

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 28 2023

S.C. SUPREME COURT

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Certiorari to Beaufort County

Honorable Eugene C. Griffith, Circuit Court Judge
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JUSTIN E. WATTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000395
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where Petitioner only pled guilty due to pressure from plea counsel who told Petitioner that if he did not accept the state's favorable plea offer and plead guilty that day, the state would not extend any further offers and Petitioner would be convicted of all three of his pending charges and sentenced up to fifty-five years' imprisonment?

STATEMENT OF THE CASE

The state alleged Petitioner, then thirty-seven years old, contacted a fourteen year old girl online through the Whisper application on August 2, 2016, despite knowing her age. The two then exchanged sexually explicit messages and, at Petitioner's request, the minor sent Petitioner photographs of her body. Days later, Petitioner drove from his apartment in Savannah, Georgia to a location near the minor's home in Bluffton, South Carolina where Petitioner and the minor engaged in oral sex in Petitioner's car. The minor's father discovered the relationship, and when confronted by police, Petitioner admitted to the conduct. App. 8, l. 25 – 10, l. 25. He was charged with second degree criminal sexual conduct (CSC) with a minor, criminal solicitation of a minor, and first degree sexual exploitation of a minor. App. 3, ll. 7-11.

Petitioner waived presentment to the Beaufort County grand jury and, on February 12, 2018, pled guilty to second degree CSC with a minor and criminal solicitation of a minor before the Honorable Carmen T. Mullen. App. 1; App. 151-154. Assistant Attorney General Bethany Miles represented the state. Trasi Campbell represented Petitioner. App. 2. While the state did not make a specific sentence recommendation during the hearing, the prosecutor requested Petitioner receive "a substantial active sentence." App. 3, ll. 16-21. Petitioner was ultimately sentenced to twenty years for second degree CSC with a minor and ten years concurrent for criminal solicitation of a minor, the maximum sentence for each offense. App. 23, ll. 2-11; App. 125-126. The state dismissed Petitioner's first degree sexual exploitation of a minor charge pursuant to the plea agreement. App. 3, ll. 7-15.

On February 16, 2018, Petitioner filed a motion to reconsider his sentence. App. 25. A hearing was held on Petitioner's motion before Judge Mullen on April 9, 2018. App. 26. At the conclusion of the hearing, the judge declined to reduce Petitioner's sentence. App. 36, l. 12.

Petitioner filed a timely notice of appeal. App. 38-42. However, Petitioner subsequently moved to withdraw his appeal. App. 43-44. By order filed May 6, 2019, the Court of Appeals dismissed the appeal. App. 45. The remittitur was sent on May 23, 2019. App. 46.

On August 21, 2018, Petitioner filed an application for post-conviction relief (PCR). App. 47-56. On June 10, 2019, Petitioner filed a second application. App. 57-63. The state filed a return and motion for merger dated July 10, 2020. App. 64-72. By order filed July 17, 2020, the circuit court merged Petitioner's two PCR actions. App. 73-74. An evidentiary hearing was convened on August 12, 2021 before the Honorable Eugene C. Griffith, Jr. App. 75. Assistant Attorney General Samantha Weidauer represented the state. James Falk represented Petitioner. App. 75.

During the hearing, Petitioner testified that on February 8, 2018, the Thursday before he pled guilty, plea counsel visited him at the detention center where Petitioner was incarcerated. According to Petitioner, counsel told him that the state had offered to allow Petitioner to plead guilty to criminal solicitation of a minor in exchange for a sentence recommendation of ten years suspended upon the service of five years imprisonment and five years' probation. If Petitioner accepted this offer and pled guilty, the state would dismiss Petitioner's remaining charges. App. 81, ll. 1-21; App. 83, l. 23 – 84, l. 3. When Petitioner was transported to the courthouse on Monday, February 12, 2018, he expected to plead guilty and be sentenced pursuant to this offer. App. 82, ll. 5-22.

However, on the day of his plea, counsel told Petitioner that this offer had been withdrawn and now the state was offering to allow Petitioner to plead guilty to second degree CSC with a minor and criminal solicitation of a minor with no sentence recommendation. In

exchange for his plea to these charges, the state would dismiss the first degree sexual exploitation of a minor charge. App. 82, l. 23 – 83, l. 4; App. 84, ll. 4-23.

Petitioner explained that he had always planned to plead guilty since he had already admitted his guilt to law enforcement upon his arrest. App. 88, ll. 4-9. During their discussion on the morning before Petitioner pled guilty, plea counsel told Petitioner that there would be no other plea offers from the state and if he did not accept the current offer he would later have to plead to all three of his pending charges and face thirty-five years' imprisonment. App. 84, l. 19 – 85, l. 17. Petitioner explained that he only accepted the state's offer that morning and pled guilty because counsel "made [him] see the most absolute bleak and vivid outlook as far as this was the only plea I was going to get and that if I didn't take it I was looking up to 30 - - all three charges - - up to 55 years . . . and having already admitted my guilt more than once, I didn't want to go to trial." App. 94, ll. 5-9; App. 99, ll. 15-17.

Trasi Campbell, Petitioner's plea counsel, testified that during the thirteen months she represented Petitioner, she met with him four times at the detention center where he was incarcerated and then at the courthouse on the morning of his guilty plea. App. 114, ll. 14-23. She explained that she "worked very diligently to try and get him [Petitioner] to understand the gravity of what he had been charged with [and] the gravity of the evidence the State had against him." App. 106, ll. 13-15. She "was very fearful for him that he would be convicted of all the charges and spend potentially the rest of his life in prison." App. 106, ll. 19-21.

Campbell testified that Petitioner always planned to plead guilty because they "had determined fairly early on that there was" no defense to the charges since Petitioner "had confessed, and the strength of the State's case was beyond a reasonable doubt." App. 117, ll. 2-9. Consequently, Campbell engaged in plea negotiations with the Attorney General's Office,

who represented the state, in an attempt “to try to minimize” Petitioner’s sentence. App. 107, ll. 12-17. She “begged” the assistant attorney general for a sentence recommendation of ten years and “asked repeatedly can we not meet somewhere in the middle,” particularly given that Petitioner had no prior record. App. 108, ll. 3-7. However, the “best” the attorney general offered was to not ask “for the maximum.” Instead, the attorney general said she would request “a substantial sentence.” Campbell testified that the attorney general kept her word and did not “pound her fist” during the plea hearing or take a “ferve position” on sentencing, which “was about as good as it was going to get for Mr. Watts [Petitioner].” App. 108, ll. 8-14.

Lastly, Campbell contended that it was “solely” Petitioner’s decision to plead guilty. App. 117, ll. 17-18. She testified that she had “no idea what Mr. Watts was talking about when” he mentioned an offer of ten years suspended upon the service of five years’ imprisonment and five years’ probation. She maintained that such an offer was never “part of any conversation [she] ever had with him.” App. App. 106, ll. 2-5.

By order filed February 23, 2023, the PCR judge denied Petitioner relief. App. 129-150. The judge found Petitioner freely, knowingly, and voluntarily pled guilty. App. 149. He determined that the record “contradicts [Petitioner’s] assertion he was coerced by counsel to plead guilty and that his plea was involuntary as a result of ineffective assistance of counsel.” App. 148-149.

Because Petitioner’s guilty plea was not knowingly, intelligently, and voluntarily made, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where Petitioner only pled guilty due to pressure from plea counsel who told Petitioner that if he did not accept the state's favorable plea offer and plead guilty that day, the state would not extend any further offers and Petitioner would be convicted of all three pending charges and sentenced up to fifty-five years' imprisonment.

Petitioner only pled guilty because plea counsel told him that if he did not accept the state's favorable plea offer and plead guilty that day (the day he was first informed of the offer), the state would not extend any other offers and Petitioner would be convicted of all three of his pending charges and potentially be sentenced up to fifty-five year's imprisonment.¹ Petitioner would not have accepted the state's offer and pled guilty that day but for counsel's pressure.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

¹ Based upon the record, it appears Petitioner was facing up to fifty years imprisonment if the maximum sentence for each offense was imposed and ordered to be served consecutively. See S.C. Code Ann. § 16-3-655(D)(3) (a person convicted of second degree criminal sexual conduct with a minor "must be imprisoned for not more than twenty years."); S.C. Code Ann. 16-15-342(E) (a person convicted of criminal solicitation of a minor must be "imprisoned for not more than ten years"); S.C. Code Ann. § 16-15-395(D) (a person convicted of first degree sexual exploitation of a minor "must be imprisoned for not less than three years nor more than twenty years").

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. In the context of a guilty plea, a petitioner must show that counsel's performance was deficient, and "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); See Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). This Court has held that a "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000)); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

"Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238 (1969)). "The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. Specifically, a defendant must be aware of the privilege against self incrimination, the right to a jury trial, and the right to confront one's accusers." Pittman, 337 S.C. at 599, 524 S.E.2d at 624 (citing Boykin, 395 U.S. 238). Additionally, "a defendant entering a guilty plea 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." Id. (citing Boykin, 395 U.S. 238).

“To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). “Although the trial court is not required to direct the defendant’s attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea.” Id. (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976)). “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.’” Id. (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)).

“[T]he voluntariness of a guilty plea 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.” Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)) (alteration in original).

In this case, Petitioner only pled guilty because he was pressured by plea counsel to accept the state’s favorable offer, which consisted of Petitioner pleading guilty to second degree CSC with a minor and criminal solicitation of a minor without a sentence recommendation in exchange for the state dismissing Petitioner’s pending charge of first degree sexual exploitation

of a minor. Counsel told Petitioner that if he did not accept this offer and plead guilty that day (the day he was informed of the offer), the state would not make any other offers and Petitioner would ultimately be convicted of all three offenses and potentially be sentenced up to fifty-five years imprisonment. Petitioner testified that counsel “made [him] see the most absolute bleak and vivid outlook” and he felt pressured into pleading guilty. App. 94, ll. 5-9; App. 96, ll. 8-9. However, but for counsel’s pressure, Petitioner would not have pled guilty the day he did. Consequently, Petitioner’s guilty plea was not knowingly, intelligently, and voluntarily made.

Respectfully, this Court should grant certiorari and reverse Petitioner’s convictions and sentence.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

s/ Lara M. Caudy _____
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of September, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Justin E. Watts states:

1. She is an 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, which was held on August 12, 2021 before the Honorable Eugene C. Griffith, 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 Justin E. Watts.

Respectfully Submitted,

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of September, 2023.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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.”

s/ Lara M. Caudy _____
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This 28th day of September, 2023.