appendix P. 192, lines 7-11. Counsel made the determination that mental health records would not be helpful to Petitioner's case without ever reviewing mental health records that were readily available to him.

As to counsel's failure to review and advise Petitioner on all discovery materials, Respondent argues that counsel did in fact review all discovery materials with Petitioner prior to his guilty plea. Respondent's Return, pg. 12. However, counsel did not possess all discovery materials. As previously stated, counsel did not reach out to Petitioner's previous juvenile attorney, whom possessed his mental health records. Appendix P. 158, lines 9-11. Furthermore, Petitioner testified that "No, ma'am." when asked by Retained Counsel "...did you understand why the evidence was strong or kind of what it was and why the State had strong evidence against you?" Appendix P. 143, lines 6-12. In fact, when 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?", Petitioner responded "No, we never – we never talked about trial." Appendix P. 127, line 25, P. 126, line 1-3. Despite counsel's statements to the contrary, counsel did not possess relevant information to Petitioner's case nor did he review discovery with Petitioner to provide Petitioner with the most basic understanding of what evidence was against him and how it would be addressed at trial.

Petitioner, through his examples of what counsel failed to do during his representation of Petitioner, clearly shows counsel with objectively deficient in their representation of Petitioner and

clearly shows that Petitioner, rationally under the circumstances, would not have pled guilty but for counsel's deficiencies.

II. THE PCR COURT ERRED IN FINDING THAT PETITIONER RAYQUAN MCCORKLE'S GUILTY PLEA WAS ENTERED INTO KNOWINGLY AND VOLUNTARILY.

During the plea colloquy conducted by Judge Clifton Newman before accepting Petitioner's guilty plea, Judge Newman determined that the guilty plea was entered into by Petitioner both knowingly, intelligently, and voluntarily.

As outlined in Brady, a plea must come from a mentally competent defendant who both understands the nature of the charges against them and understands the consequences of taking the guilty plea. Brady v. United States, 397 U.S. 742, 748 (1970). Respondent argues that Petitioner merely compromised in taking the guilty plea, had to make a difficult decision, and/or feared the possibility of a greater punishment should he elect to go to trial. Respondent's Return, pg. 15 (citing United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972)).

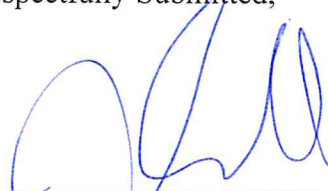
When asked during the post-conviction relief hearing "Did you at least understand sort of the – the seriousness of the charges against you and what it meant?", Petitioner responded "Not really." Appendix P. 120, lines 23-24; Appendix P. 121, line 1. When asked if he understood the negotiated thirty-five years he would receive upon pleading guilty, Petitioner responded "Not really." Appendix P. 114, line 13. Petitioner further stated that "...he just told me that the best thing for me to do it to take the plea so I – listened to him." Appendix P. 114, lines 9-10. Petitioner clearly showed during the post-conviction relief hearing that he both did not understand the nature of the charges against him or understand the consequences of taking the guilty plea. Additionally, Petitioner testified at the post-conviction relief hearing that going to trial was never a topic even discussed with counsel. Appellate P. 126, lines 1-3.

Respondent further argues that Roscoe set the following standard for overturning a guilty plea on the basis of defective representation – “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 error, 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). Making sure that a client understands the basic nature of the criminal charges the State has brought against them and what the possible outcomes of a guilty plea may be are the fundamental duties of any defense attorney. There is no question that counsel’s representation of Petitioner “fell below an objective standard of reasonableness,” when Petitioner proves that he did not understand the main two requirements under Brady for a defendant to intelligently enter into a plea agreement. 397 U.S. at 748. Furthermore, Petitioner shows during the post-conviction relief hearing that he did not believe trial was an option, under advise of counsel, and therefore also meets the standard for showing a reasonable probability of, but for counsel’s error, Petitioner would not have pled guilty and would have insisted on going to trial. Appellate P. 126, lines 1-3.

CONCLUSION

Respondent makes numerous arguments for standards Petitioner failed to meet during his testimony at his post-conviction relief hearing, both under Strickland and Hill, as well as under Brady and Roscoe. Strickland, 466 U.S. at 668; Hill, 474 U.S. at 52; Brady, 397 U.S. at 748; Roscoe, 345 U.S. at 20. However, contrary to Respondent's arguments, Petitioner was able to argue successfully demonstrate that it is objectively reasonable that counsel was deficient in his representation of Petitioner, that it is reasonably probable that but for counsel's deficiency, Petitioner would not have pled guilty, and that Petitioner understood neither the nature of the charges against him nor understood the consequences of pleading guilty. As Petitioner has met all standards required to be granted post-conviction relief from a guilty plea, the lower court erred in failing to grant such relief.

Respectfully Submitted,



James R. Snell, Jr., Esq.
Law Office of James R. Snell, Jr., LLC
123 Harmon Street
Lexington, SC 29072
(803) 359-3301
(800) 567-6249 (Facsimile)
Attorney for Petitioner

October 14, 2022
Lexington, South Carolina