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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHEROKEE COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No.: 2018-CP-11-00172

Thomas Thompson #80681

Petitioner,

v.

State of South Carolina

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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March 18, 2024

QUESTIONS PRESENTED

1. Did the court err in finding that petitioner failed to establish a prima facie case of newly discovered evidence?
2. Did the court err in finding that petitioner's argument does not support a conclusion that the plea was made unknowingly?

STATEMENT OF THE FACTS

Having been indicted by the Cherokee County Grand Jury for murder Petitioner was taken to a room in the courthouse to meet with his attorney and his two co-defendants along with their attorneys and family. The details of a negotiated plea agreement were explained at that time. Petitioner was told that the attorneys, prosecutor, judge, law enforcement, victims' family, and their own families had made an agreement whereas petitioner would receive a life sentence for murder with ten year parole eligibility. One co-defendant would receive the same sentence and the other a ten year sentence. It was explained that this sentence would serve the purpose of ensuring that petitioner spent a minimum of ten years in prison as punishment for his crime and also have a chance for a new start in life based on his conduct/behavior while still young. Petitioner's age (16 yrs. old) at the time was stated as the main mitigating factor in this agreement. That same day, December 10, 1975 Petitioner appeared before Judge Robert W. Hayes and was arraigned for the charges against him. At Judge Hayes instruction the Sheriff and Solicitor gave statements as to the details of the crime and the defendants' apprehension followed by statements concerning the plea agreement. Co-defendant Walter Gordon signed his plea and was sentenced to life for accessory to murder. On December 11, 1975 petitioner again appeared before Judge Hayes. At Judge Hayes instruction the plea agreement was again discussed in detail including the stipulation that the sentence served the dual purpose of punishment for the crime and allowing petitioner a chance to earn a new start in life while still young through good behavior/conduct in prison. Co-defendant Ben Holmes signed his plea for a ten year sentence for accessory after the fact and Petitioner signed a plea for murder and was sentenced to life. Petitioner first appeared before the Parole Board February 6, 1985 and was denied parole for the following reasons;

- 1-Nature and seriousness of offense
- 2-Indication of violence in offense
- 3-Use of a deadly weapon in offense

In October 2015, having been denied parole for the 17th time in 30 years for the same reasons, Petitioner filed an appeal in the Administrative Law Court. The issue in this appeal of relevance to this PCR being that the constant denial of parole based exclusively on the crime committed negated the sentencing authority of the court. On this issue Respondent (SCDPPP) stated that pursuant to Brown v State 306 S.C. 381, 412 S.E.2nd 399 (1991) the court had no authority to stipulate that he would be able to earn parole through good conduct/behavior. In response Appellant argued that his sentence was therefore not knowingly and willingly made and thus invalid based on Brown v State. Administrative Law Judge McLeod dismissed the appeal based on Cooper v SCDPPP 377 S.C. 489, 661 S.E. 2nd 106 (2008) without address to this issue. Petitioner appealed to the Court of Appeals which affirmed based on Cooper v SCDPPP without address to this issue. Having then exhausted his efforts in these courts on this issue Petitioner filed this PCR.

ARGUMENT

The Order signed by Judge Cole states on page #4, third paragraph, that "Applicant alleges he is entitled to PCR relief because he pled under the impression that he could get out on parole after ten years served with good behavior and that the court would not have discretion over whether parole would be granted". Petitioner alleged then and now that he was told he would have a chance for parole based on his behavior after ten years. Parole was not promised and indeed could not have been promised since the court could not possibly know with certainty what his future behavior would be. The promise was that he would be able to earn parole after ten years through good behavior. Petitioner has made no allegation as to the court's discretion over whether parole would be granted. Petitioner alleges that he had no reasonable way of knowing that the court lacked the authority or discretion to promise him a chance for parole based on his behavior. Petitioner is given to understand that the court has a duty to assess the defendant's character and crimes at sentencing and that the state has a duty to execute the sentence according to the court's intent when sentencing. South Carolina statute 24-21-640 states that parole will be granted when "it appears to the satisfaction of the Board that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his

confinement; that the interests of society will not be impaired thereby;...". This clearly indicates a reliance on behavior for determining if parole is granted.

Judge Cole's order seems to imply that Petitioner should have filed after his first parole denial in 1985 because he presumably knew he would not receive parole for the next 30 years.

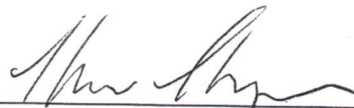
Petitioner accepted each parole denial with the hope that parole would be granted at the next hearing until at age 56, his youth gone, after 17 denials over 30 years based upon the crime he committed he asked about this promise of earning parole through good behavior. The Parole Board responded by citing Brown v State saying the court had no authority to make such a promise. Upon study Petitioner found that by making this promise which it could not keep the court had rendered the plea involuntary and therefore unknowingly and unwillingly made.

Since this issue arose from the appeal of parole and was under scrutiny of the S.C. Court of Appeals Petitioner was under the impression that he must await the outcome of this action before initiating another action and therefore did not file his PCR until after the final response of the COA. The PCR was filed within one year of the order of the COA affirming the ALC ruling. Petitioner argues that this makes the PCR timely.

Petitioner is given to understand that the courts consider parole to be a collateral matter which it is not required to address normally. However the ruling in Brown v State clearly indicates that when the attorneys or the court make promises or give advice as to parole they are held to a standard of accountability. When a guilty plea is made after receiving advice or promise concerning parole which proves to be inaccurate this renders the plea involuntary and thus unknowingly and unwillingly made.

CONCLUSION

Petitioner has clearly demonstrated a prima facie case for newly discovered evidence. Since this evidence was discovered during proceedings before another court in which Petitioner argued there as he does now that it rendered his sentence invalid, he waited until it was exhausted before filing this PCR in a timely matter thereafter. The Supreme Court has ruled that unfulfilled promises or inaccurate advice concerning parole render a plea involuntary and therefore unknowingly and unwillingly made. Petitioner is challenging the validity of his sentence. Does justice not require that a defendant receive a valid sentence?



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