

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

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Certiorari to Aiken County

Honorable J. Cordell Maddox, Circuit Court Judge

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JALEN T. BADGER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001183

—————
BRIEF OF PETITIONER
—————

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

ISSUE PRESENTED.....1

STATEMENT.....2

STANDARD OF REVIEW3

ARGUMENT

The PCR judge erred in denying petitioner’s allegation that he pled guilty involuntarily at age sixteen because he was coerced into pleading guilty to avoid a possible mandatory LWOP sentence due to trial counsel’s failure to explain the law on juvenile sentencing.4

CONCLUSION.....7

TABLE OF AUTHORITIES

Cases

Aiken v. Byers, 410 S.C. 534, 765 S.E.2d 572 (2014) 5

Boykin v. Alabama, 395 U.S. 268 (1964) 6

Brady v. United States, 397 U.S. 742 (1970)..... 6

Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997) 6

Hill v. Lockhart, 474 U.S. 52 (1985)..... 5, 6

Miller v. Alabama, 132 S.Ct. 2455 (2012) 5

Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999) 5

Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (2016)..... 3

Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995)..... 5

Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) 3

State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971) 6

Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971)..... 6

Other Authorities

Eighth Amendment 5

Sixth Amendment5

Rules

Rule 203(d)(1)(B)(iv), SCACR 2

ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that he pled guilty involuntarily at age sixteen because he was coerced into pleading guilty to avoid a possible mandatory LWOP sentence due to trial counsel's failure to explain the law on juvenile sentencing.

STATEMENT

Petitioner Jalen T. Badger pled guilty to carjacking and armed robbery, and two counts of first degree burglary during November 2016 term of the Aiken County General Sessions Court before Judge R. Lawton McIntosh, and was sentenced to imprisonment for an aggregate period of seventeen years. App. 1-23. Charles David Hayes represented petitioner at the plea proceeding, and Assistant Solicitor Robert Wilder Harte appeared on behalf of the state. Petitioner appealed, but the case was dismissed on January 27, 2017, by the South Carolina Court of Appeals per Rule 203(d)(1)(B)(iv), SCACR.

On October 30, 2017, petitioner filed a PCR application with the Aiken County Office of the Clerk of Court. App. 26-32. The respondent filed a Return dated July 6, 2018, requesting that a hearing be held in the case. App. 33-38. An Amended PCR application was filed on petitioner's behalf on August 13, 2018. App. 39-40.

A PCR hearing was convened on May 14, 2019, at the Aiken County Courthouse before J. Cordell Maddox. App. 42-68. Petitioner was present at the hearing and represented by Art Aiken, and Assistant Attorney General Janell Gregory appeared on behalf of the state. On June 12, 2019, Judge Maddox signed an Order of Dismissal denying petitioner's claims of ineffective assistance of counsel in the case. App. 70-80.

Petitioner appealed Judge Maddox's Order of Dismissal. Petitioner filed a Petition for Writ of Certiorari on June 29, 2020. The respondent filed a Return on November 11, 2020. On August 12, 2022, this Court issued an Order granting petitioner's Petition for Writ of Certiorari. This Brief of Petitioner follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue raised on appeal. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The reviewing court must defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Smalls v. State, supra citing to Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (2016). However, the appellate court reviews questions of law de novo with no deference to the PCR court. Smalls v. State, supra.

ARGUMENT

The PCR judge erred in denying petitioner's allegation that he pled guilty involuntarily at age sixteen because he was coerced into pleading guilty to avoid a possible mandatory LWOP sentence due to trial counsel's failure to explain the law on juvenile sentencing.

Petitioner was placed at the scene of two houses that were burglarized via his GPS tracking monitor and then charged with two counts of first degree burglary. Also, petitioner was charged in connection with a marijuana drug purchase gone wrong with drug seller Meagan Williams and the car she drove on that date. App. 11, 1.15-p. 17, 1.7.

During the PCR hearing held in the case, petitioner testified that he was sixteen when he pled guilty and that the only advice his attorney gave him was that he was going to get a mandatory LWOP sentence if he did not take the negotiated seventeen-year plea bargain offer from the solicitor. Petitioner stated that he was not told by counsel that he would get a mitigation hearing to show why he should not get a life sentence if convicted of burglary in the event he opted for a jury trial in the case. App. 51, 1.15-p.52, 1.13. Petitioner added that he believed that a jury trial was not an option for him and that he was in effect forced to plead guilty as charged because he did not want a possible mandatory LWOP sentence. App. 52, 1.14-p. 53, 1.19.

Trial counsel testified at the hearing and stated that he was trying to save petitioner from receiving a life sentence and that he explained this to petitioner. App. 64, 1.18-p.65, 1.1. Counsel stated that he was afraid that the solicitor would try the cases consecutively and increase his sentence time and in effect expose him to what would actually turn out to be a life sentence. App. 61, 1.14-25.

The PCR judge ruled that counsel explained the charges and potential sentences petitioner faced, and that petitioner failed to meet his burden of proving ineffective assistance of counsel, and that he did not prove that his guilty pleas were given involuntarily. App. 74-80.

Clearly, petitioner was not properly advised by counsel of the sentencing consequences on the charges as petitioner mistakenly believed that he faced a possible mandatory LWOP sentence had he gone to trial and been convicted by a jury. To the contrary, petitioner faced a possible life sentence (maximum) on the burglary charges and a possible maximum thirty-year sentence on the carjacking charge and a possible thirty-year maximum on the armed robbery charge. Petitioner pled guilty thinking that his charges exposed him to a possible mandatory LWOP sentence, but this assumption was incorrect. In Aiken v. Byers, 410 S.C. 534, 765 S.E.2d 572 (2014), the Court held that the rule in Miller v. Alabama, 132 S.Ct. 2455 (2012) applied retroactively to the extent that the mandatory imposition of LWOP sentences for juveniles violated the Eighth Amendment, and that even if a juvenile faced a life sentence under a non-mandatory or discretionary scheme, then there were certain factors to be analyzed in a mitigation hearing before that could occur. Therefore, petitioner was protected from a mandatory LWOP sentence and by a mitigation hearing for a life sentence if convicted of burglary at trial.

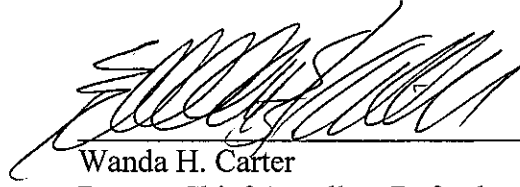
In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Here, counsel erred in advising petitioner that he could have been sentenced to LWOP for the non-homicide offenses charged against him. Graham v. Florida, 560 U.S. 48 (2010). Counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 474 U.S. 52 (1985). But for this error by counsel, petitioner would have

understood the consequences of his pleas and made an informed decision about whether to plead or request a trial by jury.

Petitioner's pleas were coerced. The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997), citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970). Therefore, "the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty." See Gustine v. State, supra. In the case at bar, petitioner felt pressured to pled guilty to avoid a mandatory LWOP sentence, which was not a possible sentence he faced in the case. Per these circumstances in the instant case, petitioner did not plead guilty voluntarily within the meaning of Boykin v. Alabama, 395 U.S. 268 (1964), and due to trial counsel's ineffective assistance with regard to incorrect sentencing advice, which formed the basis for the forced pleas.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant petitioner's request for post-conviction relief.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of September, 2022.