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Feb 10 2023
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable R. Scott Sprouse, Circuit Court Judge

MATTHEW BENNINGER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001073

JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in finding that petitioner entered a voluntary guilty plea after plea counsel admitted that he told petitioner that his wife, who recanted her domestic violence allegations, could be prosecuted for giving a false statement to police?

STATEMENT

In 2018, petitioner was indicted in Pickens County for first-degree domestic violence and second-degree assault and battery by mob. App. 106-14. These charges arose from separate incidents and did not involve the same alleged victims. App. 106-14. On January 24, 2019, petitioner pled guilty before the Honorable Letitia H. Verdin. App. 1. Shannon Odom represented the State and R. Asher Watson represented petitioner. App. 1. Judge Verdin sentenced petitioner to concurrent terms of six years' imprisonment. App. 9, l. 17 – 19. Petitioner filed no appeal.

On July 15, 2019, petitioner filed a PCR application. App. 11. On January 28, 2022, the Honorable R. Scott Sprouse held a hearing. App. 30. Don A. Thompson represented petitioner and Taylor Z. Smith represented the State. App. 30. On July 7, 2022, Judge Sprouse denied petitioner's PCR and this petition follows. App. 88.

STANDARD OF REVIEW

The appellate court defers to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013).

ARGUMENT

The PCR court erred in finding that petitioner entered a voluntary guilty plea after plea counsel admitted that he told petitioner that his wife, who recanted her domestic violence allegations, could be prosecuted for giving a false statement to police.

Petitioner was indicted for assaulting his wife in a parking lot. App. 6, l. 14 – 7, l. 24. At the plea hearing, petitioner's wife told the judge that "nothing happened that day" and that she lied to the police. App. 8, l. 10 – 18. She "called the Easley police and lied after the fact." App. 8, l. 10 – 18. She disputed the solicitor's contention that a bystander witnessed the incident. App. 8, l. 10 – 18. She had been angry with petitioner about something, but told Judge Verdin, "I really don't think he deserves to go to prison. I really don't. It's just going to make him an angry person. He's not a bad person." App. 8, l. 10 – 18. Despite the wife's recantation, Judge Verdin accepted the plea and sentenced petitioner to six years in prison. App. 9, l. 5 – 19.

Plea counsel admitted he never talked to petitioner's wife or, if he did, it was not at length. App. 57-58. However, plea counsel did admit that he told petitioner that there was "a distinct possibility" that the State would prosecute his wife if she recanted her statement. App. 67-68. He had seen it happen in his own practice. App. 67. He did not testify that the solicitor actually threatened to prosecute the wife. App. 67. Plea counsel prepared petitioner for the possiblity that the wife would recant at the plea hearing. App. 69. He denied that telling petitioner about his wife's potential prosecution was a threat to induce a guilty plea. App. 69.

The solicitor testified at the PCR hearing. App. 74. She emphatically denied making any threat to prosecute petitioner's wife. App. 78. She said she does not prosecute recanting victims in domestic violence cases. App. 78. She estimated that 9/10 domestic violence victims recant their statements. App. 78-79. She would have prosecuted petitioner regardless of the recantation

because the wife gave a statement on video immediately after the incident and she had a bystander witness on the way to the courthouse in case the plea did not occur. App. 81-82.

The threat concerning petitioner's wife rendered his plea involuntary. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.'" Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "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) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)). Because a guilty plea is equivalent to a conviction, the trial court's determination of voluntariness must consider that "[i]gnorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." Boykin v. Alabama, 395 U.S. 238, 242-43 (1969).

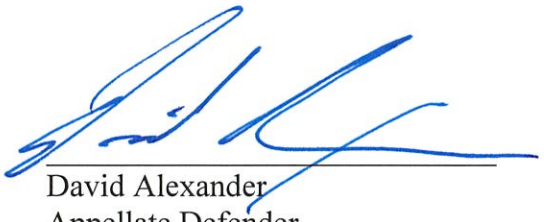
First, plea counsel was deficient because his advice was wrong. The solicitor said she never prosecuted recanting victims in domestic violence cases. Plea counsel should not have brought up this as a "distinct possibility" when this solicitor had no history of engaging in vindictive prosecutions against victims. Plea counsel's erroneous advice caused petitioner to use an irrelevant consideration in his decision to plead guilty and renders it unknowing and involuntary.

Second, a guilty plea cannot be induced as the result of a threat. Like a guilty plea, a defendant giving a statement to police must knowingly and voluntarily waive his right to remain silent and the waiver is invalidated by threats. See State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990). In State v. McClure, 312 S.C. 369, 371, 440 S.E.2d 404, 405 (Ct. App. 1994), the defendant alleged the police told him they had his family at the police station and if he did not cooperate, they would "lock every damn one of them up." The Court said, "We recognize a threat like the one described by McClure, if it occurred, could render McClure's confession involuntary." Id.

McClure was decided based on the trial judge's crediting the officers' denials of making such a threat. Unlike McClure, plea counsel here admitted telling petitioner his wife could be prosecuted. The PCR court mistakenly construed this as an allegation that the solicitor threatened prosecution. App. 103. The focus instead should have been on plea counsel's conveying of a nonexistent threat that caused petitioner to plead guilty against his will. This Court should reverse.

CONCLUSION

For the foregoing reasons, the PCR court should be reversed and petitioner's case remanded for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Matthew Frank Benninger 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 R. Scott Sprouse, which was held on January 28, 2022, 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 Matthew Frank Benninger.

Respectfully Submitted,

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of February, 2023.

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CERTIFICATE OF COUNSEL

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."

David Alexander
Appellate Defender

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This 10th day of February, 2023.