

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Nov 09 2023

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Eugene C. Griffith, Circuit Court Judge

JEROD HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000989

JOHNSON PETITION FOR WRIT OF CERTIORARI

SARAH E. SHIPE
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred finding defense counsel was not ineffective for failure to challenge the indictment?

STATEMENT

On May 5, 2011, a Spartanburg County grand jury indicted petitioner for attempted murder. App. 193-94. On May 31, 2012, petitioner pled guilty as indicted before the Honorable J. Mark Hayes. App. 1; 10-20. Pursuant to negotiations entered between petitioner and the state, Judge Hayes sentenced petitioner to fifteen years' imprisonment. App. 10, ll. 6-12; 13, ll. 17-18; 19, ll. 13-21; 195.

Thereafter, petitioner filed an application for PCR. App. 22-27. On April 7, 2014, an evidentiary hearing was held before the Honorable J. Derham Cole. App. 34-38. J. Brandt Rucker represented petitioner and Suzanne White represented the state. App. 34. At the hearing Judge Cole granted petitioner's motion to relieve Mr. Rucker as counsel so that he could retain private counsel. App. 36-38.

On November 4, 2014, an evidentiary hearing was held before the Honorable R. Keith Kelly. App. 40-52. Petitioner represented himself pro se. App. 40. On November 26, 2014, Judge Kelly signed an order denying PCR. App. 54-59.

On October 13, 2015, appellate counsel filed a petition for a writ of certiorari asserting the PCR court erred finding petitioner knowingly, voluntarily, and intelligently waived his right to PCR counsel. App. 60-70. Following briefing the Supreme Court reversed the PCR court's denial of relief and remanded the matter back for a new evidentiary hearing after the appointment of counsel. App. 85-115; 117-19.

On November 12, 2019, an evidentiary hearing was held before the Honorable Eugene C. Griffith Jr. App. 125-54. Susannah Ross represented petitioner and Jacob Isenberg represented the state. App. 125.

On June 8, 2023, Judge Griffith signed an order denying PCR. App. 181-92. The court

found defense counsel was not ineffective for “failure to investigate flaws in the indictment.” App. 190. The court found the grand jury “properly met during the May 2011 term as directed by then Chief Administrative Judge Roger Couch. App. 191. The court found defense counsel credibly testified that he found the indictment to be sufficient and that there was no prejudice to petitioner where he admitted guilt at the guilty plea hearing and evidentiary hearing. App. 191.

This petition follows.

ARGUMENT

The PCR court erred finding defense counsel was not ineffective for failure to challenge the indictment.

Relevant facts

On May 31, 2012, petitioner pled guilty as indicted before Judge Hayes. App. 10-19. The state alleged that on December 17, 2010, petitioner shot Scott Pender multiple times, resulting in multiple injuries that required extensive rehabilitation. App. 12, l. 9-13, l. 4. Pursuant to negotiations between petitioner and the state Judge Hayes sentenced petitioner to fifteen-years' imprisonment. App. 19, ll. 18-21.

At petitioner's 2019 PCR hearing he testified that the state lacked subject matter jurisdiction in his case because the indictment in his case was invalid. App. 132, l. 24-133, l. 3. He claimed that that there was no general sessions court convened on the dates of his indictment and because the grand jury could only meet during times when the general sessions court is convened his indictment was therefore void. Petitioner asserted that had defense counsel properly investigated his case they would have challenged the indictment. Petitioner did admit that he was guilty of the crime but contended that did not make the indictment valid in his case. App. 136, l. 20-137, l. 21.

Defense counsel testified that he reviewed the indictments in petitioner's case. App. 143, ll. 18-22. Counsel stated he did not see any problems with the indictment. App. 144, ll. 3-11. He testified petitioner understood he was charged with attempted murder. App. 142, ll. 3-6.

Discussion

For a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. *Boykin v. Alabama*, 395 U.S. 238, 241 (1969). A

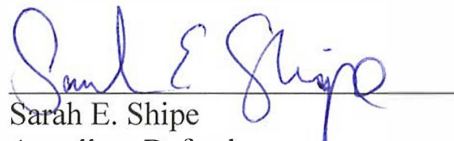
defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (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. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000).

During his PCR hearing petitioner asserted the indictment in his case was void where it was dated for a period that was outside the term where general sessions court was being held which was violative of the rules. Although he admits guilt, petitioner declared his conviction was unconstitutional where the indictment was invalid and did not give him proper notice as required.

Trial counsel was ineffective where he failed to properly review the indictment in petitioner's case. Due to this error, petitioner's guilty plea should be reversed, and his case should be remanded for a new trial.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on the issue.


Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of November, 2023.

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Counsel for Jerod Keykendall Harris states:

1. She is 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 before Judge Eugene C. Griffith, which was held on November 12, 2019, 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 Jerod Keykendall Harris.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of November, 2023.

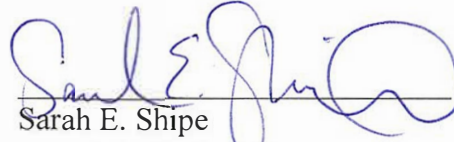
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CERTIFICATE OF COUNSEL

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."



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This 9th day of November, 2023.