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Apr 28 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge

TRON HANEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001307

JOHNSON PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
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Division of Appellate Defense
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ISSUE PRESENTED

Did the PCR court err in finding plea counsel provided effective representation where counsel failed to investigate and discuss potential defenses to the narcotics discovered in the rental truck that Petitioner was driving thereby rendering Petitioner's guilty plea involuntary and unknowing?

STATEMENT OF THE CASE

On December 5, 2016, members of the Spartanburg County Sheriff's Office narcotics unit received an anonymous tip that an "individual known as Tee was driving a black Dodge truck, a rental, with a quantity of methamphetamine kept in a silver or gray metal box." App. 19, ll. 21-24. After receiving the tip, officers encountered a black Dodge truck on Highway 221 near California Avenue in Spartanburg County. Officers initiated a traffic stop on the truck for allegedly failing to use a turn signal. App. 19, ll. 16-20. The driver of the vehicle was identified as Tron Haney, Petitioner.

Officers had Petitioner exit the truck after they learned he was driving under suspension (DUS). Petitioner was arrested for DUS and searched incident to arrest. The search of his person yielded \$7,120, two bags of white powdery substance that tested positive for cocaine, three bags of heroin, two brown pills and one white pill identified as oxycodone. The total weight of the cocaine was 2.58 grams. The total weight of the heroin¹ was .77 grams. App. 20, ll. 1-14.

During an inventory search of the truck, officers located a bag of methamphetamine weighing 20.93 grams sitting in an ashtray under the radio next to a set of digital scales. In a black backpack in the back seat officers located a locked toolbox. Inside the toolbox were six bags of methamphetamine weighing approximately 169 grams and another set of digital scales. App. 20, ll. 15-22. Prior to the search of the truck, Petitioner was given his Miranda warnings. Law enforcement maintained that Petitioner claimed ownership of the drugs found in the truck while on scene and later while being booked into the county jail. App. 20, l. 23-App. 21, l. 2.

¹ During the State's recitation of the facts, the solicitor informed the plea court there were two bags containing heroin, one weighing .72 grams and one weighing .5 grams. However, the drug analysis report entered during the PCR hearing shows the second bag weighed .05 grams making the total weight of heroin in this case .77 grams. App. 20, ll. 12-14; App. 122-123

Petitioner was indicted² during the August 2017 term of the Spartanburg County Grand Jury for trafficking methamphetamine greater than 100 grams second offense, possession with intent to distributed heroin second offense, possession with intent to distribute cocaine second offense, and driving under suspension third or subsequent offense. App. 31-38. On January 8, 2018, Petitioner appeared before the Honorable J. Derham Cole to enter a guilty plea. The State was represented by Lindsey H. Overby. Petitioner was represented by Steven D. Epps. App. 1. Petitioner pled to the lesser included offense of trafficking methamphetamine 28-100 grams second offense and to the three other charges as indicted. App. 3, ll. 4-14; App. 22, ll. 12-15. Judge Cole sentenced Petitioner to twelve years imprisonment for the trafficking charge, ten years imprisonment on each possession with intent to distribute charge, and 90 days imprisonment for DUS, all to be served concurrently. App. 25, l. 15-App. 26, l. 3; App. 39-42.

Petitioner filed a direct appeal of his guilty plea and sentence which was dismissed as untimely on February 2, 2018. The remittitur was issued on February 21, 2018. App. 28-30. On October 25, 2018, Petitioner filed an application for post-conviction relief. App. 43-56. The State filed a return dated August 8, 2019. App. 57-71. PCR Counsel Susannah Ross filed an amended PCR application dated January 31, 2022. App. 72. An evidentiary hearing was convened on April 20, 2022, before the Honorable G.D. Morgan, Jr. The State was represented by Chelsey Marto, Petitioner was represented by Counsel Ross. App. 73-74.

Petitioner testified that “from day one” he was going to trial and that he never wanted to enter a plea. App. 85, l. 24-App. 86, l. 2; App. 94, l. 22-App. 95, l. 1. He stated he wanted to go to trial because he believed the search of the truck was illegal. App. 88, ll. 1-5. Petitioner

² Petitioner was also indicted for possession of Oxycodone. This charge, a set of drug charges from a July 2016 arrest, and two charges out of Cherokee County were dismissed as part of the plea agreement. App. 3, l. 15-App. 4, l. 24.

maintained that because he knew he was driving on a suspended license that he had used his turn signal and not committed any traffic violations. He further testified that if he had known about the drugs in the truck, he would not have stopped for police but would have taken them on a high-speed chase. App. 84, l. 8 – App. 85, l. 12. Petitioner maintained that he did not know there were drugs in the truck. App. 96, ll. 15-17. He also stated that he was never issued a ticket for the alleged failure to use a turn signal. App. 88, ll. 6-12.

Petitioner testified that when he was arrested for DUS, he informed the officers that the truck did not belong to him and that he would not give them permission to search the truck. App. 81, ll. 2-24. He asserted that the truck belonged to Jennifer Smith and that the officers did not contact Smith to get permission to search the truck. App. 89, ll. 17-22. When asked about the locked toolbox/safe in the back seat of the truck, he told officers it was not his and that anything they found in the truck did not belong to him. App. 82, ll. 5-8. Petitioner stated that when he spoke with Counsel Epps, counsel would tell him he needed to take a plea. He also testified that Counsel Epps used his family to coerce him into pleading guilty. App. 84, ll. 6-7; App. 90, ll. 1-12; App. 92, ll. 13-App. 94, l. 22.

Counsel Epps testified that he met with Petitioner twenty to twenty-five times to discuss the case. At the request of Petitioner, he investigated whether the Family Dollar where the stop occurred had surveillance cameras but learned that the store parking lot was not equipped with cameras. Counsel Epps stated they discussed potential suppression issues, how DUS was an arrestable offense that supported the search of Petitioner's person, how there were trafficking weight drugs found in plain view in the truck, and how based upon Petitioner's prior record he was facing anywhere from a mandatory minimum twenty-five years to life in prison. App. 100, l. 11-App. 102, l. 16.

Counsel Epps admitted that Petitioner had wanted to go to trial, that he had done extensive “trial prep,” and that they had gone so far as to pick a jury. He maintained, however, that Petitioner decided at the last minute to enter a plea. App. 103, ll. 2-19. Counsel Epps testified that a guilty plea was in Petitioner’s best interest and that Petitioner knew what he was doing when he plead guilty. App. 104, ll. 12-17; App. 109, ll. 2-6. He conceded that he did not have any information as to the indicia of reliability of the informant who gave the tip. He agreed that the lack of information about the informant and the lack of a ticket documenting the failure to signal were lines of attack to use at trial. App. 111, l. 4-App. 113, l. 18. However, even with those lines of attack, Counsel Epps did not believe a trial was in Petitioner’s best interest. App. 114, ll. 11-17.

An order of dismissal was filed on September 15, 2022. App. 126-141. The PCR court found that Petitioner’s guilty plea was freely, voluntarily, knowingly, and intelligently entered. App. 136. The PCR court further found that Petitioner had waived any defenses by entering a guilty plea. Further, the PCR court noted that pursuing any of the identified defenses would have been a large risk because of the potential for Petitioner to receive a life sentence. The court also found that Petitioner’s assertions that he would have proceeded to trial were not credible. App. 138.

ARGUMENT

The PCR court erred in finding plea counsel provided effective representation where counsel failed to investigate and discuss potential defenses to the narcotics discovered in the rental truck that Petitioner was driving rendering Petitioner's guilty plea involuntary and unknowing.

It is well established that counsel has a duty to undertake reasonable investigations. Strickland v. Washington, 466 U.S. 668, 691 (1984). The failure of counsel to investigate and advise a defendant of possible defenses can constitute deficient performance sufficient to render a defendant's guilty plea involuntary and unknowing. See Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991) (holding failure to investigate possible defenses constituted ineffective assistance of counsel); See Also Fry v. State, 217 So. 36 1139 (Fla. Dist. Ct. App. 2017) (holding a claim of ineffective assistance of counsel for failure to advise a defendant of a potential defense can state a valid claim if defendant was unaware of the defense and can establish that a reasonable probability exists that [she] would not have entered the plea if properly advised).

“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). “A voluntary choice presupposes some knowledge of the consequences of the choice, and a plea of guilty may therefore be held to be involuntary if the defendant was not informed by his lawyer of his defenses to the criminal charges.” Evans v. Meyer, 742 F.2d 371, 375 (7th Cir. 1984). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 345 S.C. 16,

20, 546 S.E.2d 417, 419 (2001). The “prejudice,” requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill, 474 U.S. at 59 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pled guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

In Cobbs v. State, *supra*, this Court held that counsel was deficient for failing to investigate and explain to Cobbs the *possibility* of a valid double jeopardy defense. Importantly, the inquiry did not turn on whether or not Cobbs in fact had a valid double jeopardy defense. This Court was clear that the *possibility* that such a defense existed required counsel to investigate it and explain it to the defendant. Id. at 302, 408 S.E.2d at 225.

The PCR court held that Petitioner waived his right to assert any defenses by entering a guilty plea which seemingly meant that Petitioner's claims of ineffective assistance of counsel had no merit. Respectfully, as seen in Cobb, *supra*, counsel has a duty to investigate and discuss all *possible* defenses with a defendant prior to the entry of a guilty plea. That Petitioner waived his right to present a defense at trial by entering a guilty plea is irrelevant to the inquiry. The question before the court was whether Petitioner entered the guilty plea with the knowledge and understanding of any possible defenses.

The record reflects that Petitioner's guilty plea was not entered with the knowledge and understanding of any possible defenses to the charge. Counsel Epps failed to investigate Jennifer Smith, the individual who had rented to the truck, to determine whether she was responsible for the methamphetamine that was discovered in the truck. Counsel also failed to investigate the traffic stop, the lack of a blue ticket, and the reliability of the anonymous tip that led to the traffic

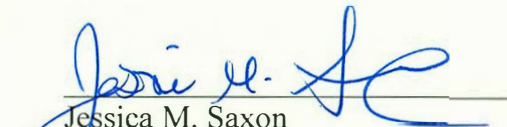
stop. The failure to investigate these avenues of defense and to explain the possible defenses to Petitioner constituted deficient performance.

The PCR court found that Petitioner was not prejudiced because his testimony that he would have gone to trial was not credible. That finding is directly refuted by the record. Both Counsel Epps and Petitioner repeatedly testified that Petitioner desired to have his day in court. More importantly, the case had been called to trial and a jury had been selected prior to the sudden entry of a guilty plea. That the trial process had already begun is strong evidence in support of Petitioner's testimony that he would have proceeded to trial. The PCR court also placed significant weight on Counsel Epp's testimony that he would have recommend that Petitioner plead guilty, despite the potential defenses that he did not investigate. However, the recommendation of counsel is not dispositive to the question of whether Petitioner would have asserted his right to trial. The record clearly reflects that Petitioner was ready to stand trial on the day he entered his guilty plea. Therefore, he has shown prejudice.

Petitioner has shown both that counsel was deficient in failing to investigate and discuss possible defenses to the charges and that he was prejudiced as he had already begun the trial process prior to entering a guilty plea. His guilty plea was entered without the knowledge and understanding of possible defenses to the charges rendering the plea involuntarily and unknowing. Petitioner has established ineffective assistance of counsel under the framework of Strickland and Hill, *supra*, and his PCR application should have been granted.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's writ of certiorari to allow full briefing on this issue.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 28th day of April, 2023.

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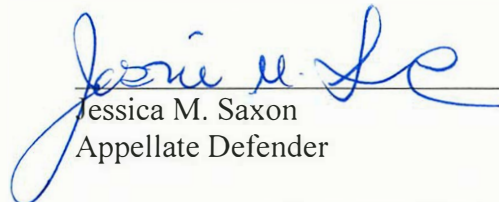
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PETITION TO BE RELIEVED AS COUNSEL
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Counsel for Tron L. Haney states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge G.D. Morgan, Jr., which was held on April 21, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Tron L. Haney.

Respectfully Submitted,


Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of April, 2023.

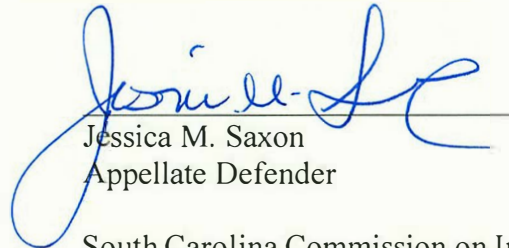
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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."



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This 28th day of April, 2023.