

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Kershaw County
Honorable D. Craig Brown, Circuit Court Judge
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Honorable Daniel McLeod Coble, Circuit Court Judge

ALONZO TARELL JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000158

PETITION FOR WRIT OF CERTIORARI PURSUANT AUSTIN V. STATE

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ISSUES PRESENTED

1. Whether the circuit court erred concluding petitioner's PCR hearing was reconstructed where the record as reconstructed prevents meaningful appellate review because the only witness available at the reconstruction was the former assistant attorney general and the reconstruction hearing was nearly ten years after the PCR hearing?

2. If this Court determines the record has been reconstructed to permit meaningful review, whether the limited record available demonstrates the PCR judge erred denying petitioner relief where petitioner's guilty plea was involuntary because he was unaware the conviction would trigger a federal prosecution?

STATEMENT

On February 20, 2013, a Kershaw County grand jury indicted petitioner for unlawful carrying of a pistol. App. 157-158. On April 9, 2013, petitioner waived indictment for the offense of resisting arrest and pled guilty to both unlawful carrying of a pistol and resisting arrest before the Honorable Deandrea G. Benjamin. App. 1-12; 9, ll. 1-4; 159-160. Cornelius J. Riley represented petitioner, and deputy solicitor Brett Perry prosecuted for the state. App. 1. Judge Benjamin sentenced petitioner to concurrent terms of one year imprisonment, suspended to six months of probation. App. 11, l. 25—12, l. 4; 161-162.

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 14-21. On July 16, 2015, an evidentiary hearing was held before the Honorable G. Thomas Cooper, Jr. Petitioner was not present at the hearing. Ronald Moak represented petitioner. J. Clayton Mitchell, former assistant attorney general, represented the state. App. 29. On December 3, 2015, Judge Cooper signed an order denying PCR. No appeal was taken from this order. App. 29-35.

On March 15, 2017, petitioner filed an application for PCR alleging previous PCR counsel, Mr. Moak, failed to file an appeal from the denial of his PCR application. App. 37-38. Almost five years later, on January 24, 2022, the Honorable D. Craig Brown held a hearing on the matter. App. 76-106. Michael Lifsey represented petitioner and Michael Davidson represented the state. App. 76. Without objection from the state, Judge Brown granted petitioner a belated appeal of his 2015 PCR action on January 31, 2022. App. 107-110.

During preparation for petitioner's belated appeal, undersigned counsel learned the transcript from his July 16, 2015, evidentiary hearing was no longer available. Undersigned counsel filed a petition to reconstruct the record of petitioner's 2015 PCR hearing. App. 111-

116. By order dated August 23, 2022, this Court granted the petition and ordered the parties reconstruct the hearing. The order provided for the circuit court to determine whether the hearing could be reconstructed. If determined reconstruction were not possible, then the circuit court was directed to notify this Court. In the alternative, if the court found reconstruction were possible, then the matter would proceed upon petitioner's receipt of the transcript. App. 118-119.

On December 17, 2024, petitioner appeared via Webex before the Honorable Daniel Coble to reconstruct the record of his July 16, 2015, hearing. Undersigned counsel represented petitioner, and Russ Barlow appeared on behalf of the state. App. 126. At the conclusion of the reconstruction hearing Judge Coble took the matter under advisement. App. 144, ll. 3-5. On February 21, 2025, Judge Coble signed an order holding the PCR evidentiary hearing was adequately reconstructed. App. 148-156.

Petitioner now files this petition for writ of certiorari pursuant to *Austin* concerning Judge Coble's finding the record was reconstructed and the denial of relief.

ARGUMENT

1. The circuit court erred concluding petitioner’s PCR hearing was reconstructed where the record as reconstructed prevents meaningful appellate review because the only witness available at the reconstruction was the former assistant attorney general and the reconstruction hearing was nearly ten years after the PCR hearing.

Petitioner’s reconstruction hearing was held in December 2024, nearly ten years after his original PCR hearing. Only one witness, former assistant attorney general Clayton Mitchell, was present to testify at the hearing. Petitioner’s former plea counsel, Cornelius Riley, who was the only witness called at the 2015 PCR hearing was deceased. App. 125, ll. 16-18. Additionally, petitioner’s former PCR counsel, Ronald Moak had been suspended from the practice of law in 2018 and was unavailable to participate in petitioner’s reconstruction hearing according to the attorney for the state. App. 124, l. 24—125, l. 24. Counsel for petitioner told the court petitioner wanted to go forward with the hearing but acknowledged that because of the length of time and the unavailability of either Mr. Riley or Mr. Moak it would be difficult to reconstruct the 2015 hearing. App. 126, l. 24—127, l. 20.

Mr. Mitchell testified that he recalled the hearing and “took pretty detailed notes.” App. 131, ll. 19-25. Mitchell told the court that he would have given a brief opening and noted petitioner was not present on the day of the hearing and the matter went forward without testimony from petitioner. App. 132, ll. 1-8. He stated that Mr. Moak called plea counsel Riley and then Mitchell read through his notes.¹ App. 132, ll. 9-12.

As to the allegation regarding the federal prosecution of petitioner, Mitchell stated Mr. Moak argued that had petitioner been aware he could be subject to federal prosecution he would

¹ Mr. Mitchell’s notes were made exhibit 1 and are included in the appendix for the Court. App. 146-147.

not have pled guilty. App. 134, l. 19—135, l. 14. Mr. Mitchell testified petitioner’s plea counsel, Mr. Riley, did not know that there was a federal prosecution and was therefore unable to inform petitioner of that prior to his guilty plea. App. 132, ll. 18-21; 135, ll. 1-8. Mitchell remembered Mr. Riley testified he did not believe “this sort of incident would draw the attention of federal authorities, and therefore, had no reason to consider it.” App. 135, ll. 9-13.

Regarding the allegation that plea counsel was ineffective for failure to investigate Mr. Mitchell claimed plea counsel’s testimony was “he did not check the gun, not check for the gun.” App. 132, ll. 22-25. Mitchell went on to say that plea counsel testified there was no dispute regarding whether a gun was present, and that petitioner had been eager to plead guilty and was happy with his sentence. App. 133, ll. 2-7; 134, ll. 15-18.

Mr. Mitchell did not recall the PCR court ruling from the bench but stated that the order denying PCR reflected that happened. App. 135, l. 19—136, l. 3.

At the conclusion of the hearing undersigned counsel argued while Mr. Mitchell may have a good memory over nine years was a very long time, and most of us could be subject to forgetting after that length of time. Additionally, in fairness to petitioner, meaningful appellate review with only the former assistant attorney general as a witness is impossible citing *State v. Ladson*² in support. App. 139, l. 19—140, l. 6.

Counsel for the state agreed but contended that because of the issues raised there was plenty for an appellate court to review. App. 140, ll. 9-18.

The South Carolina Court of Appeals concluded that a reconstructed record must allow for ““meaningful appellate review.”” Thus, a new trial is “appropriate if the appellant establishes that ‘the incomplete nature of the transcript prevents the appellate court from conducting a

² 373 S.C. 320, 644 S.E.2d 271 (2007).

meaningful appellate review.” *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (2007)(quoting *In re D.W.*, 615 S.E.2d 90, 94 (2005)).

In *Ladson*, the Court of Appeals determined the reconstructed record did not allow for meaningful review. *Id.* at 325-326, 644 S.E.2d at 274. Importantly, the court noted the reconstruction occurred “more than a year after Ladson was convicted and sentenced.” *Id.* at 326, 644 S.E.2d at 274. Repeatedly, the court remarked reconstructing the trial “would be an uphill battle” based upon the substantial delay between the original trial and the reconstruction hearing. *Id.* at 321-322, 644 S.E.2d at 271-272; *Id.* at 321 n.1, 644 S.E.2d at 271 n.1(stating “it was obviously quite difficult to reconstruct the record” in light of the passage of a year since the trial).

In light of the respective workloads, the court found “[i]t is simply unrealistic and unreasonable to think that a trial judge and counsel can – under these circumstances – reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules.” *Id.* at 326, 644 S.E.2d at 274. The court described the trial court and counsel as “groping in the dark as to what actually happened at trial.” *Id.* The reconstructed record consisted of “conclusory” information provided by the state as evidenced by the witnesses testifying in generalities and summaries. *Id.* at 322, 644 S.E.2d at 272. Additionally, the court noted discrepancies among the witnesses regarding whether a witness was qualified as an expert, whether particular individuals testified, including the defendant, whether the jury returned its verdict the same day it began deliberating, and whether objections to evidence had been made. *Id.* at 322-323, 644 S.E.2d at 22.

The record before this Court as reconstructed does not allow for meaningful appellate review of petitioner’s 2015 evidentiary hearing. Significantly, the reconstruction was held at the

end of 2024, almost ten years after the July 2015 evidentiary hearing. Importantly, the only witness who testified at petitioner's 2015 evidentiary hearing plea counsel, Cornelius Riley, was deceased and therefore unavailable to testify at the reconstruction hearing. Petitioner was not present at his 2015 hearing and could offer no recollection of the hearing. Petitioner's former PCR counsel, Mr. Moak, was unavailable for the 2024 reconstruction hearing. Although it is likely Moak would not have offered much because even at the 2022 hearing concerning belated review Moak admitted he did not recall some of what occurred at the 2015 hearing. App. 99, ll. 15-20. Former assistant attorney general, Mr. Mitchell, seemingly had a good recollection of the hearing and he provided his notes from the hearing. However, Mr. Mitchell's testimony and less than two pages of notes cannot be enough to provide meaningful appellate review for petitioner.

2. If this Court determines the record has been reconstructed to permit meaningful review, the limited record available demonstrates the PCR judge erred denying petitioner relief where petitioner's guilty plea was involuntary because petitioner was unaware the conviction would trigger a federal prosecution.

A two-prong test for determining effective assistance of counsel has been set forth by the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). First, a defendant must show that counsel's performance was deficient. Under this prong, "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." 466 U.S. at 688. The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). To prove trial counsel's performance was deficient, an applicant must show "counsel's representation fell below an

objective standard of reasonableness.” *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.” *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

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 from the record of the PCR hearing. *Id.*

The Supreme Court of South Carolina has considered the requirements of a voluntary and

knowing guilty plea previously, including in the following cases.

In *State v. Hazel*, the Court held defendant's guilty plea was not knowing and therefore invalid because it was made without an understanding of the sentencing consequences. 275 S.C. 392, 271 S.E.2d 602 (1980). In that case neither defense counsel nor the plea court made defendant aware of the mandatory punishment for the offense they pled guilty to. *Id.*

In *Dover v. State*, the Court affirmed the lower court's grant of PCR, holding defendant's guilty plea was not voluntarily and understandingly made where defendant was not made aware of the consequences of his guilty plea.³ 304 S.C. 433, 405 S.E.2d 391 (1991). In that case the defendant pled guilty to twenty-nine indictments including grand larceny, burglary, second degree burglary and petit larceny and was given an aggregate sentence of twenty-five years' imprisonment. *Id.* at 434, 405 S.E.2d at 392. In that case the Court found defendant's plea was not voluntarily and understandingly made where defendant did not have a full understanding of the consequences of his plea where it was not established that defendant understood the severity of the crimes or the sentences they carried. *Id.* The Court analogized *Dover* to *Hazel* where the defendant was not made aware that her charges carried a mandatory life sentence.

In *Harres v. Leeke*, the Court reversed the lower court's grant of PCR and held defendants' guilty pleas were voluntary and knowing. 282 S.C. 131, 318 S.E.2d 360 (1984). In that case two defendants pled guilty to exhibiting obscene films and were sentenced. *Id.* at 132, 318 S.E.2d at 360. At the PCR hearing defendants testified it was their belief the plea court would sentence them to probation, and they were instead sentenced to active time. Based on the defendants' testimony during the plea hearing and their testimonies during the PCR hearing the Court found the guilty pleas were knowing and voluntary. *Id.* at 133, 318 S.E.2d at 361.

³ The Court disagreed with the lower court's reasoning and affirmed the result on other grounds appearing in the record.

Unlike *Harres v. Leeke*, petitioner is *not* alleging he was promised a particular sentence if he pled guilty. He understood the range the state offered. However, petitioner was not aware that his guilty plea would trigger a federal investigation, and alleged counsel knew of this and failed to warn him so that petitioner could make an informed decision regarding the state's offer to plead guilty. App. 96, l. 25—97, l. 12.

In *Rollinson v. State*, the Court reversed the lower court's grant of PCR and held (1) counsel was not ineffective for failure to challenge the legality of a weapons frisk that led to discovery of drugs and (2) counsel was not ineffective in allowing defendant to plead guilty to both first and second offense drug charges. 346 S.C. 506, 507, 552 S.E.2d 290 (2001). In that case defendant pled guilty pursuant to a negotiated agreement to possession of crack cocaine possession with intent to distribute crack cocaine second offense and carrying a pistol. *Id.*

At PCR the lower court found counsel was ineffective in allowing defendant to plead to second offense possession with intent to distribute at the same time he was pleading guilty to his first drug offense. *Id.* at 510, 552 S.E.2d at 292. The Court disagreed finding he “knowingly intelligently, and voluntarily agreed to plead guilty to both as part of a plea bargain where the state dropped three other drug charges. *Id.* The Court found there was a sufficient factual basis presented for both charges reasoning “[a]ll that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” *Id.* at 511, 552 S.E.2d at 292.

In *Sellner v. State*, the Court reversed the PCR court's denial of relief, granted defendant a new trial, and held defense counsel's advice to defendant that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counsel's

performance deficient. 461 S.C. 606, 607, 787 S.E.2d 525 (2016). In that case defendant was charged with armed robbery and as a result of prior convictions was subject to a sentence of life imprisonment without the possibility of parole. *Id.* at 608, 787 S.E.2d. at 526. At PCR counsel testified there was no evidence that defendant had a gun during the robbery or that he made any representation of a weapon. *Id.* at 609, 787 S.E.2d at 527. The Court found “counsel’s advice to [defendant] that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counsel’s performance deficient and the PCR court erred in finding [] counsel effective. *Id.* at 612, 787 S.E.2d at 528.

Petitioner did not have information that would have been crucial to his determination whether to continue to trial or plead guilty. Counsel’s advice to plead guilty knowing petitioner would be implicated in a federal prosecution was deficient performance.

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. *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 they are waiving. *Id.* 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.

In addition to the requirements of *Boykin*, 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. *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “Any defects in the information conveyed by defense counsel can be cured by information provided at the guilty plea proceeding. *Rollinson v.*

State, 346 S.C. 506, 513, 552 S.E.2d 290, 293 (2001) (citing *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415, (1998)). “The knowing and voluntary nature of the plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant’s counsel or both.’” *Id.* (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

“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, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). The two-part test also “applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial.” *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

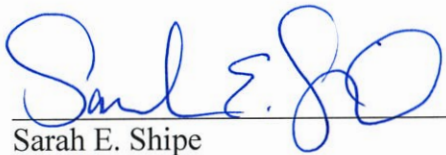
In addressing the adequacy of a PCR applicant's guilty plea, it is proper to consider both the guilty plea transcript, and the evidence presented at the PCR hearing. *Id.* at 573, 713 S.E.2d at 615 (citing *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007)). “[T]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). *Sellner v. State*, 416 S.C. 606, 610–11, 787 S.E.2d 525, 527 (2016)

The PCR court erred finding counsel was not ineffective, and petitioner’s guilty plea was voluntary where it was unreasonable for defense counsel to advise petitioner to plead guilty

knowing he could be implicated in a federal prosecution.

CONCLUSION

As to the first issue, petitioner requests this Court find the circuit court erred in determining the record had been reconstructed to permit meaningful review. Thus, petitioner respectfully requests this Court remand the matter for a new evidentiary hearing concerning his allegations of PCR. As to the second issue, petitioner requests this Court reverse the decision of the circuit court and reverse his convictions and sentences and remand for a new trial.



Sarah E. Shipe
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This 24th day of March, 2025.