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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Jocelyn J. Newman, Circuit Court Judge

JONATHAN CHRISTIAN HUGHES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000231

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

1. Did the PCR court err finding defense counsel was not ineffective for failure to advise petitioner of his constitutional rights rendering petitioner's guilty plea invalid where the transcript does not reflect the colloquy between the plea court and petitioner regarding the waiver of constitutional rights?

2. Did the PCR court err finding defense counsel was not ineffective for failure to object or otherwise withdraw petitioner's guilty plea when a detective demanded the plea court sentence petitioner to the maximum where the solicitor did not recommend a sentence?

STATEMENT

In April 2015, a Lexington County grand jury indicted petitioner for burglary, first degree, armed robbery, two counts of kidnapping, and possession of a weapon during the commission of a violent crime. App. 1-4; 13, ll. 21-23. On April 14, 2016, petitioner pled guilty before the Honorable William H. Seals, to burglary, first degree and armed robbery.¹ App. 5-19. Petitioner was represented by Jason Chehoski and assistant solicitor Angela Martin represented the state. App. 5. Judge Seals sentenced petitioner to concurrent terms of forty years' imprisonment for burglary, first degree, and thirty years' imprisonment for armed robbery. App. 19, ll. 8-17; 21-22.

Defense counsel Chehoski filed a motion to reconsider petitioner's sentence and a memorandum in support. App. 23-28. Without a hearing Judge Seals issued an order denying petitioner's motion to reconsider his sentence. App. 31. Appellate counsel appealed the denial of petitioner's motion to reconsider his sentence. App. 88. The Court of Appeals affirmed petitioner's convictions and sentences. *State v. Hughes*, 2018-UP-382 (S.C. Ct. App. filed Oct. 17, 2018).

Thereafter, petitioner filed an application for PCR. App. 32-38. On June 6, 2022, an evidentiary hearing was held before the Honorable Jocelyn Newman. App. 55-84. Ola Johnson represented petitioner. Former assistant attorney general, Lillian Meadows, represented the state. App. 55.

On December 5, 2023, Judge Newman signed an order denying PCR. App. 88-125. In the order the PCR court found defense counsel was not ineffective and petitioner's guilty plea was made freely, knowingly, and voluntarily. App. 114. The court found petitioner knew the

¹ The state dismissed both counts of kidnapping and possession of a weapon during the commission of a violent crime. App. 13, ll. 21-23.

nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty. The court found the plea transcript indicated all defendants pleading guilty on that day were brought before the plea court as a group and advised of their rights. Further the court found credible defense counsel's testimony that he explained to petitioner the constitutional rights he was waiving by pleading guilty. App. 117. Lastly, the court found counsel was not ineffective for failure to object or withdraw petitioner's guilty plea when Detective Spivey asked the plea court to give petitioner the maximum sentence. App. 111-113.

This petition follows.

INTRODUCTORY FACTS

Early in the morning of February 14, 2015, three men entered the home of David Quintana, Alva Valdez, and their children. One of the men, Antonio Johnson, was armed with a gun and advised David and Alva to cooperate or he would harm their children. Meanwhile petitioner and Jamon McNeil took items from the home including two video game consoles, Alva's purse, and a family heirloom. App. 10-11.

The same day, Jamon attempted a second home invasion and was caught and arrested. App. 12-13. Petitioner and Antonio were later arrested. Petitioner admitted to law enforcement that he entered the home and took one of the video game consoles but he insisted he was not armed and had no contact with the occupants of the home. App. 13-14; 16, ll. 17-25.

At the time of his guilty plea petitioner was twenty years old and had no prior record. App. 15, l. 22-16, l. 17.

ARGUMENT

1. Defense counsel was ineffective for failure to advise petitioner of his constitutional rights rendering petitioner's guilty plea invalid where the transcript does not reflect the colloquy between the plea court and petitioner regarding the waiver of constitutional rights.

Relevant facts

The first page of petitioner's guilty plea hearing transcript states the following: "(Prior to this hearing, all defendants were required to stand as a group as their rights were recited by the Court.)" App. 8, ll. 1-3. Shortly thereafter, the plea court addressed petitioner and the following occurred:

Q: Were you in the courtroom when I went over your rights to a jury trial?

A: Yes, sir.

Q: Did you understand those rights?

A: Yes, sir.

Q: And you want to give up your right to a jury trial and plead guilty today[?]

A: Yes, sir.

App. 9, ll. 1-8. After the state's recitation of the facts the court accepted the plea and found petitioner was "doing so freely, intelligently, and with the advice of competent counsel." App. 15, ll. 19-21.

At petitioner's evidentiary hearing he testified he was not properly advised of all his constitutional rights during his guilty plea. Specifically, petitioner said he was not advised regarding his constitutional right to confront witnesses at trial and his constitutional right to remain silent. App. 63, ll. 8-22; 64, ll. 7-15; 67, ll. 10-16.

Defense counsel testified that he discussed petitioner's constitutional rights with him, including the right to a jury trial and his right to confront witnesses. Counsel maintained he usually advised his clients of their constitutional rights individually prior going in front of the plea court. Counsel insisted he would not have petitioner appear before the plea court if he believed petitioner did not understand his constitutional rights. He had no recollection regarding the plea court's advisement of rights to petitioner. App. 69, ll. 13-23; 77, ll. 8-20.

Discussion

The 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 v. Lockhart*, 474 U.S. 52, 56 (1985). Where a defendant was represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. *Id.* In order to show prejudice in the context of a guilty plea a defendant must show there was a reasonable probability that, but for counsel's errors he would not have plead guilty and would have insisted on going to trial. *Id.* at 59.

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea. *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980)). Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea. *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel,

or both.” *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

When determining issues relating to guilty pleas, the appellate court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *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.*

Here, the PCR court erred finding defense counsel was not ineffective, and petitioner’s guilty plea was made freely, knowingly, and voluntarily. There is no evidence in the record, other than counsel’s testimony regarding what he “usually” did, that demonstrates petitioner was advised and knowingly waived his constitutional rights prior to his guilty plea. Additionally, defense counsel had no independent recollection of what the plea court’s advisement of rights consisted of. Instead, there is reference at the beginning of petitioner’s guilty plea to an advisement of trial rights by the plea court. Petitioner testified at the evidentiary hearing that he was not made aware of the right to confront witnesses or the right to remain silent.

Defense counsel was ineffective for failing to advise petitioner of his constitutional rights prior to his guilty plea and petitioner’s plea was rendered invalid by that failure.

2. Defense counsel was ineffective for failure to object or otherwise withdraw petitioner's guilty plea when a detective demanded the plea court sentence petitioner to the maximum where the solicitor did not recommend a sentence.

Relevant facts

After the solicitor recited the facts to the plea court, she told the court that the victims were in the courtroom but did not wish to address the court. App. 14, ll. 11-12. However, Detective Spivey wanted to be heard "as far as sentencing." App. 14, ll. 13-15. Detective Spivey made the following statement to the court:

This case was something that happened over Valentine's Day. **I would see some time for -- for severity that took place in these -- these victims' lives.** Fear, I mean, that's the biggest thing I can say. These are true, true victims that you will want to call it in this matter. You know, to -- to have a family be put into a -- to a shower and be -- have threatened their children in regards to this matter, not knowing what's going on with the children while they're in the shower and not being able to move, you know, I mean, they're -- they're basically rendered helpless in the matter. And so it's a -- it's a everyday nightmare for -- for a father or mother not knowing what's going on with their children. But kinda go into also with the children, you know, knowing these people are inside the house, burying their heads to kind of cover up that they're not -- that they're sleeping, faking that they're asleep while they hear all this activity going on, you know, it's just -- it's -- it's a nightmare for any family. **But I just wanted to basically ask that you give the max you possibly can give him.**

App. 14, l. 21-15, l. 16

Petitioner testified at the evidentiary hearing that he expected to be sentenced similarly to his co-defendant Antonio Johnson, who was given a twenty-year sentence. App. 62, ll. 1-8. He contended he wanted defense counsel to object and to withdraw his guilty plea after Detective Spivey requested the court give him the maximum sentence. App. 61, ll. 6-24.

Defense counsel admitted he likely advised petitioner that he would receive a similar sentence to his co-defendant because petitioner was not armed during the incident, had no

contact with any of the victims, and had no prior record. App. 76, ll. 6-16. When defense counsel was asked why he failed to object or otherwise withdraw petitioner's plea after Spivey's statement he asserted that it was a victim impact statement. Counsel asserted that victims are "free to say whatever they feel is appropriate as long as it's not derogatory toward" the client. App. 71, ll. 11-18; 75, l. 12-76, l. 1.

Discussion

The PCR court erred finding counsel was not ineffective for failure to object or withdraw petitioner's guilty plea and that petitioner failed to show that his sentence would have differed if counsel had objected.

Initially, defense counsel and the PCR court mischaracterized Detective Spivey's remarks as victim impact statements. While it is true victims of crimes are permitted great latitude in their statements to the court, Spivey was not a victim. The PCR court also notes "the [s]tate complied with the plea agreement, [s]pecifically, the record is devoid of any statements" from the solicitor regarding sentencing. App. 112. However, Spivey was speaking on behalf of the state.


The PCR court cited *State v. Rikard*, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006) in support of its denial of relief on this allegation. In that case the Rikard appealed her guilty plea arguing the plea court erred in denying her motion to withdraw her plea after the state asked for the maximum sentence during the plea where the state earlier indicated, on the sentencing sheet, that it would make no recommendation. *Id.*

Importantly, this case is on appeal from the denial of PCR and *Rikard* was at direct appeal. Here, petitioner was prejudiced by counsel's deficient performance because due to counsel's failure to make a motion to withdraw petitioner's plea, the plea court was not able to

exercise its discretion. *See Rolan v. State*, 384 S.C. 409, 413-14, 683 S.E.2d 471, 474 (2009); *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982) (holding that the withdrawal of a guilty plea is generally within the sound discretion of the trial court). Furthermore, while his more culpable co-defendant was sentenced to twenty years, petitioner was given the maximum for armed robbery and a hefty forty year sentence for burglary, first degree.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on these issues.


Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of July, 2024.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and Appendix in the above-referenced case has been served upon Donald J. Zelenka, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 31st day of July, 2024.



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