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Jul 18 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable G.D. Morgan, Jr., Circuit Court Judge

SAMUEL CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000192

JOHNSON PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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The PCR court erred in finding Petitioner’s guilty pleas were knowingly and voluntarily entered into where Petitioner believed, based on statements made by plea counsel, that he would be sentenced to twelve to fifteen years imprisonment on the charges and that if the judge went over the fifteen-year cap he would be able to withdraw his guilty pleas5

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ISSUE PRESENTED

Whether the PCR court erred in finding Petitioner's guilty pleas were knowingly and voluntarily entered into where Petitioner believed, based on statements made by plea counsel, that he would be sentenced to twelve to fifteen years imprisonment and that if the judge went over the fifteen-year cap he would be able to withdraw his guilty pleas?

STATEMENT OF THE CASE

Petitioner was indicted in May 2017 by a Colleton County grand jury for one count of safe cracking, one count of burglary first degree, six counts of burglary second degree violent, two counts of breaking into a motor vehicle, one count of grand larceny value \$2,000 to \$10,000, and one count of accessory after the fact to a felony. App. 36-59. On December 14, 2017, Petitioner appeared before the Honorable Brooks Goldsmith to enter a guilty plea.¹ The State was represented by Ceth Utsey. Petitioner was represented by Chris Murphy. App. 1-2. The plea was a straight-up plea without any recommendations or negotiations. The only consideration for the plea was a reduction of the burglary first degree charge to burglary second degree violent. App. 3, ll. 3-18; App. 21, ll. 3-10.

The charges arose from numerous break-ins throughout Colleton County in January and February 2017. Upon his arrest, Petitioner gave a lengthy confession where he admitted to his part in the crimes, identified his co-defendants, and helped law enforcement to retrieve some of the stolen property. App. 7, l. 4-App. 12, l. 24. Petitioner was sentenced to imprisonment for five years on each breaking into a motor vehicle charge, five years on the grand larceny charge, fifteen years on each burglary charge, fifteen years on the accessory charge, and twenty-two years on the safe cracking charge, all sentences to run concurrently. App. 33, l. 16-App. 34, l. 9.

Petitioner appealed but the matter was ultimately dismissed for failure to provide a sufficient explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR. A *pro se* application for post-conviction relief was filed on February 28, 2019. App. 72-104. The State filed a return on October 5, 2022. App. 105-126. An evidentiary hearing was convened on November 18, 2022,

¹ Petitioner was on probation at the time of his guilty plea. He admitted to willfully violating his probation and was revoked in full, with all monies owed converted to civil judgements. App. 17, l. 12-App. 18, l. 10; App. 33, ll. 11-15.

before the Honorable G.D. Morgan, Jr. The State was represented by Laruen Mims. Petitioner was represented by James Falk. App. 127.

Petitioner testified that he never saw a plea offer in writing but was told that the State had offered him a plea for thirty years. According to Petitioner, Counsel Murphy met the solicitor and judge in chambers to discuss the case. Counsel Murphy purportedly told Petitioner just prior to the plea that the judge would sentence him to between twelve and fifteen years, and if the judge felt he needed to go over that sentencing range he would let Petitioner withdraw his plea. App. 135, l. 5-App. 136, l. 2. Petitioner entered his guilty pleas because he believed that he would not get more than a fifteen-year sentence. When he was sentenced to twenty-two years incarceration, Petitioner asked Counsel Murphy about withdrawing his plea and was told “it’s over.” App. 139, l. 17-App. 140, l. 5. On cross-examination, Petitioner admitted that he had never contested his guilt and that his goal in the case was to plead guilty. App. 142, l. 14-App. 143, l. 4.

Counsel Murphy testified that while he did speak with the judge in chambers prior to the plea, the judge did not make any statements regarding sentencing. He testified that he had explained to Petitioner that he believed the judge would not give him more than fifteen years but that he did not know what the judge would ultimately do. Counsel Murphy stated that Petitioner understood that the plea was straight up. He maintained he never told Petitioner that he would be sentenced between twelve and fifteen years or that Petitioner could withdraw his plea if the judge went over the fifteen-year sentence cap. Counsel Murphy explained that the State was not interested in making any plea offers in the case and the best he was able to do was get them to drop the burglary first degree to a burglary second degree charge. Counsel Murphy testified that from the beginning, the case was going to be resolved by a plea. App. 151, l. 19-App. 153, l. 5.

An order of dismissal was filed on January 31, 2024. App. 161-App. 169. The PCR court found Counsel Murphy's testimony that the State did not make any plea offers and that he never told Petitioner he would receive between twelve- and fifteen-year sentences as credible. The PCR court also found that Petitioner understood he was entering straight-up guilty pleas and that the plea colloquy showed Petitioner's plea was knowingly and voluntarily entered. Finally, the PCR court found that Petitioner could not show prejudice as both he and Counsel Murphy testified that he did not want to go to trial. App. 167.

This petition follows.

ARGUMENT

The PCR court erred in finding Petitioner’s guilty pleas were knowingly and voluntarily entered into where Petitioner believed, based on statements made by plea counsel, that he would be sentence to twelve to fifteen years imprisonment on the charges and that if the judge went over the fifteen-year cap he would be able to withdraw his guilty pleas.

A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. Boykin v. Alabama, 395 U.S. 238 (1969). Additionally, before a plea can be accepted a defendant must be aware of the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000).

“An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.” Wiggins v. Smith, 539 U.S. 510, 521 (2003) (citation omitted). “To establish deficient performance, a petitioner must demonstrate that counsel's representation ‘fell below an objective standard of reasonableness.’” Id. (quoting Strickland v. Washington, 466 U.S. 668, (1984)). “[T]o establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. at 534 (quotations and citation omitted).

An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The “prejudice,” requirement focuses on whether counsel's constitutionally ineffective performance affected the

outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Importantly, "the 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).

Petitioner's guilty plea was not knowingly and voluntarily entered into because Petitioner was unaware of the actual consequences of his plea. Petitioner was not informed by the plea court of the sentencing ranges of the offenses he was pleading guilty to and had no reason to not believe the assertions by plea counsel that he would not receive more than fifteen years imprisonment. Despite a rather thorough plea colloquy, Petitioner was unable to knowingly and voluntarily plead guilty because of a fundamental misunderstanding of his sentencing exposure.

Petitioner entered his guilty pleas under two mistaken beliefs: that he would not receive a sentence of more than fifteen years and that if the judge felt he had to go over fifteen years, Petitioner would be allowed to withdraw his plea. While Petitioner did not want to have a trial on his charges, he did want the best possible plea outcome and entered his guilty plea believing he had received a favorable plea offer. Counsel Murphy failed to ensure that Petitioner understood that there was not a plea deal, that he could be sentenced to more than fifteen years prior to the plea, and that he would not be able to withdraw his guilty plea. These failures amounted to ineffective assistance of counsel.

CONCLUSION

Based on the forgoing argument, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of the issue.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of July, 2024.

STATE OF SOUTH CAROLINA

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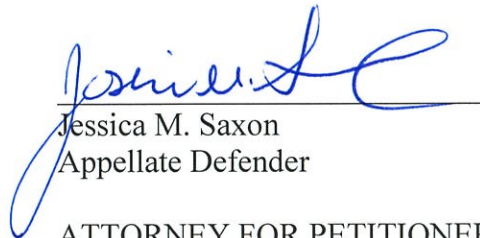
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Samuel Campbell 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 G.D. Morgan, Jr., which was held on November 18, 2022, 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 Samuel Campbell.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of July, 2024.

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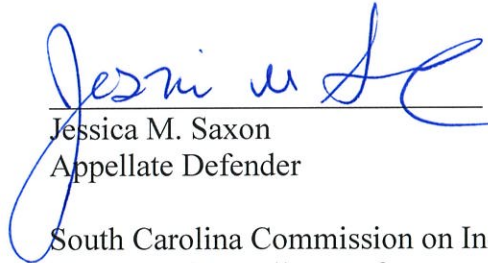
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CERTIFICATE OF COUNSEL

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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