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Feb 07 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Walton J. McLeod, IV, Circuit Court Judge

DAESHAUN ALEXANDER FORREST,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000860

JOHNSON PETITION FOR WRIT OF CERTIORARI

JESSICA M. SAXON
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ISSUE PRESENTED

Did the PCR court err in finding that Petitioner's guilty plea was knowingly and voluntarily entered where Petitioner never indicated a desire to plea, was confused during the plea process, and felt strongly that he could have won his case at trial?

STATEMENT OF THE CASE

Petitioner was indicted during the November 2015 term of the Charleston County grand jury for attempted murder, possession of a weapon during the commission of a violent crime and discharging firearms into a dwelling. App. 61-62; App. 67-68; App. 73-74. On October 13, 2017, Petitioner appeared before the Honorable R. Markley Dennis. Petitioner was represented by Melisa Gay. The State was represented by Edward Regin “Ted” Corvey, III. App 1. The hearing was originally scheduled to address the bondsman’s request to come off Petitioner’s bond, along with two motions Counsel Gay had filed regarding that request, but eventually turned into a guilty plea hearing with sentencing deferred to a later date. App. 3-5.

Prior to reciting the facts of the incident, the State informed the plea court that the entire shooting incident was captured on video surveillance. The State alleged that on May 4th, 2015, Shatario Copeland¹ was staying in North Charleston at the Stayover Lodge Hotel. Petitioner called Copeland that day and was upset as the two appeared to discuss a dispute over money. Approximately an hour-and-a-half to two hours after the call an individual the State believed to be Petitioner is seen entering the front door of the hotel in dark clothing and distinctive pants. That person is seen tying a bandana around his face before proceeding to Copeland’s room. Once at the room the person takes out a revolver and fires twice through the window into the room before the gun jams. The person un-jams the gun and then fires twice more into the room before retreating off-camera. App. 21, l. 2-App. 22, l. 3.

During the hearing Petitioner entered standard guilty pleas to the weapons charge and discharging firearms into a dwelling. He pled to the attempted murder charge pursuant to North

¹ Copeland was Petitioner’s uncle-in-law and was familiar with Petitioner. Copeland told police that he knew it was Petitioner who shot at him based on Petitioner’s voice as well as his hairstyle and clothing in the video. App.

Carolina v. Alford.² Judge Dennis informed Petitioner of each charge against him and the possible penalties. App. 8, l. 6-App.10, l. 24. He confirmed that Petitioner was satisfied with Counsel Gay, that Counsel Gay had fully investigated the case, and that she had shared the results of the investigation with Petitioner. App. 13, l. 24-App. 15, l. 25. Judge Dennis reviewed the constitutionally protected rights Petitioner would be waiving by entering a guilty plea and ensured that Petitioner was not under the influence of any substances, or acting under threat or promise to plead guilty. App. 16, l. 1-App. 20, l. 19. Judge Dennis accepted Petitioner's guilty pleas³ and deferred sentencing until the following week. App. 27, ll. 12-13. The parties reconvened before Judge Dennis for sentencing on October 18, 2017. App. 29. Judge Dennis sentenced Petitioner to five years on the weapons charge, ten years on the discharging firearms into a dwelling charge, and thirty years provided upon the service of eighteen years on the attempted murder charge. Petitioner was given two and a half years of pre-trial credit. App. 56, l. 4-App. 57, l. 24; App. 60; App. 66; App. 72.

A notice of appeal was filed on Petitioner's behalf but the appeal was dismissed for failure to provide a sufficient explanation pursuant to Rule 203(d)(1)(B)(iv). The remittitur was issued on May 18, 2018. Petitioner filed the present PCR application on November 13, 2020, alleging ineffective assistant of counsel and an involuntary guilty plea. App. 79-90. The State filed a return and motion to dismiss for failure to comply with the statute of limitations on October 29, 2021. App. 91-99. On December 6, 2021, the Honorable Roger M. Young, Sr., signed a conditional order of dismissal finding that Petitioner had failed to timely file his PCR application. App. 100-106. PCR Counsel Tommy Thomas filed a reply to the conditional order

² 400 U.S. 25 (1970).

³ Judge Dennis initially declined to take the plea. App. 22, l. 9-App. 23, l. 11.

of dismissal on December 20, 2021. Counsel Thomas argued that Petitioner was entitled to equitable tolling based on an investigation by Tricia Blanchett which discovered that Petitioner had hired William Thrower to timely file his PCR application, but Thrower had passed away prior to working on or filing the application. App. 107-116. On November 4, 2022, a hearing on the State’s motion to dismiss was held before the Honorable Diane S. Goodstein via WebEx. App. 117. Judge Goodstein determined that Petitioner was entitled to equitable tolling of the statute of limitations and issued a written order to that effect on May 25, 2023. App. 137, l. 18-App. 144, l. 20; App. 148-152.

On March 12, 2024, an evidentiary hearing was convened before the Honorable Walton J. McLeod, IV. App. 153. Petitioner was represented by Counsel Thomas. The State was represented by Bryan Hall. App. 153. Petitioner testified that Counsel Gay was hired approximately ninety days before the plea, that he met with her once during that time, and only spoke with her seventy-two hours before his trial.⁴ App. 161, l. 2-App. 162, l. 7. Petitioner testified that he only saw the videos and statements seventy-two hours prior to trial and saw one of the “main videos” on the day of his plea. App. 162, ll. 19-23. The “main video” showed the shooter prior to placing the bandana on his face, but Petitioner stated that it was not him in the video. App. 165, l. 13-App. 166, l. 12.

Petitioner maintained he never told Counsel Gay that he wanted to enter a plea and that Counsel Gay conducted plea negotiations with Charleston County and two other counties where he had pending charges without first speaking to him. App. 160, l. 21-App. 161, l. 1; App. 163, ll. 7-13; App. 167, ll. 9-16. He stated plea negotiations only came up because Sumter County was willing to run any sentence he would receive concurrent to the Charleston County charges

⁴ Petitioner’s case was first up for trial the upcoming Monday. App. 23, ll. 9-16.

which would avoid the possibility of Sumter serving him with life without parole notice. App. 166, l. 13-App. 167, l. 4. He believed he was pleading for a range of zero to twenty years and did not realize his highest sentencing exposure was thirty years. He also did not understand what the Alford plea procedure really meant. App. 169, ll. 2-24. Petitioner testified that he pled guilty because he was scared. He did not want to plead because he “strongly felt” that he could have beaten his charges at trial. App. 172, ll. 1-13. He testified that Counsel Gay pressured him into the plea and gave him no other option. App. 173, ll. 5-13.

On cross-examination Petitioner again stated that it was not him on the video. App. 177, ll. 12-19. He confirmed that Counsel Gay told him it was in his best interest to plead guilty to avoid facing life without parole on his other charges and he conceded that he ultimately made the decision to enter the plea. Petitioner stated that he could not dispute what was in the plea transcript but clarified that he was “in a fog the whole time” and did not understand anything that was occurring on the day of the plea. App. 178, ll. 3-App. 179, l. 4. On redirect examination, Petitioner stated that he did not want to enter the plea. App. 182, ll. 23-25.

Veronica Forrest, Petitioner’s mother, testified that she was in the room with Petitioner, Counsel Gay, and Petitioner’s girlfriend Desiree when they viewed the video of the person without the bandana around his face. She testified that she thought the video would hurt Petitioner, even though she did not believe it was Petitioner in the video. She also testified that she did not want Petitioner to accept the plea because they were supposed to be going to trial. App. 183, l. 21-App. 187, l. 22. Ms. Forrest stated that Petitioner was not in his right mind during the plea, that he was emotional, very confused, and did not have enough time to make a rational decision. App. 188, l. 1-App. 190, l. 12. On cross-examination she testified that after

Counsel Gay “drilled” them with the information about a possible life sentence, she told Petitioner to take the plea. App. 193, ll. 3-8.

Counsel Gay testified that although she had not been on the case for very long, she had met with Petitioner enough to have gone over the issues in his case. She confirmed she discussed the possibility of Petitioner facing life without parole in other counties if he went to trial on the Charleston charges. App. 199, l. 19-App. 201, l. 6. She testified that Petitioner’s family identified the person in the video as him prior to the plea. App. 202, l. 10-App. 203, l. 8; App. 209, ll. 4-8. Counsel Gay testified that she explained an Alford plea to Petitioner and that the benefit of the plea was that the solicitor’s in the other counties had agreed to run any sentences concurrently to the Charleston charge which meant he would avoid a life sentence. App. 205, ll. 13-25. During cross-examination Counsel Gay testified that she was prepared to go to trial, but after she saw the video of the shooter without a bandana on she told Petitioner that, in her professional opinion, a jury would find him guilty. She explained that a plea was in his best interest and the plea was set up so that Petitioner could say he was not guilty, still enter a plea, and avoid a life sentence in his other pending criminal case. App. 210, ll. 4-21; App. 222, l. 7-App. 223, l. 5.

The PCR court took the matter under advisement. App. 233, l. 25-App. 234, l. 1. An order of dismissal was filed on May 9, 2024, finding that Petitioner had not met his burden of proof to show that his plea was involuntary or that Counsel Gay was ineffective. The Court also found that Petitioner could not establish the requisite prejudice. App. 236-246.

ARGUMENT

The PCR court erred in finding that Petitioner's guilty plea was knowingly and voluntarily entered where Petitioner never indicated a desire to plea, was confused during the plea process, and felt strongly that he could have won his case at trial.

“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).

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 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 pled 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. Lecke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Counsel Gay had been retained on the case roughly ninety days before it was scheduled for trial. She and Petitioner had prepared the case for trial and Petitioner was first up for trial that next Monday. Petitioner had never expressed a desire to enter a plea or have Counsel Gay negotiate a plea on his behalf. He wanted to try his case before a jury of his peers. When he showed up to court for a bond hearing he was instead ambushed with a plea offer and told to plead to avoid the possibility of receiving a life sentence in the future. Petitioner’s unease with the plea can be seen in the numerous pauses in the transcript, along with Judge Dennis’ initial refusal to accept the plea. Petitioner testified that he was confused and emotional during the plea hearing. His mother also testified that Petitioner was not emotionally stable during the plea and was not able to make a rational decision. The testimony of Petitioner and his mother, along with the plea transcript, corroborate Petitioner’s claim that he was not acting rationally, knowingly, and voluntarily during the plea.

Counsel Gay, on the eve of trial, rushed Petitioner into a plea that he did not understand and did not want. Petitioner wanted to go to trial, as evidenced by the testimony of everyone during the PCR hearing. It was only Counsel Gay’s insistence that he would likely receive life without parole notice in another county that induced his plea. Thus, his plea was not knowingly and voluntarily entered.

CONCLUSION

Based on the foregoing 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 7th day of February, 2025.

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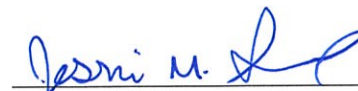
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PETITION TO BE RELIEVED AS COUNSEL
—————

Counsel for Daeshaun Alexander Forrest 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 before Judge Walton J. McLeod, IV, which was held on March 12, 2024, 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 Daeshaun Alexander Forrest.

Respectfully Submitted,



—————
Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of February, 2025.

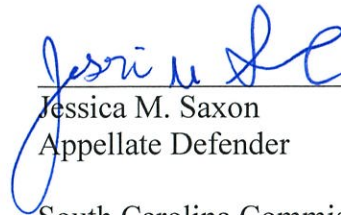
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CERTIFICATE OF COUNSEL

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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This 7th day of February, 2025.