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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO BERKELEY COUNTY
Court of Common Pleas
Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2023-000072

DARIUS HAMILTON, Petitioner,

vs.

STATE OF SOUTH CAROLINA, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S ISSUES PRESENTED

I. **The post-conviction relief court properly found that trial counsel was not ineffective.**

II. **The post-conviction relief court properly found that Petitioner's guilty plea was voluntarily made.**

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Id. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the 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).

STATEMENT OF THE CASE

In April 2017, the Berkeley County Grand Jury indicted Darius Hamilton (Petitioner) Armed Robbery (2017-GS-08-00807), Kidnapping (2017-GS-08-00808), Armed Robbery (2017-GS-08-00809), Kidnapping (2017-GS-08-00810), and Burglary First Degree (2017-GS-08-00812).

Steve Davis, Esquire, represented Petitioner. Assistant Solicitor Wilton McNeely, Esquire prosecuted the case. On November 1, 2018, Petitioner pled guilty as indicted to all charges before the Honorable Deadra Jefferson. Judge Jefferson sentenced Petitioner to fifteen years concurrent on all indictments. Petitioner filed a timely notice of appeal on November 15, 2018. Petitioner withdrew his appeal on December 17, 2018, and the Remittitur was issued on January 3, 2019.

Petitioner then filed a pro se application for PCR on April 12, 2019, and after retaining counsel, he filed an amended application for PCR through Counsel on March 18, 2021. An evidentiary hearing was held March 25, 2021, before the Honorable Clifton Newman. Tommy A. Thomas, Esquire, represented Petitioner. (App. 92). On December 19, 2022, Judge Newman signed an order denying PCR. (App. 165-183). The court found Petitioner failed to meet his burden of proof that counsel was ineffective for allegedly causing Petitioner to lose his proffer agreement. (App. 176). The Court further found that Petitioner was not prejudiced by the actions of plea counsel because it was Petitioner's own actions of changing his story multiple times including right before and during the trial for one of his codefendants "causing great prejudice to the State that caused Petitioner to lose the proffer agreement, not plea counsel's." (App. 177). Further, the Court found that Petitioner's plea was freely, knowingly, and voluntarily entered into. (App. 182)

Petitioner filed a Petition for Writ of Certiorari on May 9, 2023. This return follows.

RELEVANT FACTS

On November 1, 2018, Petitioner pleaded guilty as indicted to all charges. The facts leading to this plea were restated at the plea hearing as follows:

> It arises out of an incident on July 21st, 2016 at approximately 3 a.m. Berkeley County deputies responded to a specific address in the Huger area of Berkeley County in reference to a shooting. Upon arrival deputies found one victim, Kadeem [phonetic] Johnson in the bedroom who had his hands bound with tape before being killed by a single gunshot wound to the head. The other victim Crystal Snipe had also had her hands bound with tape before being shot multiple times. After the incident she was able to call 911. She told police that when she and Johnson arrived home five suspects who were masked and armed were waiting outside in the woods at their home. As they got out of their car, all five approached them with guns and all five demanded items from them. While being held at gunpoint in the driveway the Hello Kitty bag containing drugs was taken from Kadeem [phonetic] Johnson and they were ordered into the house at gunpoint. They were escorted into the bedroom where Kadeem [phonetic] Johnson was made to get on his knees and Ms. Snipe was made to sit on the bed. While being watched by co-defendant Jacob Mouzon [phonetic] at gunpoint this defendant Darius Hamilton bound their hands with clear tape. While binding Kadeem [phonetic] Johnson's hands he removed a gold bracelet from his wrist. The male that was standing guard over them, co-defendant Jacob Johnson was not wearing a mask at one point inside the house and was able to be identified by Crystal Snipe who survived the incident. She stated several items were taken from the residence including a T.V. and other property. After this defendant and the other co-defendants exited the trailer co-defendant Jacob Mouzon [phonetic] shot Kadeem [phonetic] Johnson in the head killing him and then opened fire on Ms. Snipe causing injuries to her. All of the co-defendants then collectively took off in two separate Crown Victorias that belonged to the victims at the residence. One, a white one, was observed by deputies responding to the incident on Highway 402 and co-defendants Jacob Mouzon [phonetic], Drake Campbell, and Kenneth Campbell fled into the woods at that point and they were soon apprehended. In the day following at that time this defendant was identified and came to Eccles Church to speak with deputies who were investigating the incident at the command post. During that initial interview Mr. Hamilton told police that he drove the other co-defendants to the victim's residence but did not

go into the house. He subsequently entered into a proffer agreement with the State at which time he admitted being at the scene and taping their hands but claims to have never gone into the house. During a pretrial meeting with the State Mr. Hamilton added the additional detail that he was there when the crimes occurred, that he had gone into the trailer to tape their hands and took the bracelet off the victim Kadeem Johnson. He still claimed at a pretrial meeting that he ran after the shooting, left in his truck alone and never saw them after that. In a subsequent meeting he added that he left in one of the victim's Crown Victorias with co-defendant Sharod [phonetic] Palmer but that Palmer dropped him off at his car and had no further contact with him. Then when he testified at trial he changed his version of events again to add that after he left the scene in the Crown Victoria with Sharod [phonetic] Palmer while travelling up Cain Hoy Road observed Mr. Palmer out of the Crown Victoria, picked him up in his truck and he drove Sharod [phonetic] Palmer to Saint Stephen away from the scene dropping him off at his home. This version of the events had never been told to the State in any pretrial meeting.
(App. 21-24).

ARGUMENT

I. The post-conviction relief court properly found that trial counsel was not ineffective.

Petitioner contends that the PCR court erred in finding that defense counsel was not ineffective by losing Petitioner's proffer agreement with the State. Petitioner's argument is without merit because trial counsel's performance was not deficient and even if it had been, Petitioner failed to show that he was prejudiced by this deficiency.

"A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that the applicant was prejudiced by that deficiency." Stalk v. State, 383 S.C. 559, 560–61, 681 S.E.2d 592, 593 (2009) (citing Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370 (1985) (adopting seminal ineffective assistance of counsel standard from Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984), and applying to cases resolved via guilty plea)). In order to satisfy the prejudice requirement, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial." Hill v. Lockhart, at 59, 106 S.Ct. at 370. At all times during the proceeding, the Applicant maintains the burden of establishing that he is entitled to relief. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Moreover, the proceeding is coupled with "a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Morris v. State, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006).

In this case Petitioner failed to prove counsel's performance fell below an objective standard of reasonableness. At the evidentiary hearing, Petitioner testified that he was not completely truthful to the Solicitor during any of the proffer meetings. (App. 97-120).

Furthermore, in the plea transcript, the Solicitor explained to Judge Jefferson that Petitioner had changed his story three times, including at trial, where his testimony was so inconsistent with his initial statements that it did irreparable harm to the case against the individual that was acquitted and threatened the cases of his three co-defendants. (App. 23-24). Because of his changing story, the Solicitor expressed that Petitioner violated his proffer agreement several times. (App. 23-24). The PCR Court found plea counsel's testimony that Petitioner's inability to be completely truthful with the Solicitor caused an issue with the State's case and his opinion, caused the acquittal of one of his alleged co-defendants to be credible. (App. 177). The Court further found credible plea counsel's testimony that he encouraged Petitioner to tell the complete truth and that any initial issues where Petitioner withheld details, he was able "smooth over" things with the State to keep the proffer agreement open. (App. 177).

Here, counsel was not deficient for "causing" Petitioner to lose his proffer agreement. He acted reasonably as required by Strickland in encouraging Petitioner to tell the truth to the Solicitor, as well negotiating with the State to ensure the proffer agreement stayed intact through trial. Furthermore, Petitioner was not prejudiced by the actions of plea counsel because it was Petitioner's own actions of changing his story multiple times including right before and during trial, causing great prejudice to the State that caused Petitioner to lose the proffer agreement, not plea counsel's performance.

Considering the totality of the record pertaining to the plea hearing as well as the PCR hearing, it appears that it was Petitioner's actions, not Counsel's, that caused Petitioner to lose the proffer agreement and therefore Petitioner cannot succeed in demonstrating that counsel was deficient, and that deficiency prejudiced him.

II. The post-conviction relief court properly found that Petitioner's guilty plea was voluntarily made.

Petitioner contends his plea was involuntary because he relied on erroneous advice from counsel. Petitioner's argument is without merit because Petitioner knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin and Pittman. The plea transcript reflects Petitioner entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755; see also United States v. Smith, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, the defendant "must

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." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see also Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The 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." North Carolina v. Alford, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. North Carolina v. Alford, 400 U.S. 25, 37 (1970).

"Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the

charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977); see also Jamison v. State, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." Dalton, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. Blackledge, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

The voluntariness of a guilty plea, however, "is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea 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 errors, 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).

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel; the transcript of the guilty plea hearing will be considered to determine whether any

possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. 357, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. 357, 137 S. Ct. 1958. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Id. Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

After a review of the record and testimony at the evidentiary hearing, the PCR Court found Petitioner entered into a knowing, voluntary and intelligent plea. At the plea hearing, Judge Jefferson explained to Petitioner the constitutional rights he waived by pleading guilty, including rights to: remain silent, right to confront and cross-examine State's witnesses, and present any defenses. (App. 28). Petitioner informed the court that he understood the charges he was pleading to and the implications with sentencing that came with violent classifications for crimes. (App. 13-

15). Specifically, Petitioner indicated that he understood that armed robberies are a no parole offense, and that he would have to serve at least a minimum of seven years before the Department of Corrections will make any consideration of parole eligibility. (App. 15). Petitioner advised the court he had not been threatened, pressured, intimidated, or promised anything in exchange for his guilty plea. (App. 32-33). When questioned whether he had been truthful with the court in his answering of the Court's question, Petitioner affirmed he had. (App. 34).

The plea transcript reflects Petitioner understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Petitioner has failed to present any valid reason why he should be able to depart from the above statements made during his guilty plea. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds *by* United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Furthermore, there was no indication from the record or testimony at the evidentiary hearing that Petitioner would have insisted going to trial but for the alleged error of counsel as required by Roscoe v. State. The Court specifically stated in the evidentiary hearing that the evidence presented was contrary and showed that they did not want a trial. (App. 162). The PCR Court found the testimony of plea counsel credible that there was never any discussion of going to trial because trial would be futile based on the two statements given to the police before he was retained, as they would have been enough to convict Petitioner. Likewise, Petitioner's mother testified that she did not want Petitioner to go to trial and wanted him to plead guilty because he was guilty.

Based on the foregoing, the record contradicts Petitioner's assertion he was under a

misapprehension of what was happening and that his plea was involuntary as a result of ineffective assistance of counsel. Thus, based on the evidence presented at the PCR hearing and the record of the plea proceeding Petitioner's plea was freely, knowingly, and voluntarily entered into. On this record, Petitioner cannot succeed in demonstrating that he pled guilty in an unknowing, involuntary manner, or that but for deficient advice by counsel, he would have insisted on proceeding to trial. See Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370 (1985).

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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