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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lee County

Honorable Edgar W. Dickson, Circuit Court Judge

DALONTE GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000213

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Was the guilty plea rendered involuntary by the fact that Petitioner mistakenly believed that he would receive credit for the time he was in prison between the offense and the guilty plea when he was serving sentence on another charge?

STATEMENT

In July of 2018, the Lee County Grand Jury indicted Petitioner, Dalonte Green, for possession of contraband, murder, and possession of a weapon during the commission of a violent crime, indictment #2018-GS-31-0081. (App. pp. 14-15). On April 19, 2021, Petitioner appeared before the Honorable R. Kirk Griffin and pled guilty to the lesser included offense of voluntary manslaughter. Lir P. Derieg represented Petitioner at the plea. Paul M. Fata represented the State. Pursuant to negotiations with the State Judge Griffin sentenced Petitioner to eighteen years concurrent to the active sentence Petitioner was serving in the South Carolina Department of Corrections [SCDC]. Judge Griffin checked the box on the sentencing sheet providing credit for time served. (App. p. 16). Petitioner did not appeal the conviction or sentence.

On March 21, 2022, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 17-39). The State filed a return on July 29, 2022. (App. pp. 40-55). On March 1, 2023, an evidentiary hearing was held before the Honorable Edgar W. Dickson. Timothy L. Griffith represented Petitioner at the PCR hearing. Zachary W. Jones represented the State. In a written order filed January 22, 2024, Judge Dickson denied relief and dismissed the application. (App. pp. 73-78). A timely notice of intent to appeal was served on February 13, 2024. This petition for writ of certiorari follows.

ARGUMENT

The guilty plea was rendered involuntary by the fact that Petitioner mistakenly believed that he would receive credit for the time he was in prison between the offense and the guilty plea when he was serving a sentence on another charge.

The present PCR action involves Petitioner's Lee County guilty plea to voluntary manslaughter on April 19, 2021. Prior to that guilty plea, on February 7, 2015, a Hampton County jury found Petitioner guilty of murder. The Honorable Perry M. Buckner, III, sentenced Petitioner to thirty (30) years in prison. That conviction was reversed on direct appeal. State v. Green, 2018-UP-092 (S.C. Ct. App. filed February 21, 2018). On November 4, 2020, Petitioner appeared in Hampton County and pled guilty to the lesser include offense of voluntary manslaughter. The judge sentenced Petitioner to eighteen (18) years with 2,887 days of credit for time served. (App. p. 81).

Based on events that took place on July 15, 2017, while Petitioner was serving his Hampton County murder sentence, Petitioner was charged with possession of contraband, murder, and possession of a weapon during the commission of a violent crime, indictment #2018-GS-31-0081, the Lee County charges. (App. pp. 14-15). On April 19, 2021, Petitioner appeared before the Honorable R. Kirk Griffin and pled guilty to the lesser included offense of voluntary manslaughter. Pursuant to negotiations with the State Judge Griffin sentenced Petitioner to eighteen years concurrent to the active sentence Petitioner was serving in the South Carolina Department of Corrections [SCDC]. Judge Griffin checked the box on the sentencing sheet providing credit for time served. (App. p. 16). During the plea Judge Griffin also said, "You're given credit for whatever time that you have served on this charge." (App. p. 12, lines 9-10).

In the PCR application Petitioner wrote, "Turning to the facts of the instant case, Plea Counsel's failure to let his client know that he would not receive 18 years with credit from July 15, 2017. Counsel rendered ineffectiveness. Because client "Green" accepted the plea offer with the knowledge, willingness, and understanding that he would have to do 15 years of the 18 years for his acceptance of the plea offer being released on October 19, 2032." (App. p. 32).

During the PCR hearing Petitioner testified, "As I talked to you about, SCDC is the biggest problem. The solicitor, everybody, my lawyer did their job. SCDC is saying that because I was already incarcerated, that they're not going to give me the time credit even though the Judge put credit for time served." (App. p. 63, lines 8-12). Both the State and PCR counsel appear to agree that the issue about credit for time served was not an issue that could be addressed in PCR. (App. p. 67, lines 6-25). The PCR judge noted, however, "Well, I'll certainly be glad to sign an order as you suggested, but in that order I believe, I don't mind putting in that he should be given credit for that time because it just doesn't, there's nothing to, even though I have no control over it, there's nothing to indicate to me that when he pled he did not think he was going to get credit for all the time he had been in jail." (App. p. 68, lines 4-10). The PCR judge also said, "I'd just say it appears that he should be given credit just as the sentencing Judge told him he was going to get, you know?" (App. p. 68, lines 22-24).

In the order of dismissal the PCR judge wrote:

> Whatever may be the merits of this complaint, it is not a matter for PCR. "PCR is a proper avenue of relief *only when the applicant mounts a collateral attack on the validity of his sentence* as authorized by section 17-27-20(a) (1985)." *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in the original), *see also id.* At 369 527 S.E.2d at 749-50 (holding that calculation of sentencing credits and other conditions of confinement may not be raised in a PCR proceeding). In this case, Applicant does not attack the *validity* of his conviction or sentence; instead, he attacks the calculation of his sentence by SCDC. The proper avenue for claims of this nature is review pursuant to the Administrative Procedures Act according to the procedure outlined in *Al-Shabazz.*

(App. p. 77, n.3 omitted). The PCR judge erred. The guilty plea was rendered involuntary by the fact that Petitioner mistakenly believed that he would receive credit for the time he served between the offense on July 15, 2017, and the guilty plea on April 19, 2021, for the Lee County voluntary manslaughter charge.

Footnote 3 of the order of dismissal states, "The 'sentence start date' for Applicant's Hampton County sentence is reflected as December 9, 2012, which appears consistent with the application of 2,887 days credit from the November 4, 2020, plea to the Hampton County charge." (App. p. 77; p. 71). While it appears that Petitioner received the credit for time served for the Hampton County charge, Petitioner was not aware when he pled guilty to the Lee County charge that he would not receive credit for time served from the day of the offense on July 15, 2017, to the guilty plea on April 19, 2021.

In Crooks v. State, 326 S.C. 171, 174, 485 S.E.2d 374, 375–76 (1997), the South Carolina Supreme Court wrote:

> Section 24-13-40 of the South Carolina Code is instructive on the appropriate method of calculating time served by prisoners:
>
> The computation of the time served by prisoners under sentences imposed by the courts of this State shall be reckoned from the date of the imposition of the sentence. But when ... (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served shall be reckoned from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. *Provided, however,* that credit for time served prior to trial and sentencing shall not be given: ... (2) *when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.*

Petitioner was not entitled to the time he served between the time of the offense until the time of the guilty plea for the Lee County charge. Petitioner, however, entered the guilty plea believing that he was entitled to that time served. The judge's comment at the end of the plea that, "You're given credit for whatever time that you have served on this charge." (App. p. 12, lines 9-10), and the sentencing sheet, with the credit for time served box checked, added to Petitioner's mistaken belief.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made.

Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "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." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (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, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999), the South Carolina Supreme Court wrote:

> 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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (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 he or she is 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. This Court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). 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.

In Dalton v. State, 376 S.C. 130, 138–39, 654 S.E.2d 870, 874 (Ct. App. 2007), the South Carolina Court of Appeals wrote:

> "[T]he voluntariness of a guilty plea is not determined by an examination of the 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 the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). "When determining issues relating to guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing." Roddy, 339 S.C. at 33, 528 S.E.2d at 420. In considering an allegation on PCR that a guilty plea was based on

> inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997).

The Lee County guilty plea in the present case was rendered involuntary by Petitioner's mistaken belief that he would receive credit for time served between the offense on July 15, 2017, and the guilty plea on April 19, 2021. There is a reasonable probability that if, Petitioner knew he was not entitled to the time served, Petitioner would not have entered a guilty plea and instead would have insisted on going to trial. The PCR judge erred in refusing to grant relief.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of July, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dalonte Green 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 Edgar W. Dickson, which was held on March 1, 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 Dalonte Green.

Respectfully Submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of July, 2024.

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CERTIFICATE OF COUNSEL

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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