

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable R. Kirk Griffin, Circuit Court Judge

JABARI MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001724

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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1.

The PCR court erred finding petitioner understood the consequences of the charges against him and pled guilty voluntarily and intelligently where: (1) petitioner was only eighteen at the time of his guilty plea, (2) inexperienced defense counsel admitted he only spent two hours consulting with petitioner during the time he represented him, and (3) defense counsel had never worked with a juvenile or mentally ill client 4

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ISSUE PRESENTED

1. Whether the PCR court erred finding petitioner understood the consequences of the charges against him and pled guilty voluntarily and intelligently where: (1) petitioner was only eighteen at the time of his guilty plea, (2) inexperienced defense counsel admitted he only spent two hours consulting with petitioner during the time he represented him, and (3) defense counsel had never worked with a juvenile or mentally ill client?

2. Whether the PCR court erred finding defense counsel was not ineffective for failure to investigate and present adequate mitigation to the plea court?

STATEMENT

In January 2016, a Berkeley County grand jury indicted Jabari Moore for grand larceny and burglary second degree. App. 158-62. On March 10, 2016, a Dorchester County grand jury indicted petitioner for assault and battery, first degree and burglary, first degree. App. 152-56. On February 16, 2017, Jabari and four other defendants pled guilty before the Honorable Diane S. Goodstein. App. 1-43. Jabari waived venue in the Berkeley County charges and pled guilty to all four charges in Dorchester county. App. 9-21. Jabari was represented by John Kornegay and the state was represented by assistant solicitor, Ryan Templeton.¹ App. 1; 49; 67, ll. 19-20; 102, ll. 10-11. Judge Goodstein sentenced Jabari to concurrent terms of twenty years' imprisonment for burglary, first degree, ten years' imprisonment for burglary, second degree, ten years' imprisonment for assault and battery, first degree, and five years' imprisonment for grand larceny. App. 41, ll. 8-21; 154; 157; 160; 163.

Thereafter, Jabari filed an application for PCR. App. 45-52. An evidentiary hearing was held on September 8, 2022, before the Honorable R. Kirk Griffin. App. 65-136. Leslie Sarji represented Jabari and Lauren Mims represented the state. App. 65.

On September 25, 2023, Judge Griffin signed an order denying PCR. App. 139-51. The PCR court found Jabari understood the charges and consequences and pled guilty voluntarily and intelligently. App. 148. The PCR court held Mr. Kornegay was not deficient where he credibly testified, he advised petitioner of the nature of the charges against him, possible penalties, and constitutional rights. App. 148. The PCR court found there was no prejudice where Jabari did not present any valid reason why he should be able to depart from the statements he made to the

¹ The transcript incorrectly represents that petitioner was represented by A. Chisolm. There are multiple instances throughout the guilty plea hearing transcript that were transcribed incorrectly. Undersigned counsel will attempt to clarify the errors in this petition.

plea court during his guilty plea. App. 148. The court further found Jabari failed to convince the court that rejecting the state's plea offer would have been "rational under the circumstances, due to the evidence against him." App. 148.

The court also found Jabari failed to show Mr. Kornegay was deficient for failure to sufficiently investigate and present mitigating evidence at sentencing. App. 149. The court specifically found Mr. Kornegay's performance was reasonable in light of the circumstances, and that he performed in accordance with professional standards. App. 149. The court concluded there was no prejudice where Jabari did not show that a different sentence would have been imposed had Mr. Kornegay presented more mitigation at sentencing. App. 149-50.

This petition follows.

ARGUMENT

1. The PCR court erred finding petitioner understood the consequences of the charges against him and pled guilty voluntarily and intelligently where: (1) petitioner was only eighteen at the time of his guilty plea, (2) inexperienced defense counsel admitted he only spent two hours consulting with petitioner during the time he represented him, and (3) defense counsel had never worked with a juvenile or mentally ill client.

Introductory facts

The facts as alleged by the state during Jabari Moore's guilty plea are as follows. On November 10, 2015, in Ladson South Carolina Jabari, sixteen years old at the time, and two co-defendants entered the home of the complainant. The solicitor claimed Jabari strangled the complainant. Then the three young men took items from the complainant's purse. The same day the three young men traveled to Goose Creek and during the night broke into an AT&T store stealing twenty-seven hundred dollars in cell phones and other items. App. 24, l. 20-26, l. 9; 71, l. 25-72, l. 2.

Jabari was sixteen when he was arrested on these charges. App. 97, ll. 2-3. John Kornegay, a recent law school graduate, began representing Jabari August of 2016. App. 102, ll. 15-16; 111, ll. 16-19. It is unclear from the record who represented Jabari before August 2016.² Jabari pled guilty on February 16, 2017, weeks after his eighteenth birthday. App. 1. He pled guilty and was sentenced with a group of four other defendants before Judge Goodstein in Dorchester County. App. 1; 81, ll. 7-9.

Relevant facts

Jabari explained at the evidentiary hearing the guilty plea transcript had multiple errors

² During his testimony at PCR hearing Mr. Kornegay mentioned Debbie Littlejohn ordered Jabari's evaluation for competency by Dr. Knight. App. 108, l. 24-109, l. 1.

which attributed other defendant's statements to him during the plea hearing. App. 70, l. 21-71, l. 17. One of the errors is that the guilty plea hearing transcript reflects that Jabari told the plea court that he was twenty-seven. App. 5, ll. 21-22. Jabari denied that he told the court he was twenty-seven. Although the transcript reflects another defendant, Courtney Fesser, stated they were eighteen that was actually Jabari's response to the plea court. App. 5, l. 22; 70, l. 23-71, l. 17.

Jabari testified John Kornegay represented him on the charges. App. 71, ll. 18-19. He stated Mr. Kornegay was not able to meet with him often because Kornegay was appointed late in the process and because he was housed in Berkeley County Detention Center. App. 72, ll. 3-7. Due in part to the brevity of their meetings, Jabari indicated he did not "have a full grasp or understanding" of his situation prior to his guilty plea. App. 72, ll. 3-19. He testified Kornegay advised him to plead guilty even after Jabari told him that he did not believe he was guilty of burglary because he was an invited guest in the home of complainant. App. 85, ll. 7-25. Jabari testified he did not feel he adequately understood the charges and consequences and did not have enough time in which to make the decision whether to plead guilty to these extremely serious charges. App. 74, l. 17-75, l. 17. He declared that he felt pressured to plead guilty. App. 76, ll. 21-22.

Jabari maintained throughout his testimony that if he had known at the time of the guilty plea what he understood now he would not have pled guilty but would have proceeded to trial. App. 75, ll. 12-17; 76, ll. 4-22. He explained part of the pressure to plead guilty came fear of a life sentence at the time of the guilty plea. Jabari also stated he did not have "enough knowledge" to understand the implications of a guilty plea. App. 68, ll. 13-24.

Jabari specifically said he did not understand the consequences of his plea. App. 82, ll.

13-25; 98, l. 15-99, l. 2. He contended he did not know he was facing a life sentence until the day of his guilty plea. App. 72, ll. 11-24. Jabari said prior to his guilty plea Kornegay did not explain strikes to him and that he did not understand that he would be doing a “day for day” sentence. He only learned the consequences from the plea court on the day of his guilty plea. However, even though the plea court told him the consequences he maintained he did not really understand how it all worked. App. 82, ll. 23-25.

Jabari told the PCR court that he felt Kornegay was deficient in his case because Jabari was told to be dishonest with the court. He stated that an attorney should make sure their client understands the complete picture of the situation so that he can make a “true and informed decision in his best interest about his future.” App. 88, ll. 1-6. Jabari argued that even a young inexperienced person deserves to know the full truth of his situation. App. 88, ll. 8-11. Jabari was clear that things were kept from him until the last minute preventing him from making an informed decision because he did not have all the facts until the last minute which resulted in extreme pressure on him as a very young man. App. 96, ll. 5-25.

Jabari’s direct testimony concluded with the following statement:

[T]he best thing that I felt I could do at the time was do what my counsel said, because he’s gone to school for this, he studied this, and I [] assume[d] he [knew] better than I [did] as he [was] an adult. And even though I had turned 18, I was a child. I was incarcerated at 16 years old, which now you’re considered a child, even on those charges there. I didn’t know any better. I went trusting the adult who would be by me. I was also told that my guardian ad litem[] and such would still be there for moral support. I had no one. No family was there. No one was there. I didn’t even know I was going to court that specific date. They just came and got me.

App. 96, l. 23-97, l. 9.

John Kornegay testified that he graduated law school in 2015 and began representing

Jabari Moore in 2016. App. 111, ll. 16-19. Kornegay had never been lead counsel in a trial at that point in his career but had sat as co-counsel in *one* trial before his representation of Jabari. App. 112, ll. 4-9. He was unsure if he had ever represented any juvenile clients prior to representing Jabari in this case and admitted he did not have any experience explaining constitutional rights to juveniles. App. 115, ll. 11-22. Mr. Kornegay was also candid that he never represented mentally ill clients prior to Jabari. App. 116, ll. 5-7.

Mr. Kornegay stated he was appointed in August 2016 “fairly long after” Jabari had been charged, “probably a few, four or five, months before the solicitor started pushing that case for a plea.” App. 102, ll. 15-17; 112, ll. 16-21. He did not have any notes regarding the dates they met but believed he had met with Jabari the first time a few months after he was appointed and a total of four or five times during his representation. App. 102, ll. 16-18; 112, l. 20-113, l. 22. Kornegay later admitted on cross examination that he likely only spent two hours with Jabari over the duration of his representation. App. 130, l. 23-131, l. 23.

Mr. Kornegay testified that he did advise Jabari of the consequences of his guilty plea including that he was facing life in prison. App. 106, ll. 10-13. He maintained that it was Jabari’s decision to plead guilty and denied asking Jabari to misrepresent anything to the plea court but admitted he typically advised clients to answer the court “yes ma’am” and “no ma’am.” App. 104, ll. 6-20; 108, ll. 3-13.

Discussion

Jabari Moore was arrested at 16 and only 18 years old when he pled guilty to these serious charges. His attorney John Kornegay was admittedly a new lawyer and unexperienced. Jabari testified at his PCR hearing that he did not understand the consequences of his plea. Jabari’s testimony and the context of this case warrant a reversal and remand on PCR.

In *Hill v. Lockhart*, the United States Supreme Court explained, that the two-part *Strickland v. Washington*³ test applies to challenges to guilty pleas based on ineffective assistance of counsel. 474 U.S. 52, 57 (1985). “A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that the applicant was prejudiced by that deficiency.” *Stalk v. State*, 383 S.C. 559, 560–61, 681 S.E.2d 592, 593 (2009). “Plea counsel is ineffective within the meaning of the Sixth Amendment only when the applicant satisfies both requirements.” *Id.*

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Dover v. State* 304 S.C. 433, 405 S.E.2d 391 (1991).

When determining issues relating to guilty pleas, the Court considers the entire record, including the transcript of the guilty pleas and evidence presented at the PCR hearing. *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420–21 (2000); *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 also from the record of the PCR hearing. *Id.*

The PCR court erred finding Jabari Moore’s guilty plea was voluntary and intelligent where Jabari testified: (1) he did not understand the consequences of his guilty plea until he was told by the plea court during his guilty plea (2) his mental illness and youth played into his

³ 466 U.S. 668 (1984).

feeling pressured and rushed to make a decision that he did not fully understand. Jabari maintained throughout his testimony that were it not for Kornegay's advice and instruction he would not have pled guilty.

The PCR court erred finding defense counsel Kornegay was not deficient. While inexperience does not always equal deficiency, in this case it does. Kornegay was admittedly new to the practice of law and candidly told the PCR court he had never tried a case on his own, only having been co-counsel in *one* prior trial. Through no fault of his own other than lack of experience Kornegay had never represented a juvenile or mentally ill client. He also admitted that he only spent two hours in consultation with Jabari prior to his guilty plea. In *Harris v. State*, the Court held brevity of time, without more, does not establish that counsel is ineffective. 377 S.C. 66, 659 S.E.2d 140 (2008). However, here there is more including the inexperience of Kornegay and Jabari's youth and mental illness.

The PCR court erred finding Jabari was not prejudiced by Kornegay's deficiency where Jabari insisted at PCR he would not have pled guilty had he had a true understanding of the consequences.

2. The PCR court erred finding defense counsel was not ineffective for failure to investigate and present adequate mitigation to the plea court.

Relevant facts

The solicitor explained Jabari's only prior conviction was an assault and battery from 2010. App. 36, ll. 15-18. Prior to sentencing Mr. Kornegay asked the plea court for a sentence of eighteen years and offered the following in mitigation. App. 40, l. 25-41, l. 3. Kornegay told the court Jabari's parents terminated their parental rights in 2014 and had no relationship with him since that time. App. 39, ll. 2-4. He told the court that Jabari had no prior adult convictions because he had been incarcerated his whole adult life. App. 40, ll. 19-24. Kornegay told the plea court that Jabari was eleven when he committed the offense listed above and was placed in the custody of the Department of Juvenile Justice (DJJ). App. 38, ll. 8-10. He stated that since then Jabari had been in the custody of DJJ or living in foster and group homes in the custody the Department of Social Services (DSS). App. 38, ll. 10-12. When Jabari committed the underlying crimes he was living in a group home with his co-defendants. App. 39, ll. 5-8.

At his PCR hearing, Jabari testified that he had an extensive history of mental health that was documented. He stated he had been diagnosed with opposition defiant disorder, attention deficient disorder, post traumatic stress disorder, obsessive compulsive disorder. App. 77, ll. 1-9. Jabari was hospitalized two separate times for psychiatric reasons. App. 77-78. He received inpatient treatment at Rebound Behavioral Health and at William S. Hall Psychiatric Institute when he was sixteen. App. 78, l. 10-79, l. 7. Jabari also received court-ordered outpatient therapy for two years. App. 77, ll. 17-20. Prior to his guilty plea he was evaluated for competency and found competent he was not evaluated further. App. 79, ll. 11-25.

Jabari testified that as a young person he suffered abuse. He stated that because of his childhood he struggled socially and had difficulty acclimating after leaving DJJ. Jabari stated he wished Mr. Kornegay would have told the plea court more about his history with his family and mental health. App. 80, l. 12-82, l. 12.

Jabari wanted the plea court to know about his mental health struggles but testified he was advised by Kornegay not to do so. App. 85, ll. 3-8; 89, l. 16-90, l. 12. He was told to answer the court with yes or no and warned that if he tried to explain the court would not accept his guilty plea and that he would go to trial and receive a life sentence. App. 85, ll. 3-8; 90, ll. 17-22.

Regarding mitigation Mr. Kornegay testified that he used mitigation specialist Adrienne Harris who made a report but was not present at Jabari's guilty plea. App. 107, ll. 3-15. He was unsure if the plea court had a copy of the report to review. App. 107, ll. 16-19. Mr. Kornegay said that Jabari had been evaluated for competency by Dr. Knight at another attorney's request. App. 108, l. 25-109, l. 2. However, Kornegay did not have a copy of the evaluation in his file, nor did he have any recollection of his conversation with Knight about Jabari other than understanding he was competent to stand trial. App. 116, l. 8-117, l. 4. Kornegay also failed to request and investigate records from Jabari's inpatient treatment. App. 116, ll. 13-24. He admitted he did not offer any of Jabari's mental health difficulties during mitigation. App. 118, ll. 18-21. First he stated that he was not aware of Jabari's mental illness, but then he found a one-page letter in his file that summarized the potential mitigating evidence. App. 118, l. 22-120, l. 19. That letter was admitted as an exhibit. App. 122, ll. 1-25. He denied that the court's sentencing would have been affected by additional mitigation. App. 109, ll. 12-18.

Discussion

Even if the Court finds Jabari's guilty plea was voluntary and intelligent Mr. Kornegay was ineffective for failure to investigate and present adequate mitigation during sentencing.

In cases where allegations of ineffective assistance challenges in the context of a guilty plea, the prejudice inquiry will be similar to the inquiry when reviewing ineffective-assistance challenges to convictions obtained through a trial. *Stalk v. State*, 383 S.C. 559, 561–62, 681 S.E.2d 592, 594 (2009).

While counsel is not required to investigate or submit every imaginable line of mitigating evidence, a decision not to investigate must be reasonable. Strategic choices made after less than complete investigation are only reasonable if reasonable professional judgment supports the limits on the investigation. *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2009) (holding counsel's investigation as to mitigation evidence was inadequate and incomplete).

It was unreasonable for Mr. Kornegay to fail to review the mitigation submitted by Ms. Harris and present all of it to the plea court. It was unreasonable for Mr. Kornegay to fail to have any copy or recollection of Jabari's evaluation by Dr. Knight. It was unreasonable for Mr. Kornegay not to investigate all avenues of mitigation that would have been readily available to him in order to negotiate with the solicitor on Jabari's behalf. *Strickland v. Washington*, 466 U.S. 668, 688–89 (1984) (stating the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances).

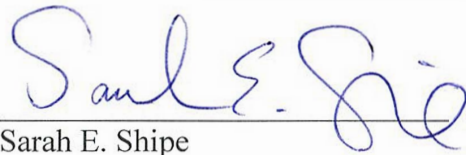
Like a capital case where guilt has already been established prior to the sentencing phase, Jabari was entitled to have evidence presented in mitigation during sentencing. *See Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008) (Trial counsel's failure to adequately investigate and

present mitigating evidence during the penalty phase of defendant's capital murder trial was deficient performance, thus supporting claim of ineffective assistance.).

Here, Mr. Kornegay was ineffective for failing to successfully investigate Jabari's past which would have been readily available as Jabari had long been in the custody of both DJJ and DSS. He should have investigated and presented Jabari's serious mental health problems in order to negotiate more successfully with the solicitor or in the alternative present it to the court during sentencing. *See Judge v. State*, 312 S.C. 554, 471 S.E.2d 143 (1996) (a defendant is entitled to effective assistance of counsel during plea negotiations). Additionally, Kornegay failed to call an expert, a treating psychiatrist, or even his own mitigation specialist at sentencing in order to present mitigating evidence on behalf of Jabari.

CONCLUSION

Petitioner respectfully requests Court grant his petition for writ of certiorari and allow full briefing on this issue, reverse the charges against him, and remand the case for a new trial.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of April, 2024.