

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-000072

Darius Hamilton,

Petitioner,

vs.

The State of South Carolina,

Respondent.

REPLY

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S.C. SUPREME COURT

ARGUMENTS

I. The PCR court erred in finding that trial counsel was not ineffective by losing Petitioner's proffer agreement with the State.

The State argues that the ruling of the PCR Court that trial counsel was not ineffective for losing Petitioner's proffer agreement with the State was correct because Petitioner lost the proffer agreement with the State due to his own dishonesty during meetings with the State. Respondent's Return p. 6-7. Petitioner respectfully disagrees.

The State's argument neglects the fact that Petitioner's concealment of certain facts was at the direction of his trial counsel. When trial counsel was asked at the PCR hearing if he ever told Petitioner to withhold information from the Solicitor after he signed his proffer agreement, he testified that he did not. App. 131. However, when he continued to explain himself, he said, "And to be fully honest with you, what that colloquy is all about rapping of the arm, it was like voluntary information that is unnecessary, okay? We was early on in the process. Just like he said, the DNA on certain forensic evidence had not been performed yet, okay? Just think how horrific this sounds. Lady was shot, she was pregnant and actually the individual I'm representing is the one who actually duct tape the hands, takes the gold bracelets off her hands. To suggest all the facts at that point without confirmation or corroboration from the State or the forensic, would have been stupid on his part." App. 131.

Through this explanation, trial counsel demonstrates that he did know about Petitioner's involvement in duct taping the victim's hands together and thought it would have been "stupid" on his part to "suggest all the facts at that point without confirmation or corroboration from the State or the forensic." App. 131. This omission was the first

instance that caused a rift between the State and Petitioner during his proffer agreement. App. 140. Trial counsel was able to smooth things over this time and the State gave Petitioner a second chance. App. 140. However, when Petitioner testified truthfully about taking his co-defendant home after the incident during his co-defendant's trial, and trial counsel had not "taken care of it" like he said he would, the State saw this as strike two against Petitioner and withdrew his proffer agreement. App. 141. To say that Petitioner was at fault for losing his proffer agreement does not address this response by trial counsel during the PCR hearing demonstrating he knew Petitioner's involvement and thought it would be stupid to disclose it to the State at that point in time.

Petitioner was an 18-year-old who had never been in legal trouble at the time of this incident. He followed his trial counsel's lead and trusted his advice. Withholding information from the State ultimately led to the State pulling his proffer agreement. Trial counsel provided ineffective assistance of counsel in violation of Petitioner's Sixth Amendment right to counsel.

II. The PCR court erred in finding that Petitioner's plea was voluntary.

The State argues the ruling of the PCR Court finding that Petitioner's plea was voluntary was correct because the record clearly reflects Petitioner understood the rights he was giving up and demonstrated his free and voluntary plea and Petitioner could not demonstrate that he would have insisted on proceeding to trial but for the errors of trial counsel. Respondent's Return p. 11-12. Petitioner respectfully disagrees.

The State's argument ignores the greater context under which Petitioner's plea was given. At the PCR hearing Petitioner testified he did not understand what he was pleading

guilty to or the rights he was giving up when he pleaded guilty. App. 112-113. When looking at the plea transcript, a few things become clear. First, Petitioner was pleading guilty for the first time ever. He had no criminal history prior to this event. App. 4. Second, when Petitioner pleaded guilty his plea was “lined up” with three other people. See App. 1-54. All of these defendants were addressed together and asked to respond to questions individually, one right after the other. See App. 1-54.

Petitioner answers every question posed to him the exact same way these other defendants do and never deviates from what the person in front of him says. See App. 1-54. All questions regarding rights he was giving up, understanding what he was doing, the voluntariness of his plea, and his satisfaction with trial counsel were all asked in this format where the judge posed the question to all defendants and the defendants responded in a line after one another. See App. 1-54. Petitioner was third in said line, behind two defendants pleading guilty to time served and a suspended YOA. He answers in the same manner as these two defendants after every group question he is asked. This examination of the plea transcript further demonstrates that his plea was not voluntarily made.

Finally, Petitioner did not testify at PCR that he did not want a trial, he testified that going to trial was never mentioned by his trial counsel. The only person who testified at PCR that she did not want Petitioner to go to trial was Petitioner’s mother, not Petitioner, and it was not her decision to make. App. 128.

CONCLUSION

Respectfully, Mr. Hamilton asks this Court to grant his petition for a writ of certiorari.

Respectfully submitted,
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