

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Oct 05 2023

S.C. SUPREME COURT

Certiorari to Spartanburg County

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

RAYSHON SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000472

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether petitioner's guilty plea was involuntary because counsel told him that if he went to trial and was convicted, he would get a life sentence?

STATEMENT

On August 27, 2018, petitioner Rayshon Lamar Smith proceeded to trial in Spartanburg County before the Honorable J. Derham Cole and a jury. App. 1. James Edward Hunter and Allison Margaret Mabbs represented the State. App. 1. Robin Clark File represented petitioner. App. 1. After Judge Cole denied petitioner's pre-trial motions, petitioner pled guilty to murder, a weapons charge, first-degree burglary, attempted armed robbery, two counts of kidnapping, and filing a false police report. App. 141, 151. Judge Cole sentenced petitioner to concurrent terms totaling thirty years' imprisonment. App. 151. Petitioner did not appeal.

On October 13, 2020, petitioner's PCR application was filed. App. 153. The State moved to dismiss as untimely, but the Honorable Brian M. Gibbons held that equitable tolling applied and denied the State's motion. App. 176. On April 19, 2022, an evidentiary hearing was held before the Honorable G.D. Morgan, Jr. App. 179. Rodeny Richey represented petitioner and Chelsey Marto represented the State. App. 179. On March 6, 2023, Judge Morgan denied petitioner's PCR. App. 204. This petition follows.

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

Petitioner's guilty plea was involuntary because counsel told him that if he went to trial and was convicted, he would get a life sentence.

Petitioner was not the shooter in this case and was prosecuted under the theory of hand-of-one-hand-of-all. App. 198. Petitioner wanted a trial, and his case began with jury selection and pre-trial motions before Judge Cole. App. 28. Judge Cole denied petitioner's motions, including a motion to suppress petitioner's incriminating statement. App. 112-16. After the denial of the motions, petitioner pled guilty. App. 116.

At the PCR hearing, plea counsel admitted that after his pre-trial motions were denied, the chances of an acquittal were "slim to none." App. 200. He told petitioner the "deck was really stacked against him." App. 200. Plea counsel said that the plea to murder for thirty years was in petitioner's best interest, stating, "We were at trial in front of Judge Cole, and I think that it was very likely had he been convicted, that he would've gotten a life sentence." App. 201.

Petitioner testified that he only pled guilty because of his attorney's advice that he would receive a life sentence. App. 191, 194-95. Plea counsel told petitioner he would "get life plus, actually." App. 191. Petitioner was adamant that he wanted a jury trial at the PCR hearing. App. 188.

The PCR court erred in finding that petitioner's guilty plea was voluntary. His will was overborne by the insistence of plea counsel that he would get a life sentence. The range petitioner was facing was thirty years to life imprisonment. S.C. Code Ann. § 16-3-20(A). A life sentence was not guaranteed.

"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). “Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process.” Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). “Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel.” Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted).

This Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant’s trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. Hinson found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).


Plea counsel’s advice about the severity of the sentence can be analogized to the error by the trial court that was alleged to have prevented a defendant from pleading guilty in State v. Jenkins, 436 S.C. 362, 872 S.E.2d 620. Jenkins was a death penalty case and during a pre-trial colloquy with the judge, the judge said he would sentence Jenkins to death if he pled guilty. Jenkins at 374-75, 872 S.E.2d at 626-27. This statement by the judge was error—an inaccurate statement of law interpreted as the trial court’s personal opinion before hearing any evidence. Id.

Plea counsel’s insistence that Judge Cole would give petitioner a life sentence is the same error, but one step removed and was ineffective assistance of counsel. Petitioner proved both ineffective assistance and prejudice under the Sixth Amendment. Petitioner’s insistence that he would have insisted on a jury trial proves prejudice. Turner v. State, 335 S.C. 382, 517 S.E.2d 442 (1999) (finding prejudice based on defendant’s testimony that he would not have pled guilty despite

plea counsel's assertion that even if he had understood defendant's potential sentence, he still would have advised defendant to plead guilty). This Court should grant certiorari and reverse petitioner's convictions.

CONCLUSION

For the foregoing reasons, this Court should reverse the PCR court, reverse petitioner's convictions, and remand for a new trial.



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 5th day of October, 2023.

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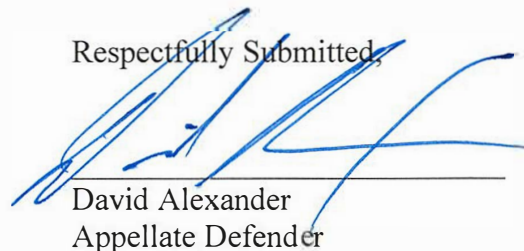
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rayshon Lamar Smith 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 G.D. Morgan, Jr., which was held on April 9, 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 Rayshon Lamar Smith.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of October, 2023.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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."



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Appellate Defender

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This 5th day of October, 2023.