STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Oct 16 2023

S.C. SUPREME COURT

Certiorari to Spartanburg County

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

JODI STAPLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000473

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding that Petitioner's plea was knowingly and voluntarily entered where Petitioner pled guilty because she was told by defense counsel that the State would seek life without parole (LWOP) even though Petitioner did not have the requisite prior convictions for LWOP notice?

STATEMENT OF THE CASE

Petitioner and her boyfriend/co-defendant, Jurrell Thompson, failed to appear for court and bench warrants were issued for their arrest. On July 18, 2018, their bondsman informed law enforcement that Petitioner and Thompson would be attempting to pick up a wire transfer from the local Walmart. Police responded to the area and attempted to make a traffic stop on Petitioner and Thompson. Petitioner, who was driving, initially pulled to the side of the rode as if she intended to stop before suddenly accelerating. As she drove away Thompson pulled an AK-47 style rifle from the back of the vehicle, climbed out of the sunroof, and began firing at police. Thompson continued firing at police throughout the chase, striking police vehicles. Eventually both Petitioner and Thompson bailed from the car. Thompson continued to shoot at and run from police. Petitioner hid under the covers in a bedroom of a friend's residence until police located her. When Thompson was arrested, he informed officers that he intended to "kill the pig." App. 17, l. 18-App. 22, l. 21.

On November 21, 2019, Petitioner appeared before the Honorable Alex Kinlaw to enter a guilty plea[1] to three counts of attempted murder without recommendations or negotiations. App. 1; App. 4, ll. 9-13; App. 10, ll. 11-20. The State was represented by Jennifer Wells. Petitioner was represented by Robin File. App. 1. Petitioner's prior record was announced during the plea. She had been previously convicted of two counts of possession with intent to distribute (PWID) narcotics out of Georgia, two counts of PWID cocaine, simple possession of marijuana, false information to the police, shoplifting, DUI, and numerous habitual traffic offender charges out of

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[1] Petitioner also pled guilty to one count of unlawful neglect, one count of distribution of cocaine second offense, and one count of breach of trust $2,000-$10,000. She received sentences of five years imprisonment, ten years imprisonment, and five years imprisonment respectively, run concurrently with the attempted murder sentences. Petitioner did not challenge these convictions and sentences in her PCR application and therefore they are not addressed in this petition. App. 47, ll. 3-12.

South Carolina. App. 29, l. 21-App. 30, l. 23. The plea court sentenced Petitioner to twenty-two years imprisonment on each attempted murder charge, sentences to run concurrently. App. 46, l. 13-App. 47, l. 2. Counsel File filed a motion to reconsider Petitioner's sentence on November 27, 2019, which was denied by written order on April 2, 2020. App. 49-50. Petitioner did not appeal her convictions and sentences. On October 15, 2020, Petitioner filed an application for post-conviction relief alleging, *inter alia*, that her plea was involuntary because she was threated with a life without parole sentence if she went to trial. App. 51-60. The State filed a return on February 12, 2021. App. 61-79. An amended PCR application was not filed. An evidentiary hearing was convened on April 19, 2022, before the Honorable G. D. Morgan. The State was represented by Chelsey Marto. Petitioner was represented by Rodney Richey. App. 80.

Petitioner testified that at the time of the incident she was under duress from her co-defendant who had shocked her when he pulled out the gun and started firing. She discussed going to trial with the defense of duress with counsel and wanted to have a jury trial. App. 86, ll. 2-25. She was told that the solicitor would serve LWOP papers on her if she went to trial so she took the plea so she "would make it out of jail one day." App. 87, ll. 10-24. On cross-examination she admitted that she pled guilty because she was afraid of being "LWOP'ed." She testified that the solicitor had sent Counsel File a paper stating that she would be "LWOP'ed" if she was found guilty at trial. App. 92, ll. 6-15.

Counsel File testified that Petitioner did express "at some point" that she wanted a jury trial. He confirmed there had been some discussion about the solicitor seeking a LWOP sentence and opined that he did not think Petitioner stood a good chance of acquittal at trial. App. 97, ll. 4-23. When asked if Petitioner was eligible for LWOP Counsel File replied, "[s]he had some drug convictions on her record. But she – there was some – she had some record with –

involving some drug convictions – several prior drug convictions." App. 98, ll. 2-6. He confirmed that a LWOP notice was never served but that the solicitor did state she was looking into the potential for LWOP, and he conveyed that to Petitioner. He testified that the case seemed destined for trial and their "feet were to the fire" at the time of the plea. App. 98, ll. 7-23.

An order of dismissal was filed on March 6, 2023. App. 106-118. The PCR court found that, based on the transcript of the plea, Petitioner's plea was knowingly and voluntarily made. Regarding the contention that Petitioner pled because she feared facing a potential LWOP, the court found that "being informed that if she went to trial, she would face more time in prison does not rise to the level of coercion and is not enough to render the plea invalid." App. 115-116.

ARGUMENT

The PCR court erred in finding that Petitioner's plea was knowingly and voluntarily entered where Petitioner pled guilty because she was told by defense counsel that the State would seek life without parole (LWOP) even though Petitioner did not have the requisite prior convictions for LWOP notice.

Petitioner's prior record consisted of no serious or most serious offenses. She had never been convicted of any violent crimes. She was, unquestionably, not eligible for a LWOP sentence. However, Counsel File did not convey to her that she could not be sentenced to life without the possibility of parole. In fact, he was not even aware that Petitioner was not eligible for a LWOP sentence. While she faced the risk of more time a trial, she did not face the risk of never getting out of prison. Her plea was based on erroneous legal advice and was therefore not voluntarily and knowingly entered.

"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) (internal citations omitted). The United States Supreme Court has held that "[g]uilty pleas are no more foolproof than full trials to the court or jury... Accordingly, we take great precautions against unsound results." Brady v. United States, 397 U.S. 742, 758 (1970). An "unsound result" occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him); See also Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding a defendant must understand the sentencing consequences of his plea for it to be considered voluntarily given).

"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 effect assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 147, 1480-81 (2010) (internal quotations omitted).

A PCR 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 v. Lockhart, 474 U.S. 52, 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 pleaded 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).

A defendant who is induced to plead guilty based on erroneous legal advice may have a valid ineffective assistance of counsel claim. See Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (court found ineffective assistance of counsel when trial counsel misinformed petitioner of sentence possibility and petitioner testified at PCR he would not have pled guilty absent the erroneous advice); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (new trial granted where incorrect parole eligibility advice induced plea). When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Importantly, the voluntariness of a guilty plea is not determined by an

examination of the plea colloquy alone but is determined from both the record of the guilty plea and *also from the record of the PCR hearing*. Id. (emphasis added).

In Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991), the petitioner was charged with grand larceny, second degree burglary, and two counts of armed robbery. Plea counsel for Ray told him that he would be subject to a sentence of life without parole if he proceeded to trial and was convicted on the two counts of armed robbery. Id. at 375, 401 S.E.2d at 152. Based on this advice Ray entered a plea pursuant to North Carolina v. Alford[2] to burglary third degree and armed robbery. Ray was sentenced to five years on the burglary and twenty years on the robbery, the sentences to run concurrently. Id.

The sentencing advice provided by defense counsel was erroneous, as Ray would not have been subject to a life without parole sentence had he been convicted of the two counts of armed robbery. At his PCR hearing Ray stated that the main factor in his decision to plead guilty to the single count of armed robbery was the possibility of the life without parole sentence. Ray stated that he would not have plead guilty absent the erroneous advice. Id.

The State argued that since Ray was facing a possible maximum sentence of seventy-five years without parole if he elected to proceed to trial, he was in effect facing a life sentence such that counsel's erroneous advice did not prejudice Ray. Id. at 376, 401 S.E.2d at 152. In finding prejudice, this Court noted that Ray may have faced up to seventy-five years without parole if convicted at trial, but he could also face a sentence as short as ten years. This Court held the distinction between the actual possibly sentence Ray faced and Ray being told he would face life without parole was sufficient to satisfy the prejudice prong. Id. at 376, 401 S.E.2d at 153.

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2 400 U.S. 25 (1970)

Petitioner's case is on all fours with Ray v. State, *supra*. Had Petitioner been convicted of the three attempted murder counts after a trial she **would not** have been eligible for a life without parole sentence. At the PCR hearing, Counsel File was unable to answer if Petitioner was eligible for a LWOP sentence and only stated that she had several prior drug convictions. He did not take the time to investigate her prior record or the LWOP statute and misadvised Petitioner that LWOP was a possibility. Petitioner testified repeatedly that she wanted a trial but pled to avoid life in prison. She also testified that she had been told the Solicitor would seek LWOP if she went to trial. This was erroneous advice that induced her plea and was deficient performance by Counsel File.

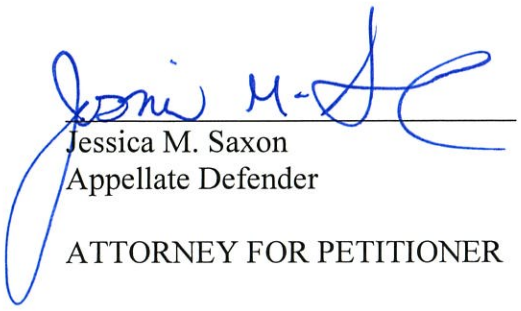
As was testified to at the PCR hearing, Petitioner wanted a jury trial, had a viable defense of duress, and the case seemed "destined for trial." It was only the looming threat of the LWOP notice that made Petitioner enter a guilty plea. While she could have faced up to ninety-years in prison, she could also have faced no time in prison, because attempted murder carries a penalty range of zero-thirty years. Much like Ray, the distinction between the actual possibly sentence Petitioner faced and being told she **would** face life without parole is sufficient to satisfy the prejudice prong.

Further, in finding Petitioner's plea voluntary, the PCR court only considered the plea colloquy. This was error, as the PRC court was required to consider both the plea colloquy and the evidence presented during the PCR hearing. The PCR court described the threat of LWOP as the possibility of a "trial tax." This was a mischaracterization of the issue and the testimony. Petitioner was not merely told she could face more time in prison if she went to trial. She was told she would face LWOP and therefore never get out of prison if she went to trial, which was patently untrue.

Petitioner's guilty plea was based on a threat of a LWOP sentence if she went to trial. Counsel File did not advise Petitioner she was not subject to LWOP and could not even articulate at the PCR hearing if Petitioner had the requisite convictions for a LWOP notice. The State confirmed during the hearing that Petitioner pled guilty to avoid LWOP, not merely more time in prison. Counsel File's ineffective assistance in failing to research and inform Petitioner that she was not subject to LWOP unquestionably affected the outcome of the plea process. Given that Petitioner was never facing a LWOP sentence, her plea was based on erroneous advice that prejudiced her under the holding in Ray v. State, *supra*. Accordingly, this Court should find her plea was not knowing and voluntarily entered but the result of ineffective assistance of counsel, and reverse and remand the case back to the Court of General Sessions of Spartanburg County.

CONCLUSION

Based on the forgoing argument, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of this issue.



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This 16th day of October, 2023.