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Jun 20 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

DeANGELO BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-001395

BRIEF OF PETITIONER

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ISSUE PRESENTED

Whether the post-conviction relief (PCR) court erred finding petitioner's guilty plea was voluntary where he relied on erroneous advice of defense counsel and where defense counsel admitted petitioner could not have made a voluntary, knowing, and intelligent guilty plea based on the inaccurate advice she gave him?

STATEMENT

In November 2015, a Charleston County grand jury indicted petitioner for possession with intent to distribute (PWID) heroin. App. 168. In December 2015, a Charleston County grand jury indicted petitioner for resisting arrest, obstruction of justice, and PWID cocaine. App. 170; 172; 174. On April 13, 2016, petitioner pled guilty before the Honorable R. Markley Dennis, Jr., to obstruction of justice, PWID heroin, PWID cocaine, and resisting arrest. App. 1-24.¹ Petitioner was represented by Melissa Gay and the state was represented by assistant solicitor, Charles Condon and assistant solicitor, Scott Maynor. App. 1.

Judge Dennis sentenced petitioner to concurrent terms of fifteen years' imprisonment for PWID heroin; fifteen years' imprisonment for PWID cocaine; three years' imprisonment for obstruction of justice; and one year imprisonment for resisting arrest. App. 22-23.

Thereafter, petitioner filed an application for PCR. App. 25-36. On December 9, 2021, an evidentiary hearing was held before the Honorable Jennifer B. McCoy. App. 39-94. Testimony continued in front of Judge McCoy on February 23, 2022. App. 114-43. Petitioner was represented by Tommy Thomas and the state was represented by assistant attorney general, Lauren Mims and assistant attorney general, Samantha Weidauer. App. 39; 114.

On May 9, 2022, Judge McCoy signed an order denying PCR. App. 144-59. The court held petitioner's guilty plea was not involuntary finding that "the plea transcript reflect[ed]" petitioner knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty. App. 152. The court found petitioner had knowledge of the report that showed there was an insufficient amount of suspected cocaine powder for testing

¹ The guilty plea hearing reflects that the state dismissed a firearm charge. App. 2, ll. 2-4. However, the order of dismissal does not state what the charge was, and petitioner does not have the indictment.

prior to his plea and still represented that he was guilty and agreed to the state's recitation of the facts. App. 156. Additionally, the court found that despite defense counsel's testimony to the contrary counsel was not deficient in this case and petitioner was not prejudiced where he received a substantial benefit in exchange for his guilty plea. App 157.

Petitioner made a motion to amend and reconsider on May 19, 2022. Judge McCoy denied petitioner's motion on May 23, 2022.

A petition for writ of certiorari was filed on February 16, 2023. The state filed its return on May 30, 2023. This Court granted certiorari on May 21, 2024.

This brief of petitioner follows.

STANDARD OF REVIEW

Appellate courts defer to a PCR court's findings of fact and will uphold them if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, if there is no evidence to support the PCR court's ruling, this Court will reverse. *Pierce v. State*, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000) (citation omitted). Questions of law are reviewed de novo, with no deference to trial courts. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018); *Sellner*, 416 S.C. at 610, 787 S.E.2d at 527 (citing *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)).

ARGUMENT

The PCR court erred finding petitioner's guilty plea was voluntary where he was induced to plead guilty based on the erroneous advice of defense counsel and where defense counsel admitted petitioner could not have made a voluntary, knowing, and intelligent guilty plea based on the inaccurate advice she gave him.

Guilty plea hearing

The transcript indicates petitioner's trial was set to begin that day. A jury had been selected and defense counsel made pretrial motions before it turned to a guilty plea. App. 11, ll. 1-10.

The state agreed to dismiss a charge related to a gun found in the car when petitioner was pulled over. Petitioner otherwise pled guilty without negotiation or recommendation. App. 10, ll. 6-19. The gun was registered to petitioner's girlfriend who owned the car he was driving at the time of the arrest. App. 18, ll. 3-5.

During petitioner's guilty plea hearing the court asked the solicitor directly if "the drugs were analyzed and [were] what they claim[ed] to be, heroin and cocaine?" App. 15, ll. 5-8. The solicitor responded, "*[t]hat's correct . . . [e]ighteen [baggies] were cocaine [] [t]hree were heroin.*" App. 15, ll. 9-12. The solicitor continued with the recitation of the facts alleging that petitioner was pulled over for a traffic violation and was found in possession of drugs. He claimed petitioner resisted arrest, including putting drugs in his mouth, and refusing to give them up. The solicitor said petitioner was taken to the hospital and he "chewed" some of the drugs but spit some drugs out. He also asserted petitioner made phone calls from the detention center where petitioner admitted having faked a seizure in the back of the police vehicle and "had in excess of ten grams of cocaine in his mouth." App. 15, ll. 9-25. However, the state did not

admit any evidence of the phone calls during the guilty plea.

Defense counsel told the plea court she conducted an independent investigation in the case and based on that she agreed with petitioner's decision to enter a plea of guilty. App. 12, ll. 19-21.

Evidentiary hearing

Petitioner testified after his arrest he hired Melissa Gay to represent him. App. 45, l. 9-46, l. 2. Petitioner said he had a defense to assert at trial, that the stop was improper because he did not commit a traffic violation. App. 46, ll. 15-22. Petitioner testified defense counsel did not represent him on the traffic violation charges. He was found not guilty of the traffic violation subsequent to his guilty plea to the drug charges. App. 48, l. 10-49, l. 17.

Petitioner maintained throughout his testimony that but for defense counsel's advice to plead guilty he planned to go to trial on these charges. App. 50, ll. 6-11; 52, ll. 10-17; 66, ll. 13-17; 70, ll. 9-12; 75, l. 3-76, ll. 10; 78, ll. 2-8. 80, ll. 11-19; 83, l. 25-84, l. 2. Petitioner testified that although counsel reviewed all the forensic reports² regarding the drug analysis she still advised him that the state would not drop the charge of PWID cocaine. App. 63, l. 6-66, l. 24. Defense counsel continued to recommend petitioner plead guilty assuring him that this was the best outcome for him versus going to trial. App. 67, ll. 8-12.

Defense counsel testified that she did not believe petitioner made the decision to plead guilty voluntarily where he did not understand the consequences of his guilty plea and where he did not have accurate information.³ She acknowledged she did not advise petitioner accurately

² App. 95-113.

³ Counsel began her testimony at the first evidentiary hearing, but the court ultimately continued it until another day so that she had the opportunity to review the file and was prepared to testify. App. 90-93.

regarding the charge of PWID cocaine. Counsel explained that at the time she most likely advised him that it was best for him to plead guilty to obstruction of justice, PWID heroin, PWID cocaine, and resisting arrest in the context of all the charges he was facing but she now recognizes that the state could not have prosecuted a case of PWID cocaine, and she should not have advised him to plead guilty. App. 123-24. She admitted she should have handled this case differently because it was clear petitioner could not have been convicted where there was no evidence of cocaine. App. 126. Defense counsel admitted that although she had the forensic report, she did not give petitioner the “right information” at the time of his guilty plea. App. 128, ll. 3-20.

Discussion

The PCR court erred finding petitioner “knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty,” where defense counsel testified unequivocally she gave petitioner inaccurate advice, and he therefore could not make a voluntary, knowing, and intelligent guilty plea.

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. *Boykin v. Alabama*, 395 U.S. 238 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights they are waiving. *Id.* Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers.

In addition to the requirements of *Boykin*, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory

minimum penalty, and the nature of the constitutional rights being waived. *Id.*; *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “Any defects in the information conveyed by defense counsel can be cured by information provided at the guilty plea proceeding. *Rollinson v. State*, 346 S.C. 506, 513, 552 S.E.2d 290, 293 (2001) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415, (1998)). “The knowing and voluntary nature of the plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel or both.’” *Id.* (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

The Supreme Court of South Carolina has considered the requirements of a voluntary and knowing guilty plea previously, including in the following cases.

In *State v. Hazel*, the Court held defendant’s guilty plea was not knowing and therefore invalid because it was made without an understanding of the sentencing consequences. 275 S.C. 392, 271 S.E.2d 602 (1980). In that case neither defense counsel nor the plea court made defendant aware of the mandatory punishment for the offense they pled guilty to. *Id.*

In *Harres v. Leeke*, the Court reversed the lower court’s grant of PCR and held defendants’ guilty pleas were voluntary and knowing. 282 S.C. 131, 318 S.E.2d 360 (1984). In that case two defendants pled guilty to exhibiting obscene films and were sentenced. *Id.* at 132, 318 S.E.2d at 360. At the PCR hearing defendants testified it was their belief the plea court would sentence them to probation, and they were instead sentenced to active time. Based on the defendants’ testimony during the plea hearing and their testimonies during the PCR hearing the Court found the guilty pleas were knowing and voluntary. *Id.* at 133, 318 S.E.2d at 361.

In *Dover v. State*, the Court affirmed the lower court’s grant of PCR, holding defendant’s guilty plea was not voluntarily and understandingly made where defendant was not made aware

of the consequences of his guilty plea.⁴ 304 S.C. 433, 405 S.E.2d 391 (1991). In that case the defendant pled guilty to twenty-nine indictments including grand larceny, burglary, second degree burglary and petit larceny and was given an aggregate sentence of twenty-five years' imprisonment. *Id.* at 434, 405 S.E.2d at 392. In that case the Court found defendant's plea was not voluntarily and understandingly made where defendant did not have a full understanding of the consequences of his plea where it was not established that defendant understood the severity of the crimes or the sentences they carried. *Id.* The Court analogized *Dover* to *Hazel* where the defendant was not made aware that her charges carried a mandatory life sentence.

In *Rollinson v. State*, the Court reversed the lower court's grant of PCR and held (1) counsel was not ineffective for failure to challenge the legality of a weapons frisk that led to discovery of drugs and (2) counsel was not ineffective in allowing defendant to plead guilty to both first and second offense drug charges. 346 S.C. 506, 507, 552 S.E.2d 290 (2001). In that case defendant pled guilty pursuant to a negotiated agreement to possession of crack cocaine possession with intent to distribute crack cocaine second offense and carrying a pistol. *Id.*

At PCR the lower court found counsel was ineffective in allowing defendant to plead to second offense possession with intent to distribute at the same time he was pleading guilty to his first drug offense. *Id.* at 510, 552 S.E.2d at 292. The Court disagreed finding he "knowingly intelligently, and voluntarily agreed to plead guilty to both as part of a plea bargain where the state dropped three other drug charges. *Id.* The Court found there was a sufficient factual basis presented for both charges reasoning "[a]ll that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the

⁴ The Court disagreed with the lower court's reasoning and affirmed the result on other grounds appearing in the record.

plea.” *Id.* at 511, 552 S.E.2d at 292.

In *Sellner v. State*, the Court reversed the PCR court’s denial of relief, granted defendant a new trial, and held defense counsel’s advice to defendant that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counsel’s performance deficient. 461 S.C. 606, 607, 787 S.E.2d 525 (2016). In that case defendant was charged with armed robbery and as a result of prior convictions was subject to a sentence of life imprisonment without the possibility of parole. *Id.* at 608, 787 S.E.2d. at 526. At PCR counsel testified there was no evidence that defendant had a gun during the robbery or that he made any representation of a weapon. *Id.* at 609, 787 S.E.2d at 527. The Court found “counsel’s advice to [defendant] that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counsel’s performance deficient and the PCR court erred in finding [] counsel effective. *Id.* at 612, 787 S.E.2d at 528.

The PCR court found defense counsel’s testimony credible regarding her frequency of visits with petitioner, her preparation for trial, and her discussion of the case with petitioner. Interestingly, the PCR court found counsel’s testimony and opinion of her own actions as petitioner’s attorney were “not probative.” Moreover, the order mischaracterized the testimony of counsel. Her testimony was not, as the order stated, that she believed she was ineffective for failing to negotiate the plea offer due to the insufficient amount of suspected cocaine available for testing. Rather, defense counsel testified that in hindsight she misadvised petitioner regarding his charge of PWID cocaine and counsel admitted she should not have advised him that pleading guilty was in his best interest.

Here, like *Sellner*, defense counsel was deficient where she advised petitioner to plead guilty to a charge the state could not have prosecuted at trial. The record is replete with

probative evidence that defense counsel was deficient where she advised petitioner to plead guilty to a crime which the state could not have prosecuted, which rendered petitioner's guilty plea invalid. *See Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (Appellate courts defer to a PCR court's findings of fact and will uphold them if there is any evidence of probative value in the record to support them). Petitioner testified counsel advised him that pleading guilty was the best course of action even where counsel had the forensic report showing there was no evidence of cocaine. Counsel readily admitted she misadvised petitioner. Petitioner supplemented his testimony with exhibits that corroborated his and counsel's testimony. None of this was cured by the plea court where the court was wrongly told by the state that the substance found *had been tested and was cocaine*.

A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) that counsel's representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 56-57 (1985). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984). *Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997).

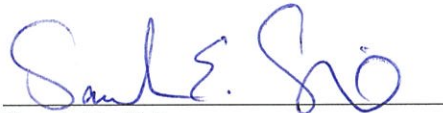
Counsel's representation fell below an objective standard of reasonableness where she wrongly advised petitioner to plead guilty to a charge the evidence did not support. Defense counsel testified that she advised petitioner from a "global" perspective that pleading guilty to the four charges would benefit him. The PCR court noted that petitioner benefited from the dismissal of the gun charge related to this incident. However, petitioner had a defense to the gun

charge and was prepared to go to trial. The state's dismissal of that charge was not the sole inducement for petitioner to plead guilty. Counsel's testimony corroborated petitioner's that he was advised to plead guilty when he should not have been. It is clear from both petitioner and counsel's testimony and from the forensic reports admitted as exhibits that the state could not have prosecuted a case of PWID cocaine where there was an insufficient amount of substance to analyze.

Petitioner was prejudiced where there is a reasonable probability that but for counsel's inaccurate advice, he would not have pled guilty and would have insisted on trial. Petitioner testified to that repeatedly during the evidentiary hearing. It is apparent from the transcript of the guilty plea hearing petitioner was prepared to go to trial the very day of his guilty plea. Petitioner entered exhibits at his hearing that supported his own testimony and that of counsel that there was no evidence of cocaine.

CONCLUSION

By reason of the foregoing argument, petitioner respectfully requests this Court reverse the lower court's denial of post-conviction relief and remand his case for a new trial.



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ATTORNEY FOR PETITIONER

This 20th day of June, 2024.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
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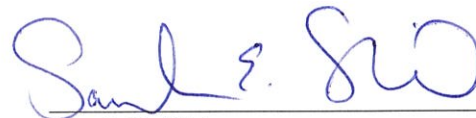
STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-001395

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Petitioner in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on DeAngelo Laprinice Brown, #317618, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy, Turbeville, SC 29162, this 20th day of June, 2024.



Sarah E. Shipe
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Cc: [Grace Sommer](#); [Shipe, Sarah](#)
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Date: Thursday, June 20, 2024 11:17:00 AM
Attachments: [2022-001395 DeAngelo Brown v. State Brief of Petitioner.pdf](#)
[AG Cover Letter - BOP.pdf](#)

Good Morning Ms. Muller,

Please find attached for service in the above-referenced case the Brief of Petitioner, which will be filed with the Court of Appeals today, June 20, 2024, via email filing.

Thank you!

Sara McInnis

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