

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Debra R. McCaslin, Circuit Court Judge

TIMOTHY C. TURBEVILLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001664

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Appellate Defender

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Feb 23 2024

S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred ruling petitioner's guilty plea was voluntary where petitioner testified, he was coerced by defense counsel to plead guilty?

STATEMENT

On June 19, 2019, a Florence County grand jury indicted petitioner for attempted murder. App. 97-98. On January 9, 2020, petitioner pled guilty pursuant to negotiations to attempted murder before the Honorable Thomas A. Russo. App. 1-28. Karen Parrott represented petitioner and Todd Tucker, deputy solicitor, represented the state. App. 1. Pursuant to the negotiated plea deal Judge Russo sentenced petitioner to twenty years' imprisonment. App. 7, ll. 5-10; 27, ll. 20-24.

Thereafter, petitioner filed an application for PCR on March 16, 2020. App. 30-39. An evidentiary hearing was held before the Honorable Debra R. McCaslin on June 12, 2023. App. 54-77. Joshua Bailey represented petitioner and Russell Barlow, assistant attorney general, represented the state. App. 54.

On October 9, 2023, Judge McCaslin signed an order denying PCR. App. 78-96. The court found petitioner failed to show his guilty plea was involuntary and failed to show any deficiency of defense counsel. App. 92. The court found defense counsel did not coerce petitioner to plead guilty and the allegation was without merit. App. 87. The court found the record and counsel's credible testimony showed petitioner understood the charges, the terms of the negotiated plea agreement, and the consequences of pleading guilty. App. 91. The court found that the plea transcript reflected petitioner entered a knowingly and voluntarily guilty plea. App. 91.

This petition follows.

ARGUMENT

The PCR court erred ruling petitioner's guilty plea was voluntary where petitioner testified he was coerced by defense counsel to plead guilty.

Relevant facts

At petitioner's guilty plea hearing the solicitor alleged on April 15, 2018, petitioner stabbed his girlfriend, Crystal Gandy, several times. App. 17-19. Gandy sustained wounds to her deltoid muscle as well as her neck but fortunately made a full recovery. App. 19, ll. 3-18.

After the state's recitation of the facts the court asked petitioner if he agreed with the facts. App. 21, ll. 16-18. Petitioner did not agree with the facts as given by the solicitor. App. 21, l. 19. Petitioner declared that he and Gandy had a verbal altercation after having been on a multi-day bender "smoking crack and drinking heavily." App. 21, ll. 21-24. Petitioner indicated that he too was hurt in the altercation with Gandy. App. 21, l. 24-22, l. 5. At the conclusion of petitioner's guilty plea he begged the court to accept the negotiated plea and "not give [him] any more time." App. 25, ll. 16-22.

At the evidentiary hearing petitioner repeated his version of events stating that he did not attack Gandy but was defending himself from her attack. App. 59, ll. 12-25. Petitioner said he and Gandy had been partying for days. He testified Gandy got a knife and stabbed him first. App. 59, ll. 12-17.

Petitioner testified defense counsel spent very little time with him before his guilty plea. He contended that at one of their few meetings defense counsel told him if he refused to take the state's negotiated plea offer he would be going to trial the following week and would get a thirty year sentence. App. 61, ll. 15-24. Petitioner would have proceeded to trial if defense counsel had investigated and prepared to argue self-defense. App. 64, ll. 4-11.

Defense counsel stated that if petitioner had wanted to go to trial on these charges, she would have argued self-defense, but she believed, based on the evidence in the case, the argument would not have been successful at trial. App. 74, ll. 18-21.

Defense counsel testified petitioner never wanted to go to trial and indicated that to her during their first meeting. App. 71, ll. 11-15; 74, l. 22-75, l. 1. Counsel said petitioner wanted a plea deal for a sentence of less than ten years, but the solicitor refused. She testified she informed petitioner it would be a negotiated twenty-year sentence or a trial. App. 75, ll. 15-21. Defense counsel denied forcing or coercing petitioner to take the negotiated deal offered by the state. App. 71, l. 25-72, l. 1.

Discussion

Petitioner's guilty plea was not entered voluntarily where he testified and defense counsel admitted, he was told if he did not plead guilty, he would go to trial and potentially be sentenced to thirty years' imprisonment.

"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).

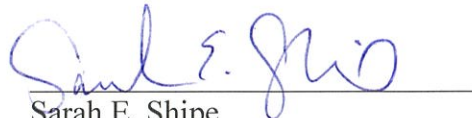
"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry 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 also from the record of the PCR hearing." *Roddy*

v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “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, (1985) (quoting *North Carolina v. Alford*, 400 U.S. 25 (1970)).

The PCR court determined petitioner’s guilty plea was valid but focused solely on his statements made during the guilty plea hearing. However, the PCR court ignored petitioner’s desperate appeal to the plea court not to sentence him to more than twenty years. That request suggests petitioner did not fully understand the nature of his negotiated guilty plea. Petitioner’s statement to the plea court before sentencing and testimony at his evidentiary hearing reflect petitioner did not enter a knowing or voluntary guilty plea. Instead, because of defense counsel’s advice petitioner pled guilty out of fear that if he proceeded to trial, he would surely receive a severe sentence.

CONCLUSION

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



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of February, 2024.

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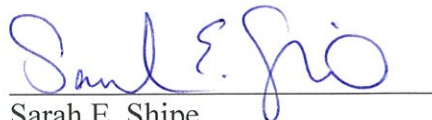
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy C. Turbeville 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 Debra R. McCaslin, which was held on June 12, 2023, 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 Timothy C. Turbeville.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of February, 2024.

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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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