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Dec 17 2024
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable J. Mark Hayes, Circuit Court Judge

JEFFERSON QUINDE QUISHPI,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000617

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in holding trial counsel was not deficient where counsel advised petitioner to plead guilty but mentally ill and such advice was too likely to be misunderstood, did not clearly convey to petitioner that doing so confers no sentencing benefit over an ordinary guilty plea, and led petitioner to plead guilty?

STATEMENT OF THE CASE

On December 17, 2019, petitioner Jefferson Quishpi pleaded guilty before Judge Daniel Hall to murder and possession of a weapon during the commission of a violent crime. App. 1, 37:21-22. He was represented by Christopher Wellborn, and Kevin Brackett and Walter Thompson, Sr. represented the state. App. 1. Judge Hall sentenced him to life in prison for murder and to five years on the weapons charge. App. 78:20-79:1.

Quishpi was born and raised in Ecuador and his primary language is Spanish. App. 15:4-12. He had an interpreter at the plea and PCR hearings. App. 6:12-13, 150. During the plea hearing the court conducted a *Blair* hearing in which the court received evidence that Quishpi hears voices and had attempted suicide multiple times, including at the scene of the crime where he attempted to "eviscerat[e] himself" by stabbing himself in the chest and abdomen. App. 49:2-9, 85. When officers arrived on scene, he refused to stop stabbing himself and "it took that officer tazing him to get him to finally drop the knife." App. 49:2-9.

On February 7, 2020, Quishpi filed his initial application for post-conviction relief. App. 97. He was appointed Michael Lifsey to represent him for PCR, and he filed an amended application on June 22, 2022. App. 113. Quishpi alleged plea counsel was ineffective for failing to advise him properly about the plea. App. 113-14. Quishpi also alleged plea counsel was ineffective for failing to object to the five-year sentence on the weapons charge because that sentence does not apply where the defendant also receives a life sentence. App. 114.

On February 29, 2024, Judge Mark Hayes heard Quishpi's PCR application, where he was represented by Lifsey and Cruise Mitchell represented the state. App. 116. In an order dated April 3, 2024, Judge Hayes granted Quishpi's application in part, vacating the sentence for the weapons charge and denying the application as to the murder plea. App. 150.

ARGUMENT

A defendant seeking post-conviction relief most demonstrate that "counsel's performance was deficient such that it falls below an objective standard of reasonableness" and "there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (citations omitted). The two-pronged approach applies to guilty pleas, and an applicant demonstrates prejudice by showing "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." *Jordan v. State*, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

Quishpi testified at the PCR hearing that trial counsel did not explain to him what it meant to plead guilty but mentally ill or that doing so carried no benefits at sentencing. App. 123:7-14. The trial court erred because plea counsel was ineffective by recommending the GBMI plea at all because it was too likely to cause Quishpi to misunderstand the terms of his plea thus rendering it involuntary. *See* 16 Corpus Juris, *Criminal Law* § 737, at 401 (1918) ("To authorize the acceptance and entry of a plea of guilty . . . the plea must be entirely voluntary. It must not be induced by fear, by misrepresentation, by persuasion, or by the holding out of false hopes, nor be made through inadvertence *or ignorance*." (emphasis added)).

A plea of GBMI confers no sentencing benefit compared to an ordinary guilty plea. S.C. Code Ann. § 17-24-70; *State v. Wilson*, 306 S.C. 498, 502-03, 413 S.E.2d 19, 21-22 (1992). Its only practical function is to require the Department of Corrections to take the defendant for separate evaluation and treatment before placing him with the general population in prison. § 17-24-70; *State v. Hornsby*, 326 S.C. 121, 126-27, 484 S.E.2d 869, 872 (1997). However, to an untrained lay person—especially one like Quishpi with a significant mental health condition and

limited proficiency with the English language—GBMI sounds like a better option, one that presumably has material benefits. But it does not, and counsel did not explain this to Quishpi. By encouraging Quishpi to plea GBMI, counsel was deficient because the most likely result of his advice—as actually occurred—was that Quishpi would erroneously believe he stood to gain by pleading guilty but mentally ill rather than proceeding to trial.

Plea counsel explained at the PCR hearing that he hoped the GBMI plea "would show the judge that this was not somebody who was just, quite frankly, just an angry -- I hate to use the term evil, but just a really nasty situation and that there were mental issues involved and that that might mitigate more towards less than the [plea offer of 50 years]." App. 141:16-21. Even considering the necessary deference and presumption of reasonable assistance, this was not a "sound" strategy, *Stone v. State*, 419 S.C. 370, 384, 798 S.E.2d 561, 568-69 (2017), because that point could be made—and in fact was made—with thorough evidence of Quishpi's mental condition.

During the *Blair* hearing, the plea court heard testimony from Dr. Adriana Flores, a forensic psychologist fluent in Spanish. App. 11:3-13, 14:13-15:3. Dr. Flores reviewed many documents about Quishpi including his medical records and the Department of Mental Health's evaluation finding him competent to stand trial. App. 15:23-16:6. She also reviewed his family background including "very severe physical abuse from his mother" while he was a child in Ecuador, his abandonment by both his parents, and his attempted suicide as a teenager. App. 16:22-18:4. Those experiences caused his post-traumatic stress disorder. App. 17:9-18. She explained that shortly after he came to America and started living with his father, Quishpi's depression worsened and he began cutting himself and again struggled with thoughts of suicide. App. 18:5-15. Dr. Flores diagnosed Quishpi with border-line personality disorder and explained

that "he started hearing voices." App. 18:16-19:2. Those voices "were telling him to harm himself" and "progressed to also tell him to hurt others." App. 19:2-6. Thus, Dr. Flores also diagnosed him with persistent depressive disorder, noting his attempted suicide in the months prior to the charged crime. App. 19:6-13. Quishpi was also scheduled for a mental health appointment the very day of the crime. App. 48:7-24. Given all that evidence already presented in the *Blair* hearing which could have occurred exactly the same prior to trial, there was no need and no benefit in counsel recommending to Quishpi he plead GBMI. Counsel's advice to do so carried too big of a risk and no benefit and, therefore, his performance was deficient.

At the end of his direct examination, Counsel explained the true reason he recommended Quishpi plead guilty:

> [I]t was my suggestion to him . . . that he did not want to go to trial on these facts and this is why: it was clear from the very beginning of this case and certainly as the case went on and the idea that the insanity or potential insanity defense was foreclosed, that there was no viable or ethical or factual bases for me, as an officer of the Court, to present to a Court that he was unable to assist me as counsel in his own defense, that he -- if he went to trial, he would have to go to trial and the facts were, quite frankly, horrendous.

PCR 21:8-17. Counsel's belief that a defendant would be found guilty anyway—that there was no viable defense—is not alone a valid reason to recommend a defendant plead guilty. That reasoning completely upends the role of counsel and turns him into both judge and jury; it entirely undermines the criminal justice system. Particularly given Quishpi's perception that trial counsel only "wanted to process the case and hurry through it," App. 123:17-18, that advice coerced Quishpi into the plea and was deficient. That deficiency prejudiced Quishpi because he testified he would have otherwise proceeded to trial and it makes sense he would have done so given that taking the straight-up plea did not put him in a better position.

CONCLUSION

Petitioner respectfully requests this Court grant his petition for certiorari and allow further briefing on the issue because reasonable counsel would not have advised Quishpi to plead guilty but mentally ill when doing so conferred no benefit. Quishpi had nothing to gain.

Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of December, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jefferson Quinde Quishpi states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge J. Mark Hayes, which was held on Feb. 29, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Jefferson Quinde Quishpi.

Respectfully Submitted,

Jordan Wayburn
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of December, 2024.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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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This 17th day of December, 2024.