

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 29 2024

S.C. SUPREME COURT

Certiorari to Sumter County

Honorable Edgar W. Dickson, Circuit Court Judge

TYRONE JOSEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000218

JOHNSON PETITION FOR WRIT OF CERTIORARI

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where trial counsel failed to adequately communicate with Petitioner and advise him of the nature of the charges against him as well as his potential defenses, and where Petitioner only pled guilty because counsel told him if he did not accept the state's favorable offer he would be sentenced to more time?

STATEMENT OF THE CASE

On January 9, 2019, a search warrant was executed at Petitioner's residence in Sumter. Law enforcement allegedly found 17.93 grams of heroin and 283 grams of marijuana during the search. App. 192, ll. 3-19. A Sumter County grand jury indicted Petitioner on July 9, 2020 for trafficking heroin, 14 grams or more but less than 28 grams, possession with intent to distribute marijuana, and possession with intent to distribute in close proximity to a school or park. App. 275-276. Petitioner's case was called to trial on July 22, 2021 before the Honorable George McFaddin, Jr., and a jury. App. 1. Assistant Solicitors Tyler Brown and Jason Corbett represented the state. Jason Bridges represented Petitioner. App. 1.

After Petitioner's pretrial motion to suppress was denied, Petitioner agreed to plead guilty to the lesser included offense of trafficking heroin, 4 grams or more but less than 14 grams, and possession with intent to distribute marijuana in exchange for a sentence recommendation of seventeen years imprisonment. App. 25 – 27, l. 3; App. 32, l. 15 – 33, l. 13. However, during the plea proceeding, Petitioner decided to withdraw his guilty plea and go forward with his jury trial. App. 35, l. 1 – 36, l. 5. After the state rested, the trial court directed a verdict on the proximity offense. App. 181, l. 2 – 183, l. 1. However, Petitioner again agreed to plead guilty at that time to the lesser included offense of trafficking heroin, 4 grams or more but less than 14 grams, and possession with intent to distribute marijuana in exchange for a sentence recommendation of twenty years imprisonment. App. 185, l. 24 – 186, l. 22. Petitioner pled guilty accordingly and was sentenced to twenty years imprisonment on the trafficking offense and ten years concurrent for the distribution charge. App. 193, l. 10 – 194, l. 25. Petitioner did not appeal his conviction or sentence.

On July 12, 2022, Petitioner filed an application for post-conviction relief (PCR). App. 197-206. The state filed a return to this application on January 12, 2023. App. 207-220. With the assistance of counsel, Petitioner filed an amended application on March 2, 2023 raising the claim argued in this petition. App. 221-223. An evidentiary hearing was convened on March 2, 2023 before the Honorable Edgar W. Dickson. App. 224. Assistant Attorney General T. Cruise Mitchell represented the state. Michael Lifsey represented Petitioner. App. 224.

During the hearing, Petitioner testified that he met with his trial counsel four times. During these meetings, counsel explained to Petitioner what offenses he was charged with and how much time he was “looking at.” Counsel also discussed with Petitioner the state’s favorable plea offer. Petitioner testified that counsel told him “every time that I refuse an offer that the offer is going to go up. . . . And I was going to be offered more time.” App. 230, l. 5 – 231, l. 2. After Petitioner rejected the state’s offer to plead guilty, counsel told Petitioner that the hearing on his “motion to suppress was coming up and [to] be ready for it.” It was not until after the trial court denied Petitioner’s suppression motion that Petitioner learned he was going to trial that same day. Petitioner testified that counsel first told him after his motion was denied that they were “picking [a jury] that same day.” App. 231, l. 9 – 232, l. 10. Petitioner said he only pled guilty because trial counsel “kept telling [him] that the offer was going to be off the table” and “if [he] didn’t take the offer that was in front of [him], that [he] would get more time.” App. 233, ll. 3-9. He testified that he would have continued with his jury trial had counsel met with him more and told him more about his case and what defenses were available. App. 233, ll. 13-22.

Jason Bridges, Petitioner’s trial counsel, testified that he met with Petitioner about five times before Petitioner’s case was called to trial. In July or August 2020, the assistant solicitor first offered to allow Petitioner to plead guilty to the lesser included offense of trafficking heroin,

4 grams or more but less than 14 grams, in exchange for a sentence recommendation of ten years imprisonment. According to Bridges, he discussed this offer with Petitioner in September 2020 and reviewed all of the discovery materials with him at that time. However, Petitioner refused the offer.

Bridges testified that in May 2021, Petitioner rejected the state's second plea offer, which was to plead guilty to the lesser included offense in exchange for a sentence recommendation of fifteen years. Petitioner rejected this offer on the record and was told that "his case was subject to trial in the extremely near future." Bridges explained that Petitioner was not amenable to pleading guilty until his motion to suppress was heard and ruled upon by the trial court. However, the assistant solicitor refused to "hold open" the plea offer until that time and Bridges advised Petitioner so.

After the trial court denied Petitioner's motion to suppress, Petitioner stated he wished to plead guilty. At that time, the state offered to allow Petitioner to plead to the lesser offense in exchange for a sentence recommendation of seventeen years imprisonment. While Petitioner initially agreed to plead guilty, he withdrew his guilty plea during the plea proceeding and his jury trial continued. After the state rested its case, Petitioner again stated he wanted to plead guilty. The state offered to recommend a sentence of twenty years imprisonment at that stage and Petitioner accepted the offer and pled guilty accordingly. Bridges testified that Petitioner's delay in pleading guilty "cost him." However, Bridges believed he "did everything [he] could" professionally to assist Petitioner. App. 237, l. 6 – 248, l. 6.

By order filed February 14, 2024, the PCR court denied Petitioner relief. App. 260-274. The court found Petitioner failed to prove trial counsel was deficient. The court reasoned that counsel credibility testified that he met with Petitioner several times and thoroughly advised

Petitioner of his charges and potential defenses and reviewed all of the discovery materials with him. The court concluded Petitioner failed to present any evidence of how additional preparation or communication would have affected the outcome of his case, including his decision to plead guilty. App. 266-269.

Because Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to trial counsel's deficient performance, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where trial counsel failed to adequately communicate with Petitioner and advise him of the nature of the charges against him as well as his potential defenses, and where Petitioner only pled guilty because counsel told him if he did not accept the state's favorable offer he would be sentenced to more time.

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made because trial counsel failed to adequately communicate with Petitioner before he pled guilty. Petitioner did not know his case would proceed to trial immediately after the hearing on his motion to suppress pursuant to the Fourth Amendment. Petitioner only found out that morning after the motion was denied that his trial would start that day. Counsel failed to properly advise Petitioner of the nature of the charges against him and the potential defenses available. Petitioner testified that if counsel had met with him more and told him more about his case he "would have continued with [his] jury trial." Petitioner only pled guilty because counsel told him if he did not accept the state's favorable offer he would be sentenced to more time.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. In the context of a guilty plea, a petitioner must show that counsel's performance was deficient, and "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); See Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). This Court has held that a "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000)); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

"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." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing 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 he or she is waiving. 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." Pittman, 337 S.C. at 599, 524 S.E.2d at 624 (citing Boykin, 395 U.S. 238). Additionally, "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. (citing Boykin, 395 U.S. 238).

“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 v. Lockhart, 474 U.S. 52, 56 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)). “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.” Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

In Pittman v. State, this Court held Pittman’s guilty plea was not voluntary, intelligent, and knowing where Pittman did not fully understand the nature of the constitutional rights being waived and the consequences of his plea. Id. at 601, 524 S.E.2d at 625. It was undisputed that Pittman met with his attorney only twice for approximately twenty minutes each. Id. at 600, 524 S.E.2d at 625. The trial court did not advise Pittman of the crucial elements of the charged offenses. Id. Moreover, while the court informed Pittman of the maximum sentences which could be imposed, he failed to advise him that the armed robbery charge carried a mandatory minimum of ten years, seven without the possibility of parole. Id. (citing 22 C.J.S. Criminal Law § 404 (1989) (“prior to accepting a plea of guilty . . . the court is required to advise accused of the range of punishment attached to the offense charged such as . . . the minimum sentence.”)). Lastly, the trial court never affirmatively asked Pittman for an admission of guilt. Id.

In this case, Petitioner’s guilty plea was not knowingly, intelligently, and voluntarily made because trial counsel failed to adequately communicate with Petitioner before he pled guilty. Petitioner did not know his case would proceed to trial immediately after the hearing on his motion to suppress pursuant to the Fourth Amendment. Petitioner only found out that morning after the

motion was denied that his trial would start that day. Counsel failed to sufficiently advise Petitioner of the nature of the charges against him and the defenses available. Because of counsel's lack of proper communication, Petitioner was left in the dark about key aspects of his case and the best way to proceed.

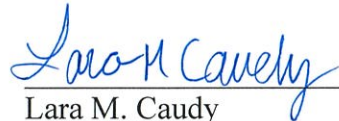
Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability that he would not have pled guilty but would have proceeded to trial if counsel had properly communicated with him and adequately advised him. Petitioner testified that if counsel had met with him more and told him more about his case he "would have continued with [his] jury trial." Petitioner only pled guilty because counsel told him if he did not accept the state's favorable offer he would be sentenced to more time.

Respectfully, this Court should reverse Petitioner's conviction and sentence and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. Petitioner ultimately requests this Court reverse his conviction and remand for a new trial.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of August, 2024.

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Counsel for Tyrone Josey states:

1. She is an 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, which was held on March 2, 2023 before the Honorable Edgar W. Dickson, 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 Tyrone Josey.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of August, 2024.

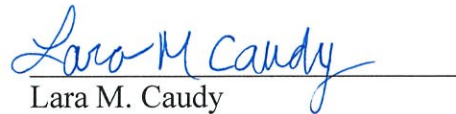
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CERTIFICATE OF COUNSEL

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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Senior Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

This 29th day of August, 2024.