

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Richland County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

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WILLIAM OLIVER AGUILAR PINEDA,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2023-000035

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QUESTIONS PRESENTED

Petitioner's Questions Presented on Certiorari

I. Does probative evidence support the PCR court's finding that plea counsel allowed [Mr. Aguilar] to present testimony to the plea court that "she knew was false" and "encouraged him to present false testimony to the court?"

II. Did the PCR court err as a matter in law in finding plea counsel was ineffective for advising [Mr. Aguilar] that his co-defendants would testify against him when that finding was based on hindsight?

Respondent's Questions Presented

I. Whether any evidence of probative value supports the PCR court's finding defense counsel allowed and encouraged Mr. Aguilar to present testimony that she knew to be false to the court during his guilty plea hearing?

II. Whether the PCR court erred as a matter of law finding Mr. Aguilar's guilty plea was involuntary where evidence of probative value supports the PCR court's finding defense counsel was ineffective for advising and pressuring Mr. Aguilar to plead guilty where (1) counsel's advice that co-defendants would testify against him should he go to trial was incorrect; (2) counsel acknowledged that had the case gone to trial she could have effectively cross-examined the co-defendants regarding their statements implicating Mr. Aguilar; and (3) counsel confirmed Mr. Aguilar never admitted guilt and even requested she tell his family that he intended to offer false testimony during his guilty plea?

STATEMENT OF THE CASE

On August 9, 2017, respondent, William Oliver Aguilar-Pineda, was indicted in Richland County for murder. App. 25-26. Pursuant to negotiations Mr. Aguilar pled guilty to voluntary manslaughter before the Honorable DeAndrea G. Benjamin on November 5, 2020. App. 1-16. Judge Benjamin sentenced Mr. Aguilar to twenty-three years' imprisonment. App. 15, ll. 10-16. Mr. Aguilar was represented at the hearing by Megan Eigenbrot and the state was represented by assistant solicitor, Lamar Fyall. App. 1.

Thereafter, Mr. Aguilar filed an application for PCR on October 26, 2021. App. 29-35. On September 26, 2022, an evidentiary hearing was held before the Honorable Courtney Clyburn Pope. App. 47-99. Mr. Aguilar was represented by Michael Lifsey and assistant attorney general, Danielle Dixon, represented the state. App. 47.

On December 8, 2022, Judge Pope signed an order granting PCR. App. 100-05. In the order the court held Mr. Aguilar's conviction was vacated and his case remanded to the lower court for a new trial. App. 105. The court found both Mr. Aguilar and defense counsel, Megan Eigenbrot, credibly testified. The court found that, but for defense counsel's incorrect and advice *and pressure to plead guilty*, Mr. Aguilar would not have pled guilty. App. 104. The court also found defense counsel "allowing and encouraging [Mr. Aguilar] to present testimony that she knew to be false to the plea judge constituted ineffective assistance of counsel and that, but for counsel's error, [Mr. Aguilar] would not have pled guilty. App. 10

ARGUMENT

I. There is evidence of probative value in the record that supports the PCR court’s finding defense counsel allowed and encouraged Mr. Aguilar to present testimony that she knew to be false to the court during his guilty plea hearing.

Relevant facts

Defense counsel began representing Mr. Aguilar soon after his arrest in April of 2017. App. 75, ll. 6-17. Shortly thereafter the case was transferred to another public defender at the Richland County office, Adam Ruffin due to counsel’s heavy caseload. App. 75, ll. 17-22. Mr. Ruffin represented Mr. Aguilar until he left the public defender’s office in February 2019 and Mr. Aguilar’s case was transferred again this time to Robert Forney. App. 75, l. 23-76, l. 6. Nearly a year later, in January 2020, Mr. Forney discovered that he represented a witness in the case against Mr. Aguilar and defense counsel was reassigned to the case.¹ App. 76, ll. 10-20.

On November 5, 2020, Mr. Aguilar pled guilty pursuant to negotiations with the state to voluntary manslaughter before Judge Benjamin.² App. 1-4. Regarding the incident the solicitor told the court that on March 22, 2017, Barry Reed planned to kill Pierre Wilson because the two had “a pre-existing feud.”³ App. 6, ll. 8-14. The solicitor alleged Mr. Aguilar was at the scene of the shooting. He claimed after Mr. Reed began shooting the victim Mr. Aguilar left in a car and began shooting out of the car with “an assault style weapon.” App. 6-7. The solicitor

¹ Mr. Aguilar and defense counsel both testified that Mr. Forney failed to communicate with Mr. Aguilar during the eleven-month period that he represented Aguilar. App. 52, l. 25-53, l. 8; 54, ll. 8-16; 76, ll. 6-6-7; 85, l. 13-86, l. 22.

² During the hearing Mr. Aguilar admitted guilt and did not express any dissatisfaction with defense counsel. App. 5-16.

³ The solicitor also claimed both Mr. Reed and Mr. Aguilar were members of the Bloods gang. App. 6, ll. 8-17.

asserted two of Mr. Aguilar's co-defendants picked him out of a photographic lineup and that an item of his clothing had been found at the scene. App. 7, ll. 10-18.

At the evidentiary hearing Mr. Aguilar testified that he initially did not want to plead guilty and wanted to go to trial because he believed he was being set up for a crime he did not commit. App. 58, ll. 2-12; 60, l. 17; 66, ll. 2-5. Throughout the hearing he repeatedly stated he was innocent. App. 59, ll. 13-17; 62, ll. 21-24; 64, ll. 23-25; 65, ll. 23-25; 71, ll. 4-22.

Mr. Aguilar expressed that he felt pressured to plead guilty and stated that his decision was based on defense counsel's advice that if he did not accept the state's plea offer he would likely be convicted and go to prison for much longer for a crime he did not commit. App. 62, l. 24-63, l. 20; 63, l. 25-64, l. 23; 71, l. 23-72, l. 2. Mr. Aguilar testified prior to his guilty plea hearing defense counsel told him that he would be asked a series of questions by the judge and that he would have to answer each question. Defense counsel told him that if he told the judge he was not guilty the judge would not accept the plea and the plea deal, so he did as he was told during his guilty plea hearing. App. 61, ll. 11-24. Mr. Aguilar contended that if he had been advised to tell the truth, that he was innocent of the charges, he would have gone to trial. App. 68, ll. 2-7.

Defense counsel's testimony corroborated Mr. Aguilar's on all relevant points. Defense counsel acknowledged that Mr. Aguilar always denied having been involved in the shooting. App. 83, ll. 10-11. She denied threatening or coercing Mr. Aguilar to plead guilty. However, counsel admitted that when preparing Mr. Aguilar for his guilty plea hearing she "advised that if he [did] not respond to certain questions in certain ways, the judge would not accept his guilty plea and that we would be going to trial." App. 84, ll. 5-14. Counsel further testified that Mr. Aguilar was very distressed and struggled with the decision to plead guilty. She stated that Mr.

Aguilar asked her to turn to his family and explain to them that what he would tell the plea court regarding his guilt was not true. App. 84, ll. 15-23

Discussion

Probative evidence supports the PCR court's finding that counsel allowed and encouraged Mr. Aguilar to present false testimony to the plea court.

“A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction ... has two components.” *Strickland v. Washington*, 466 U.S. 668 (1984). The defendant must first demonstrate that counsel was deficient and then must also show this deficiency resulted in prejudice. *Id.* To satisfy the first prong, a defendant must show counsel's performance “fell below an objective standard of reasonableness.” *Franklin v. Catoe*, 346 S.C. 563, 570–71, 552 S.E.2d 718, 722 (2001). “However, there is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal quotation omitted).

To satisfy the second prong of the analysis in the context of an allegation that a guilty plea was improvidently accepted, the “defendant must show that 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.” *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

When determining issues relating to guilty pleas, the appellate 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). Specifically, the voluntariness of a guilty plea is not determined by an examination of a 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 from the record of the PCR hearing. *Id.*

While it is true Mr. Aguilar admitted guilt during his guilty plea hearing, he testified at the evidentiary hearing, and counsel corroborated, that he did so at the direction of defense counsel. *See Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984). Mr. Aguilar and defense counsel both testified Aguilar was told to answer the court's questions in a certain manner. Counsel was admittedly aware that Mr. Aguilar always contended he was merely present at the club that the shooting occurred but maintained his innocence of this crime. Counsel also testified that Mr. Aguilar asked her to explain to his family that he did not mean what he said to the judge. Thus, counsel knew that he intended to present false testimony to the plea court of his guilt.

Counsel's representation fell below the objective standard of reasonableness where she directed Mr. Aguilar to "offer evidence she knew to be false" to the plea court. Her failure to take remedial measures regarding this matter violated the following well established rule of professional conduct.

(a) A lawyer shall not knowingly: . . . (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

S.C. App. Ct. R. RULE 407 RPC 3.3

The state argues that Mr. Aguilar's insistence of innocence and request that counsel tell his family he was lying during his guilty plea did not in and of itself mean that counsel believed Mr. Aguilar was lying to the court. However, at the evidentiary hearing defense counsel never indicated she did not believe Mr. Aguilar was innocent. This Court can only review evidence in

the record. There is no evidence in the record to support the state's assertion that defense counsel did not believe Mr. Aguilar was innocent. Rather, there is probative evidence in the record to support the PCR court's finding that Mr. Aguilar asserted his innocence throughout and shortly before pleading guilty under pressure from his own counsel asked counsel to explain to his family that he was lying to the plea court. Despite all that defense counsel continued to advise Mr. Aguilar to falsely testify to the plea court that he was guilty of this crime.

II. The PCR court correctly found Mr. Aguilar's guilty plea was involuntary where evidence of probative value supports the PCR court's finding that defense counsel was ineffective for advising and pressuring Mr. Aguilar to plead guilty where (1) counsel's advice that co-defendants would testify against him should he go to trial was incorrect; (2) counsel acknowledged that had the case gone to trial she could have effectively cross-examined the co-defendants regarding their statements implicating Mr. Aguilar; and (3) counsel confirmed Mr. Aguilar never admitted guilt and even requested she tell his family that he intended to offer false testimony during his guilty plea.

Relevant facts

Mr. Aguilar admitted he was present at the club where the shooting occurred but adamantly denied any involvement. App. 69, ll. 10-11; 71, ll. 4-22. Mr. Aguilar contended throughout the evidentiary hearing, that but for defense counsel's incorrect advice *and pressure to plead guilty*, he would have gone to trial. App. 57, l. 8-11; 58, ll. 1-2; 58, l. 17-59, l. 8; 60, ll. 7-17; 62, ll. 2-7; 63, l. 1465, l. 20; 66, ll. 8-11; 71, l. 23-72, l. 2. He asserted there were witnesses that could testify on his behalf had he gone to trial. He stated, he "was really getting pushed into pleading guilty." App. 58, ll. 10-18. Mr. Aguilar testified he was advised that going to trial was futile because he would be found guilty and given the maximum possible sentence of life without parole. App. 58, l. 19-59, l. 10. Mr. Aguilar said defense counsel told him to think about his children. She warned he may never see them again if he went to trial and ultimately that is why he pled guilty. App. 66, ll. 2-11. Mr. Aguilar was confused by this advice because he believed he had a defense and did not want to plead guilty because he was not guilty. App. 59, ll. 13-23.

He testified that he was advised “two or three” co-defendants were going to testify against him and that factored into his decision to plead guilty instead of going to trial. App. 60, ll. 1-17. Mr. Aguilar indicated that the state’s case relied on his co-defendants naming him as the shooter. However, he testified that he was not associated with most of the men named as the co-defendants in this case. App. 59, l. 24-60, l. 21; 68, l. 18-69, l. 9; 70, l. 15-71, l. 3.

Defense counsel agreed that it was fair that Mr. Aguilar had misgivings about his representation after being transferred between attorneys at her office multiple times. App. 85, ll. 6-12. She agreed that Mr. Aguilar may have lacked confidence in her office’s representation of him when it was clear that Mr. Forney neglected to look at his file or contact him for almost an entire year. App. 86, ll. 1-22.

Defense counsel testified regarding the state’s evidence against Mr. Aguilar. There were two individuals that multiple witnesses saw with guns, and neither were Mr. Aguilar. App. 87, ll. 1-20. She agreed the state had charged multiple co-defendants including Corey Sanders and Benjamin Chestnut who were both seen with guns the evening of the shooting. Counsel testified that co-defendants began giving statements that continued to evolve and eventually their statements put a gun in Mr. Aguilar’s hand during the shooting. App. 77, ll. 2-22; 88, ll. 11-25. The other evidence was an article of clothing that belonged to Mr. Aguilar, cell phone evidence demonstrating he was at the club, and some text messages that suggested he was meeting some of the other suspects at the club. App. 77, l. 23-78, l. 7.

Defense counsel agreed that had they gone to trial she could have made a pre-trial motion to suppress any gang evidence and could have cross-examined the testifying co-defendants because they made multiple statements to law enforcement. App. 89, ll. 2-18. She agreed that Mr. Aguilar always admitted he had been at the club. She said Mr. Aguilar had witnesses with

him that evening, but she was unable to speak with them because they were either represented by attorneys or did not wish to be involved. App. 78, l. 22-79, l. 6. Defense counsel had one eyewitness that denied seeing anyone fitting Mr. Aguilar's description involved in the incident. App. 79, l. 20-80, l. 6. Her recollection was that Mr. Aguilar was concerned about the state bringing up "gang affiliations" at trial. App. 81, ll. 19-23.

Regardless of the above, counsel admitted she recommended that Mr. Aguilar plead guilty instead of going to trial. She explained that she advised Mr. Aguilar that no matter what trial was a risk, and she did not know what the jury would decide. App. 90, ll. 1-10. Defense counsel said her main reason for advising Mr. Aguilar plead guilty was the damning testimony of his co-defendants. App. 91, ll. 12-16. Counsel admitted that ultimately the co-defendants opted not to cooperate with state and their case "had, basically, fallen apart." App. 91, ll. 17-25.

Discussion

There is evidence in the record of probative value to support the PCR court's decision to grant PCR where but for defense counsel's advice and undue pressure Mr. Aguilar would not have pleaded guilty and would have proceeded to trial. *See Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 989 (Stating "[t]he appropriate scope of review of this Court is that "any evidence" of probative value is sufficient to uphold the PCR judge's findings.").

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

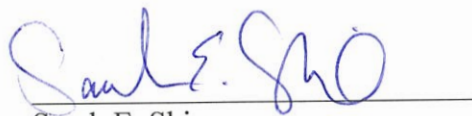
Mr. Aguilar testified, and defense counsel corroborated the state's key witnesses in the case against him ultimately proved uncooperative. *See Jackson v. State*, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000) (Finding there was no evidence contradicting or conflicting with petitioner's testimony that he would not have pled guilty had he not been misinformed about the charge by his attorney and thus he was entitled to PCR on that basis alone). Had counsel not advised Mr. Aguilar to plead guilty the state's case, which relied heavily on the incredible statements of the co-defendants would have completely fallen apart. Additionally, defense counsel testified that she advised Mr. Aguilar to plead guilty even though she had ample fodder for cross-examination of the testifying co-defendants and an eyewitness that would testify she did not see Mr. Aguilar during the incident.

Contrary to the state's assertion, the PCR court's grant of relief was based on more than just counsel's bad advice regarding the co-defendant's testimony that later proved to be incorrect. In addition to her incorrect advice regarding the co-defendants, the PCR court's order focused on the "shifting of [Mr. Aguilar's] lawyers" and the pressure to plead guilty that defense counsel placed on Mr. Aguilar.

All of this is probative evidence from the record that supports the lower court's decision to grant PCR to Mr. Aguilar. Additionally, Mr. Aguilar stated throughout that but for advice of counsel he would not have pled guilty, and he repeatedly maintained his innocence. *See Rolan v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). Defense counsel corroborated this where she stated he always maintained his innocence while she represented him.

CONCLUSION

Based on the foregoing, Mr. Aguilar respectfully requests that this Court deny certiorari.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR RESPONDENT

This 3rd day of November, 2023.