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Dec 27 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Honorable Letitia H. Verdin, Circuit Court Judge

RONALD DUYANE DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001136

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding petitioner's guilty plea was freely and voluntarily given when he was coerced to change his plea by the misconduct of his trial counsel and the trial court noted his reluctance to plead rather than continuing his jury trial?

STATEMENT OF FACTS

On September 16, 2016, a Laurens County Grand Jury indicted petitioner for the offenses of murder and possession of a weapon during the commission of a violent crime in connection with the death of Shana Prophet on July 3, 2016. App. 919 – 924.

Petitioner and Prophet were in a relationship at the time of her death. App. 138, l. 5 – 139, l. 16. Petitioner has consistently relayed the circumstances surrounding Prophet’s death. During an argument, Prophet reached under a pillow in their shared bedroom and pulled a pistol, shooting at petitioner due to his refusal to leave the home. App. 402, l. 16 – 403, l. 10. They fought over the gun, and petitioner was able take it away from Prophet. App. 403, ll. 9 – 12. Prophet then moved toward petitioner causing him to fire the fatal shots. App. 403, ll. 12 – 21.

Shortly after the shooting, petitioner called 911 and reported the incident. App. 403, ll. 17 – 24. Petitioner became afraid and left the scene before officers arrived. App. 404, ll. 1 - 9. Petitioner called and arranged to meet law enforcement to turn himself into the police. App. 404, ll. 7 – 9. After petitioner was taken into custody, he was suicidal and placed on suicide watch. App. 387, ll. 1 – 17; 391, ll. 6 – 10.

Petitioner proceeded to trial before the Honorable Donald B. Hocker and a jury on March 26, 2018. App. 173. Petitioner was represented by Chelsea McNeill and Tristan Shaffer; the state was represented by Warren Mowry and Jared Simmons. App. 173.

On March 28, 2018, the third day of his trial, petitioner was coerced into pleading guilty to the lesser offense of voluntary manslaughter and to possession of a weapon during the commission of a violent crime. App. 714, l. 16 – 715, l. 22. At the time of his plea, Petitioner told Judge Hocker that “I just wish that out of due respect to the State, to you, to the lawyers, to the family, that I just could have had until tomorrow just to pray about it and to think about it. If

this offer was still on the table on the table tomorrow.” App. 719, ll. 15 – 19. Petitioner was told “if you are wanting to go forward with your guilty plea then we’re going to do it now as opposed to your request to give you overnight and you said to pray about it. But if you want to go forward with this guilty plea, then we’re going to do it now.”¹ App. 719, l. 23 – 720, l. 3.

At his PCR hearing, petitioner described the events leading up to his guilty plea. Counsel McNeil told petitioner he was going to be convicted if he did not plea and that she had already confirmed this by speaking with the jury. App. 852, ll. 7 – 21. Counsel McNeil called two of petitioner’s close friends to apply pressure to plead guilty. App. 852, l. 15 – 853, l. 15. When petitioner still refused to change his plea, counsel McNeil made inappropriate physical advances and threatened petitioner with sexual harassment charges if he did not change his plea. App. 855, l. 1 – 856, l. 13. Overcome with emotion, petitioner changed his plea. App. 856, 5 - 13. Counsel McNeil denied having any inappropriate contact with petitioner during the PCR hearing. App. 895, l. 22 – 896, l. 12. However, counsel McNeil admitted to having “very intimate conversations about [petitioner’s] life” while alone with petitioner in the holding cell just before the plea. App. 754, ll. 4 – 6.

Following the guilty plea, Judge Hocker sentenced petitioner to concurrent terms of twenty-five years for voluntary manslaughter and five years for the weapons charge. App. 734, ll. 14-18. On April 19, 2018, petitioner appeared again before Judge Hocker to withdraw his guilty plea following a *pro se* motion filed on April 4, 2018 (and dated March 28, 2018). App. 742, ll. 10 - 24. Judge Hocker acknowledged during the motion hearing that appellant had been reluctant during his guilty plea. App. 765, ll. 7 – 11. Judge Hocker denied the motion. App. 766. On direct appeal, appellate counsel’s sole argument presented pursuant to Anders v. California,

¹ This directly contradicts counsel McNeil’s testimony at the PCR hearing that appellant was able to sleep on the offer and think about it overnight. App. 854, ll. 1 - 8.

386 U.S. 738 (1967) centered on the allegation that petitioner's prior sexual relationship with an investigator working with trial counsel was a coercive factor in petitioner's decision to plead guilty. App. 741 – 743. The Court of Appeals affirmed Judge Hocker's decision not to allow a withdrawal of the guilty plea in an unpublished opinion on April 29, 2020. *See State v. Davis*, No. 2018-000651 (S.C. Ct. App. Apr. 29, 2020).

Petitioner filed his initial application for post-conviction relief on July 21, 2020. App. 769 - 823. The state filed its return dated November 3, 2020, denying the substance of the application and requesting an evidentiary hearing on the voluntariness of the guilty plea and claims of ineffective assistance of counsel. App. 824 - 843. An amendment to the application was filed on petitioner's behalf by Counsel Don A. Thompson on July 14, 2022. App. 845. The matter was heard by the Honorable Letitia Verdin on August 2, 2022, with Thompson representing petitioner and Zachary Jones representing the state. App. 845. Judge Verdin denied the petitioner's application by order of dismissal dated June 20, 2023. App. 901 - 918.

This Petition for Writ of Certiorari follows.

ARGUMENT

The PCR court erred in finding petitioner’s guilty plea was freely and voluntarily given when he was coerced to change his plea by the misconduct of his trial counsel and the trial court noted his reluctance to plead rather than continuing his jury trial.

Generally, a guilty plea waives non-jurisdictional defects and violations of constitutionally protected rights. State v. Green, 436 S.C. 492, 494, 872 S.E.2d 869, 870 (Ct. App. 2022). “Thus, when challenging a guilty plea, a PCR applicant must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the applicant would not have pled guilty.” Ervin v. State of South Carolina, 438 S.C. 559, 565, 885 S.E.2d 387, 390 (2023) (internal citations omitted). “The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial.” Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018). In a guilty plea setting, “the prejudice analysis is limited to the outcome of the plea process—whether but for counsel's deficiency, the defendant would have declined to plead and instead proceeded to trial.” Frierson, 423 S.C. at 263, 815 S.E.2d at 436. “In other words, in order to satisfy the ‘prejudice’ requirement, 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.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

“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.” Gustine v. State, 325 S.C. 123, 127, 480 S.E.2d 444, 446 (1997) (quoting Hill v. Lockhart 474 U.S. 52, 56 (1985)).

In the present matter, petitioner's reluctance to plead guilty was evident to the trial court. During the middle of the plea itself, petitioner asked for additional time to consider changing his plea. App. 719, ll. 7 – 19. Judge Hocker referenced this reluctance in ruling on petitioner's motion with withdrawal his plea. App. 765, ll. 7 – 11.

Petitioner's will to continue his jury trial was overcome by the inappropriate actions of trial counsel while alone with the petitioner leading up to his guilty plea. Petitioner described the inappropriate conduct in detail during the PCR hearing. App. 854, l. 11 – 856, l. 13. Petitioner's co-counsel, Shaffer, confirmed counsel McNeil and petitioner were alone for a period of time in the room leading up to the guilty plea. App. 878, l. 24 – 879, l. 15. Trial counsel McNeil described spending extensive time alone with petitioner and having "very intimate conversations about [petitioner's] life" in the holding cell just before his plea. App. 754, ll. 4 – 6.

Petitioner explained the impact of McNeil's inappropriate conduct on his decision to change his plea:

Tristan [co-counsel Shaffer] came on in, he told us that the solicitor said that we don't come to an agreement in the next five minutes, he's going to withdraw the guilty plea, going to take it off the table. So by that time, she [McNeil] told me they going to take it off the table, she told me to sign the paper, I said, no, I'm not going to sign it, sign the paper. So by that time she told me if I don't plead guilty, I'd get charged sexual harassment charge, I didn't do nothing like that, so when she said that, that when me and her go out in front of the, go back into the Courtroom. So I had to sign the papers at that time, so when I get in the Courtroom, she said, are you going to sign the papers, just like that. So when I got ready to go in front of the Judge, that's when I went on ahead and signed the papers. At the same time, when I got to SCDC the next day, that's when I filed sexual harassment . . .

App. 855, l. 24 – 856, l. 13.

While no direct authority has been found on the nature of the misconduct presented here, guidance can be gleaned from cases in which our courts have reviewed conflict of interest related

misconduct by trial counsel. In Lomax v. State, 379 S.C. 93, 103, 665 S.E.2d 164, 169 (2008), this Court found that a PCR petitioner “did not have to demonstrate prejudice in order to be entitled to post-conviction relief” when plea counsel had an actual conflict of interest. In Jordan v. State, 406 S.C. 443, 450, 752 S.E.2d 538, 541 (2013), the Court found:

The effect of this actual conflict of interest is best illustrated by DePew's refusal to pursue a third-party guilt defense as to Summers, especially after being invited by the trial judge to do so. Because of the actual conflict of interest, Petitioner was not required to demonstrate resulting prejudice.

While the “Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction,” they do provide guidance on the objective standard of representation required of plea counsel. Langford v. State, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993). In the present case, counsel McNeil’s undue influence over the will of petitioner coerced him into pleading guilty. Like cases involving a conflict of interest and division of loyalty, counsel McNeil’s conduct in this case should be treated in the same fashion and result in the same outcome. Petitioner’s guilty plea was coerced and was not voluntary as a direct result of the actions of counsel McNeil. Petitioner has consistently relayed the circumstances surrounding Prophet’s death. During an argument, Prophet reached under a pillow in their shared bedroom and pulled a pistol, shooting at petitioner due to his refusal to leave the home. App. 402, l. 16 – 403, l. 10. They fought over the gun and petitioner was able take it away from Prophet. App. 403, ll. 9 – 12. Prophet then moved toward petitioner causing him to fire the fatal shots. App. 403, ll. 12 – 21. Petitioner’s reluctance to plead and desire to continue his trial is supported by clear and convincing evidence. Judge Hocker referenced this reluctance in ruling on petitioner’s motion with withdrawal his plea. App. 765, ll. 7 – 11. During the middle of the plea itself, petitioner asked for additional time to consider changing his plea. App. 719, ll. 7 – 19.

This Court should reverse the PCR court and grant petitioner a new trial. See Hill v. Lockhart, 474 U.S. 52, 56 (1985); Ervin v. State of South Carolina, 438 S.C. 559, 885 S.E.2d 387 (2023).

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this Court grant the writ of certiorari to allow full briefing on this issue.

A handwritten signature in blue ink, appearing to read "Gary H. Johnson", is written over a horizontal line.

Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of December, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronald Duyane Davis 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 Letitia H. Verdin, which was held on August 2, 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 Ronald Duyane Davis.

Respectfully Submitted,

[Handwritten signature]

Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of December, 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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ATTORNEY FOR PETITIONER

This 27th day of December, 2023.