

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to York County

S.C. SUPREME COURT

Honorable R. Scott Sprouse, Circuit Court Judge

TRAVIS HUTCHINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000752

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err finding defense counsel was not ineffective for failing to request a continuance when petitioner informed the court during the plea proceeding that he had used heroin the prior day and was still “coming down,” rendering petitioner’s guilty plea involuntary?

STATEMENT

On January 18, 2018, a York County grand jury indicted petitioner for possession with intent to distribute (PWID) heroin, possession of cocaine, and escape. App. 151-56. On February 13, 2018, petitioner appeared before the Honorable Roger E. Henderson and pled guilty to PWID heroin, third offense; possession of cocaine, third offense; and escape. App. 1-30. Petitioner was represented by Devon Nielson and the state was represented by assistant solicitor, Marina Hamilton. App. 1. Judge Henderson sentenced petitioner to concurrent terms of fourteen years' imprisonment for PWID heroin, five years' imprisonment for possession of cocaine, and one consecutive year imprisonment for escape. App. 29-30.

Appellate counsel, Robert Pachak, argued, pursuant to an *Anders*¹ brief, “[t]he plea court erred in amending [petitioner’s] indictment from a second offense to a third offense because it increased [petitioner’s] sentencing range.” On June 5, 2019, the Court of Appeals dismissed petitioner’s appeal pursuant to *Anders* review and granted appellate counsel’s motion to be relieved. App. 137.

Thereafter, petitioner filed an application for PCR on January 29, 2020. App. 32-48. An evidentiary hearing was held on April 13, 2022, before the Honorable R. Scott Sprouse. App. 59-135. Petitioner was represented by Ola Johnson and the state was represented by assistant attorney general, Michael Neubauer. App. 59.

On May 24, 2022, Judge Sprouse signed an order denying PCR. App. 136-50. The court found petitioner’s claim that his guilty plea was not voluntary because he used heroin prior to the plea proceeding and was still “coming down” from the use of heroin when he entered his guilty plea was contradicted by counsel’s testimony at the evidentiary hearing and by petitioner’s own

¹ *Anders v. California*, 386 U.S. 738 (1967).

solemn statements at the guilty plea hearing. The court found defense counsel was not ineffective for his failure to request a continuance when he learned petitioner used heroin the previous day and was still “coming down” during his guilty plea because petitioner repeatedly stated he was able to understand the proceedings. The court also likened petitioner’s situation to *Garren v. State*², where the Court reversed the PCR court’s grant of relief holding the applicant failed to establish his incompetence by a preponderance of the evidence. App. 145-47.

This petition follows.

² 423 S.C. 1, 813 S.E.2d 704 (2018).

ARGUMENT

The PCR court erred finding defense counsel was not ineffective for failing to request a continuance when petitioner informed the court during the plea proceeding that he had used heroin the prior day and was still “coming down,” rendering petitioner’s guilty plea involuntary.

Relevant facts

It is undisputed petitioner suffered from the disease of addiction. Defense counsel knew about petitioner’s condition and made the court aware during mitigation. Counsel stated that petitioner had struggled with addiction “throughout much if not all of his adult life and he will continue to struggle when he gets out of prison.” App. 27, l. 25-28, l. 3.

The record reflects that at multiple times during the hearing petitioner appeared confused and acted oddly. App. 2, ll. 15-18; 6, l. 24-7, l. 2; 23, l. 24-24, l. 7. During petitioner’s colloquy with the plea court the following occurred:

The Court: Are you under the influence of any alcohol or drugs today?

Petitioner: I was - - I’m just coming down off heroin.

The Court: Okay, just come down.

Petitioner: Coming down off of it.

The Court: Sir?

Petitioner: Coming down off of it.

The Court: Coming down off of it. So when did you last use?

Petitioner: Yesterday.

The Court: When yesterday?

Petitioner: Morning.

The Court: Yesterday morning. So it has been about 24 hours?

Petitioner: I guess.

...

The Court: How long does it normally take you to get a clear head after using heroin.

Petitioner: I don’t know.

...

The Court: Well, how often have you used heroin?

Petitioner: On a day-to-day basis.

...

The Court: So the fact that you used heroin yesterday morning, does that effect [sic] your ability right now to be able to think, reason, and understand?

Petitioner: No, sir.

...

The Court: You've understood everything we talked about?

Petitioner: Right.

The Court: Now, understanding you may be coming down it may cause you to have some sort of physical problems but mainly you're okay. You are telling me that?

Petitioner: Yes, sir.

App. 12, l. 14-14, l. 17.

After this discussion the guilty plea proceeded without any objection or comment from petitioner's defense counsel. Counsel later told the court that it was his belief that petitioner "fully under[stood] all of his rights," and "fully comprehend[ed]" all the questions asked by the court. App. 25, ll. 7-13.

The state alleged during a traffic stop officers discovered petitioner was driving with a suspended license and he was arrested. When petitioner was searched, he was found to have an amount of cocaine and heroin. While being transported to court, petitioner jumped out of the transport van and was later found less than a mile from the courthouse. App. 20-22. After the state's recitation of the facts petitioner responded oddly to the court's question regarding his alleged escape. Petitioner stated he jumped out of the transport van so he would not get hurt because he was "withdrawing off of heroin" and then told the court he had "no choice." App. 24, ll. 1-7.

At his evidentiary hearing, petitioner testified that the day before his guilty plea he used approximately "five, twenty-dollar bags" of heroin and asserted that it affected his ability to understand the proceedings. App. 73, l. 22-74, l. 5; 89, ll. 19-23. Petitioner testified that while he understood some things during the plea hearing there were things he did not understand, and

he contended that his guilty plea was involuntary. App. 70-71; 72, ll. 5-8.

Specifically, petitioner did not understand that he was pleading guilty to PWID, it was his belief that he was entering a guilty plea to *possession* of drugs. Petitioner was a heroin user and the amount of heroin that he was found with was for his own personal use. App. 70-71. Petitioner testified he did not understand that the amount or “weight” of drugs that he possessed would elevate the charge from possession to PWID. He also did not know that his having the drugs in multiple baggies would lead to a PWID charge. App. 82, ll. 1-14.

The assistant attorney general pressed petitioner, asking several times, why he told the court he understood if he did not understand. Petitioner revealed that he was trying to get through the process and did not feel like the court wanted to “hear” him. App. 88.

Defense counsel testified that he met with petitioner only three times during the course of his representation. App. 104, ll. 6-8. Counsel “thought” petitioner understood their discussions. App. 105, ll. 6-20. He claimed petitioner should have been aware that he was pleading to PWID not possession because he signed the plea affidavit form. App. 113, ll. 9-16. Counsel admitted that he knew petitioner had used heroin the day before but said he only found out when petitioner told the court. Counsel testified that, at the guilty plea hearing, petitioner appeared as he had in their prior meetings. App. 115, ll. 11-24.

Counsel did not feel that he should have requested a continuance regardless of petitioner having used heroin because petitioner seemed to understand the proceedings. Counsel did acknowledge that if he had moved for a continuance the court “might have let [petitioner] plead a day or two later in the week.” App. 116, ll. 1-18. Counsel maintained petitioner never wanted to go to trial and had he not pled guilty that day he would have pled guilty at a later date. App. 117, ll. 7-12.

Discussion

Petitioner could not have entered a guilty plea “voluntarily, knowingly, and intelligently, considering the fact that he used heroin daily and was admittedly “coming down” from heroin at the time of the guilty plea. Counsel was ineffective where he failed to request a continuance when petitioner revealed that he was under the influence of heroin.

“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*, 566 US, 156, 162 (2012).

“Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers.” *Id.* A defendant must also “be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Id.*

Every criminal defendant has the right to be present at his trial, and this right includes the right to be mentally present. U.S. Const. amends. V, VI, XIV. The conviction of an accused person while he is incompetent violates due process. *Pate v. Robinson*, 383 U.S. 375, 378 (1966). In *Sanders v. United States*, 373 U.S. 1, 5 (1963), the defendant alleged his guilty plea was involuntary because of narcotics administered at the jail. During the guilty plea, the defendant asked the judge to send him to a specific prison “for addiction cure” and stated he had “been using

narcotics off and on for quite a while.” *Id.* at 4. The habeas judge denied relief without a hearing and the United States Supreme Court reversed. *Id.* at 19 – 23.

The *Sanders* Court noted that “[w]hether or not petitioner was under the influence of narcotics would not necessarily have been apparent to the trial judge.” *Id.* at 20. “However regular the proceedings at which he signed a waiver of indictment, declined assistance of counsel, and pleaded guilty might appear from the transcript, it still might be the case that petitioner did not make an intelligent and understanding waiver of his constitutional rights.” *Id.* at 19-20. *See also Hansford v. United States*, 365 F.2d 920, 924 (D.C. Cir. 1966) (“This reasoning applies with particular force to a defendant who may be under the influence of narcotics, since the symptoms and effects of an acute brain syndrome produced by narcotics will often not be apparent to a lay observer, even a judge, but only to an expert.”).

The PCR court erred finding petitioner failed to establish his incompetence by a preponderance of the evidence. The record reflects that petitioner acted oddly during the guilty plea hearing where he signed the wrong portion of the plea affidavit, and his answers when not rote were occasionally unresponsive. Moreover, petitioner revealed to the court that he was a drug user, had used heroin the day before, and was “coming down” from heroin during his guilty plea hearing. Counsel’s statements during the plea hearing substantiated petitioner’s drug use. Petitioner testified at the evidentiary hearing that he did not fully understand what he was pleading guilty to during the proceeding.

Defense counsel’s belief that petitioner understood does not signify where he admittedly met with petitioner only three times and where during their minimal time together petitioner was likely under the influence of heroin. As stated by the Court in *Sanders*, mental issues and intoxication *are not easy to spot*. Thus, counsel’s belief regarding petitioner’s understanding and

the plea court's acceptance of petitioner's rote answers regarding his understanding are unsurprising.


In finding petitioner's allegation was without merit the PCR court compared *Garren v. State*, to the case at hand. In *Garren*, the South Carolina Supreme Court reversed the PCR court's grant of relief holding Garren failed: (1) to show deficient performance arising from plea counsel's failure to seek a competency evaluation as required to support his claim of ineffective assistance of counsel; (2) demonstrate prejudice arising from plea counsel's failure to seek competency evaluation, as required to support his claim of ineffective assistance of counsel; and (3) demonstrate that his guilty plea was rendered involuntary by medications he was purportedly being given while in jail. *Garren v. State*, 423 S.C. 1, 813 S.E.2d 704 (2018).

Contrary to the PCR court's order petitioner's case differs substantially from *Garren*. In that case Garren did not inform the plea court that he was under the influence of any substance. Here, the transcript of the plea hearing reflects that petitioner informed the court that he had used heroin the previous day and was "coming down." Additionally, petitioner's other statements demonstrated his confusion that day. Unlike in *Garren* petitioner testified at the evidentiary hearing as to what substance he was on during his guilty plea. Petitioner also testified regarding the approximate amount of heroin he used, which he stated would have been a great amount to most people.

Here petitioner's guilty plea was not entered voluntarily, intelligently, or knowingly where he informed the plea court and testified at PCR that he recently used heroin and counsel was ineffective for not at the very least moving to have petitioner's case continued to a time where he was not under the influence of heroin.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on the issue.



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ATTORNEY FOR PETITIONER

This 27th day of January, 2023.