

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to York County

Honorable Walton J. McLeod, IV, Circuit Court Judge
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CARLY BLUMENSTEIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000932
—————

PETITION FOR WRIT OF CERTIORARI
—————

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ISSUE PRESENTED

Trial counsel erred in misadvising petitioner regarding parole eligibility consequences for drug trafficking offenses because petitioner relied on the misadvice and decided to forego a jury trial in order to plead guilty on a trafficking offense in the case.

STATEMENT

Petitioner Carly Marie Blumenstein pled guilty to trafficking in methamphetamine (28 grams or more), possession with intent to distribute heroin, and two counts of possession of methamphetamine during the January 2020 term of the York County General Sessions Court before Judge Paul M. Burch, who handed down a negotiated aggregate fifteen-year prison term at the sentencing hearing. App. 1-11. Assistant Solicitor Austin Newman appeared on behalf of the state at the guilty plea proceeding, and Attorney Christopher A. Wellborn appeared on petitioner's behalf at that time. Petitioner did not appeal the case.

On November 16, 2020, petitioner filed a PCR application with the York County Office of the Clerk of Court. App. 13-19. The respondent filed a Return in the case dated January 19, 2022. App. 20-32. An Amended PCR application was filed on December 5, 2022. App. 34-35.

On December 9, 2022, a PCR hearing was convened before Judge Walton J. McLeod, IV. App.37-90. Petitioner was present at the PCR hearing and represented by Tommy A. Thomas, Esquire. Assistant Attorney General T. Cruise Mitchell appeared on behalf of the state at the PCR hearing. On April 17, 2023, Judge McLeod signed an Order of Dismissal in the case, which was filed on April 25, 2023. App. 96-110.

Petitioner appealed. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel erred in misadvising petitioner regarding parole eligibility consequences for drug trafficking offenses because petitioner relied on the misadvice and decided to forego a jury trial in order to plead guilty on a trafficking offense in the case.

Drugs were found inside a vehicle in which petitioner was a passenger on January 24, 2019, in York County pursuant to a search after a police traffic stop. App. 8, l.21 – p. 9, l. 23.

During the PCR hearing held in the case, petitioner testified that counsel advised her that trafficking in methamphetamine was classified as a violent offense, but that she would become parole eligible after serving 85 percent of the sentence. Petitioner stated that she relied (to her detriment) on counsel’s parole eligibility misadvice when she decided to plead guilty to the trafficking offense. Petitioner stated that the parole eligibility factor on the trafficking offense that was presented to her by counsel was the reason why she pled guilty to the same. Subsequently, petitioner learned that her inmate status was parole ineligible. Petitioner testified in effect that she would have elected to proceed with a jury trial had she known that she would not have been eligible for parole in her case. App. 47, l. 8 – p.49, l. 10; App. 50, lines 3-7; App. 50, l. 12 – p. 51, l. 5; App. 51, lines 15-24, App. 57, lines 7-25. Petitioner claimed that she was “misinformed” with respect to parole eligibility consequences when she pled guilty in the case and that “this [made] her plea(s) involuntary” in nature. App. 52, lines 7-17.

Trial counsel testified at the hearing and explained that the state’s plea offer was for a fifteen-year sentence, and that he indeed advised petitioner that she was “eighty-five percent eligible” for parole. App. 63, lines 19-21; App. 64, lines 20-21; App. 66, lines 16-24; App. 67, lines 9-25; App. 70, lines 1-2; App.72, lines 15-16; App. 81, l. 25 – p. 82, l.2 However, note state’s exhibit #1 where the solicitor’s e-mail stated “violent, serious, and no parole” in

connection with the trafficking offense in question. App. 92-93. Subsequently, trial counsel stated at the PCR hearing that petitioner's sentencing would end at 85 percent with community supervision. App. 75, l. 5 – p. 76, l. 23. Trial counsel's PCR testimony regarding the matter follows:

Q: So knowing it was a non-parole eligible offense, you're still not sure whether you would have informed her if it was parole eligible or not?

A: I what I rem—you know I would have, yes. I mean, in my mind I would have said that to her. The exact words I said to her is what I'm trying to convey and perhaps in artfully. I cannot remember the exact words I said to her...I did...I did tell her it was an eighty percent in the eighty five percent category.

App. 69, l. 3 – p. 70, l. 2.

At the close of the PCR hearing, PCR counsel argued that it “should have been clear to [counsel] in the email (sent by the solicitor) that [petitioner] was not parole eligible,” and that counsel's remarks were confusing where counsel indicated that “it's not eighty-five percent of parole eligibility, [but] it's eighty-five percent with community [supervision].” App. 83, l. 23 – p. 84, l. 5; App. 84, l. 23 – p. 85, l. 5. PCR counsel added the following during closing comments:

[Counsel] undertook to inform her about parole...[counsel] misconstrued to her what parole meant and that, in essence, she relied upon that...she entered into the plea to her detriment, and it ended up now that she has to serve a substantial amount of more time.

App. 86, lines 10-18.

The PCR judge ruled that counsel was not ineffective in his representation of petitioner with respect to parole eligibility advice because petitioner did not rely on the parole eligibility misinformation since the plea waiver documentation signed stated expressly in writing that the controlling trafficking offense plea was “violent, serious, and no parole.” App. 105 - 109.

Parole eligibility is a collateral consequence of sentencing which a defendant need not specifically be advised of before entering a guilty plea. However, if defense counsel undertakes to advise regarding parole eligibility and gives erroneous advice, and the defendant relies on the erroneous advice, then the plea can be attacked. Smith v. State, 329 SC 280, 494 S.E.2d 626 (1997), Fraiser v. State, 351 S.C. 385, 570 S.E.2d 172 (2002).

The controlling offense (of trafficking in methamphetamine) that petitioner pled to is found under S.C. Code 44-53-375(c)(2)(a) and is categorized as a class A felony under S.C. Ann Code 16-1-90 (2010), which in turn results in its listing as a no parole offense under S.C. Code Ann. 24-13-100 (2010). Also, although S.C. Code Ann. 24-13-150 (2010) allows for early release, discharge, or community supervision after serving 85 percent time; nonetheless, the sentence is not reduced to achieve the 85 percent due to earned work credits, or good time credits, or education credits. In addition, community supervision is a matter connected to the 85 percent service time. See State v. Blakney, 410 S.C. 244, 763 S.E.2d 622 (2014). Presently, petitioner is listed as a no parole inmate per SCDPPP and SCDC records.¹

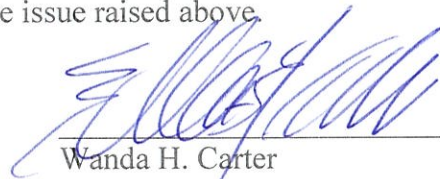
Clearly, petitioner was misinformed regarding parole eligibility, and petitioner certainly relied on the parole eligibility misadvice from counsel when deciding to plead guilty to a trafficking offense in the case. The questions of whether petitioner was 85 percent parole eligible, or whether parole eligibility hinged on community service time, or whether she would ever be parole ineligible had not been resolved prior to the plea proceeding. Moreover, reliance on the documentation signed by petitioner cannot cure counsel's error in giving misadvice to petitioner on the subject of parole eligibility in the case. App. 50, 1.6-18.

¹ As of September 19, 2024, investigations into petitioner's SCDPPP and SCDC records revealed that petitioner's status is currently parole ineligible.

A guilty plea is valid only if a defendant understands the nature and elements of the charge(s), and the rights waived upon pleading guilty, and the consequences of the plea(s). Pittman v. State, 337 S.C. 597, 524 S.E.2d 623(1999). Clearly, petitioner was misadvised by counsel regarding parole eligibility prior to the guilty plea proceeding, which in turn constituted deficient legal representation in violation of the Sixth Amendment and Hill v. Lockhart, 474 U.S. 52 (1985). Furthermore, but for counsel's misadvice regarding parole eligibility, there was a reasonable likelihood that petitioner would have opted for a jury trial on the trafficking charge.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant this petition and allow full briefing on the issue raised above.



Wanda H. Carter
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ATTORNEY FOR PETITIONER

This 18th day of October 2024.