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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable R. Kirk Griffin, Circuit Court Judge

ALEXANDER REID,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000439

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 when trial counsel incorrectly advised Petitioner that he would be able to appeal the trial court's denial of his pretrial motions to suppress despite pleading guilty, and where Petitioner was prejudiced because if he would have known he could not appeal the pretrial rulings, he would have rejected the state's favorable plea offer and proceeded to trial, which was scheduled to begin the day Petitioner pled?

STATEMENT OF THE CASE

On September 11, 2015, law enforcement executed a search warrant at a residence in Mount Pleasant connected to Petitioner. During the search, officers found "just under one hundred fifty grams of cocaine, just under two grams of cocaine base, along with other items for packaging, weighing, cutting, and things like that for narcotics packaging and sales." App. 111, l. 17 – 112, l. 3. During "surveillance" the day the warrant was executed, officers also observed two children coming in and out of the residence and there were children's toys in close proximity to where the drugs were found. App. 112, ll. 4-8.

A Charleston County grand jury indicted Petitioner in March 2016 for trafficking cocaine, one hundred grams or more, and two counts of unlawful conduct towards a child, and in September 2017 for possession with intent to distribute cocaine base. App. 231-238. On October 12, 2017, days before Petitioner's case was scheduled for trial, a pretrial hearing was held before the Honorable R. Markley Dennis, Jr. App. 1. Assistant Solicitors Stephanie Linder and Charles Patrick represented the state. Aaron Mayer represented Petitioner. App. 1. During the hearing, Judge Dennis heard Petitioner's motion to suppress his various statements to law enforcement pursuant to Jackson v. Denno, 378 U.S. 368 (1964), as well as Petitioner's motion to suppress the drug evidence pursuant to the Fourth Amendment on grounds that the affidavit in support of the search warrant did not support a finding of probable cause.

At the conclusion of the hearing, Judge Dennis found Petitioner's statements were admissible and further denied Petitioner's motion to suppress the drug evidence concluding the search warrant was supported by probable cause. App. 85, l. 5 – 92, l. 25.

On October 16, 2017, the day Petitioner's case was scheduled for trial, Petitioner pled guilty to the lesser included offense of trafficking cocaine, twenty-eight grams but less than one

hundred grams, second offense. Petitioner also pled pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to possession with intent to distribute cocaine base, and two counts of unlawful conduct towards a child. In exchange for Petitioner's plea to the above offenses, the state dismissed "three firearm changes" and "two proximities" as well as unrelated charges from a separate arrest. App. 97, ll. 18-23. The state also recommended a sentence of twenty years' imprisonment. App. 97, l. 24 – 98, l. 2.

At the conclusion of the plea proceeding, Judge Dennis sentenced Petitioner to twenty years for trafficking cocaine, twenty years for possession with intent to distribute cocaine base, and ten years for each count of unlawful conduct towards a child to be served concurrently. App. 118, l. 15 – 119, l. 2.

On October 23, 2017, Petitioner's trial counsel, Aaron Mayer, filed a timely notice of appeal on Petitioner's behalf, indicating Petitioner "appeals . . . from the guilty plea entered on October 16, 2017 *and the rulings of the prior motions from the hearing held on October 12, 2017*." App. 136 (emphasis added). The following day, the Court of Appeals wrote to Mayer requesting Mayer file an explanation pursuant to Rule 203(d)(1)(B)(iv), SCACR. App. 138-139. On November 3, 2017, Mayer filed an explanation asserting there were "issues which *can* be reviewed on appeal," including a motion to suppress an illegal automobile stop and search, a motion to obtain the name of a confidential informant, and a motion to suppress a search of a residence. Mayer indicated the motion to "suppress the search of the residence where cocaine was found" was "clearly dispositive" since the "search was the only way the authorities would have encountered the cocaine." App. 140-142 (emphasis added).

On March 19, 2018, Petitioner's appellate counsel, Wanda Carter, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing the trial judge erred by accepting

Petitioner's guilty plea because Petitioner "was not advised that he would waive his right to cross-examine his accusers by pleading guilty." App. 143-152. On January 4, 2019, the Court of Appeals dismissed Petitioner's appeal after a review pursuant to Anders. App. 153-154.

On January 24, 2019, Petitioner filed an application for post-conviction relief (PCR). App. 155-161. The state filed a return to this application on April 1, 2019. App. 162-169. An evidentiary hearing was convened on November 20, 2019, before the Honorable Robert E. Hood. App. 201. Assistant Attorney General Benjamin Limbaugh represented the state. Christopher L. Murphy represented Petitioner. App. 201.

PCR counsel explained at the beginning of the hearing that Petitioner's only claim was an "involuntary plea" because Petitioner did not understand "what his rights were in terms of the appeal" when he pled guilty. App. 205, ll. 12-24. Petitioner testified that trial counsel filed a motion to suppress the drugs found in the residence arguing there was not probable cause to support the search warrant as well as a motion to suppress Petitioner's statement to law enforcement where he claimed ownership of the drugs. Petitioner explained that a hearing was held on these motions, but the trial court ruled against him on both. This pretrial hearing and the adverse rulings occurred on the Friday before Petitioner's case was scheduled for trial. App. 210, l. 1 – 211, l. 24.

That Sunday, on the eve of trial, trial counsel told Petitioner the state was willing to recommend a sentence of twenty years imprisonment if Petitioner pled guilty. Petitioner testified that he told trial counsel he did not want to accept the offer and did not want to plead guilty. However, counsel advised Petitioner that he "would never see the street again" if he did not plead guilty and that accepting the offer was "the best thing to do." Counsel further told Petitioner he would "just appeal it" after Petitioner pled. Petitioner understood this to mean that

counsel would appeal both the sentence Petitioner received as well as the denial of his pretrial motions to suppress the drugs and his statements. App. 212, l. 3 – 213, l. 23.

Petitioner testified that he did not know that by pleading guilty he waived the right to challenge the pretrial rulings on appeal. Trial counsel did not explain to Petitioner that the only way to appeal the suppression motions was to go through with the trial. Had Petitioner known that the only way to preserve his motions to suppress was to proceed to trial, Petitioner "would have went to trial." App. 214, l. 6 – 215, l. 24.

At the conclusion of Petitioner's testimony at the evidentiary hearing, Judge Hood agreed to leave the record open for ninety days to allow the state additional time to locate Petitioner's trial counsel, Aaron Mayer, who had been disbarred and was not cooperating with the state. App. 219, l. 23 – 224, l. 4.

A second evidentiary hearing was held on April 19, 2023, before the Honorable R. Kirk Griffin. App. 181. Assistant Attorney General Danielle Dixon represented the state. Christopher L. Murphy represented Petitioner. App. 181. At the beginning of the hearing, the attorney general explained that a previous evidentiary hearing was held before Judge Hood and that Judge Hood left the record open at that time to allow the state additional time to locate Aaron Mayer, Petitioner's trial counsel. Judge Griffin marked the transcript of this previous hearing as Court's Exhibit No. 1. App. 184, l. 6 – 185, l. 10. The judge stated he would be "happy to review the transcript." App. 188, l. 22.

PCR counsel explained that Petitioner's only claim was that his plea was not knowingly and voluntarily made because Petitioner mistakenly believed that his plea was conditional and that he would still be able to appeal the denial of his motions to suppress despite pleading guilty. App. 185, l. 12 – 186, l. 1.

Aaron Mayer, Petitioner's trial counsel, testified that he was retained to represent Petitioner. Mayer testified that he did not practice a lot of "criminal defense" and did not have "a lot of familiarity with the appeals process." His understanding was that "if a defendant pled, then they would have much less ability to seek relief through an appeal." App. 190, l. 25 – 191, l. 12. Given the passage of time, Mayer did not recall whether he discussed an appeal with Petitioner. App. 191, ll. 17-18.

Mayer was unsure whether he had ever heard the term "conditional plea" before. He did not know that a conditional plea was accepted in federal court but not in state court. App. 192, ll. 14-25. He did not recall whether he had ever discussed a "conditional plea" with Petitioner. If he did, Mayer did not think he would have used that "phraseology." All he could recall was that he felt "strongly that the suppression hearing was really our best chance, and . . . upon losing that I felt like I had a real fear for him [being sentenced to] LWOP [life without parole]." App. 193, ll. 17-23.

PCR counsel then called Petitioner to testify in "rebuttal." Petitioner testified that he "didn't really know too much about the law" and was led to believe that if he pled guilty, he could appeal the denial of his motions to suppress. App. 194, l. 3 – 195, l. 19.

By order filed March 3, 2025, the PCR court denied Petitioner relief. App. 226-230. The court found trial counsel "credibly testified that at the time of the plea, he understood it was very difficult to appeal a guilty plea." The court determined that Petitioner "did not prove his belief that he could appeal the suppression hearing was based on any deficient advice." As far as prejudice, the court found Petitioner did not show a reasonable probability that he would have rejected the state's offer to plead guilty and proceeded to trial had he known he could not appeal the denial of his motion to suppress. App. 229.

Because Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to trial counsel's incorrect advice that Petitioner would be able to appeal the trial court's denial of his pretrial motions to suppress despite pleading guilty, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when trial counsel incorrectly advised Petitioner that he would be able to appeal the trial court's denial of his pretrial motions to suppress despite pleading guilty, and where Petitioner was prejudiced because if he would have known he could not appeal the pretrial rulings, he would have rejected the state's favorable plea offer and proceeded to trial, which was scheduled to begin the day Petitioner pled.

It is apparent from the record that trial counsel did not know that South Carolina does not allow conditional guilty pleas and that by pleading guilty, a defendant waives the right to appeal any pretrial rulings. See State v. Rice, 401 S.C. 330, 331, 737 S.E.2d 485, 485 (2013) ("South Carolina does not recognize conditional guilty pleas. Rather, in South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights."). In the Rule 203(d)(1)(B)(iv), SCACR, explanation, which accompanied Petitioner's notice of appeal, counsel asserted there were "issues which *can* be reviewed on appeal," including a motion to suppress an illegal automobile stop and search, a motion to obtain the name of a confidential informant, and a motion to suppress a search of a residence. App. 140 (emphasis added).

During his testimony at Petitioner's PCR hearing, counsel admitted he did not know what a conditional plea was nor whether conditional guilty pleas were accepted in South Carolina. All counsel knew "was that if he pled, if a defendant pled, then they would have much less ability to seek relief through an appeal." App. 190, l. 25 – 192, l. 25.

Petitioner consistently maintained his desire to proceed to trial. His case was scheduled for trial the week of October 16, 2017. The Thursday before, the trial court held a hearing to

address Petitioner's numerous pretrial motions, including his motion to suppress the drug evidence pursuant to the Fourth Amendment and his motion to suppress his statements to law enforcement pursuant to Jackson v. Denno, 378 U.S. 368 (1964). At the conclusion of the hearing, the court denied all of Petitioner's motions. Over the weekend, trial counsel informed Petitioner of the state's new favorable plea offer. Petitioner did not want to accept the offer, but counsel advised Petitioner to do so and afterward he would "just appeal it." See App. 212, l. 3 – 213, l. 23. Petitioner understood this to mean that Petitioner could appeal both the denial of his pretrial motions and whatever sentence he received. See App. 213, ll. 11-23. Petitioner's understanding is consistent with what counsel believed as evidenced by the language of the notice of appeal counsel filed indicating Petitioner appealed from his guilty plea and "the rulings of the prior motions from the hearing held on October 12, 2017" as well as the Rule 203(d)(1)(B)(iv), SCACR, explanation counsel filed stating there were issues that could be reviewed on appeal, including the motion to suppress. See App. 140-142.

Due to counsel's incorrect advice that Petitioner could appeal the pretrial rulings, Petitioner accepted the state's offer and pled guilty. Counsel's performance was clearly deficient. Petitioner was prejudiced by counsel's deficient performance because if Petitioner would have known he could not appeal the pretrial rulings if he pled guilty, he would have rejected the state's favorable plea offer and proceeded to trial. See App. 214, ll. 19-22.

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)).

"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)) (alteration in original).

There is no evidence to support the PCR court's finding that Petitioner "did not prove his belief that he could appeal the suppression hearing was based on any deficient advice." As already discussed, in the notice of appeal counsel filed on Petitioner's behalf, counsel stated Petitioner appeals from his guilty plea and "the rulings of the prior motions from the hearing held on October 12, 2017." See App. 136. Counsel further informed the Court of Appeals that Petitioner had issues which could be raised on appeal, including the motion to suppress. App. 140. Counsel clearly did not understand that a defendant waives the right to appeal any pretrial rulings by pleading guilty. Petitioner testified that he told counsel he did not want to plead guilty, but counsel advised Petitioner to accept the state's offer, plead guilty, and counsel would "just appeal it." Due to counsel's undeniable misunderstanding, he led Petitioner to believe that Petitioner could appeal both the trial court's pretrial rulings and whatever sentence Petitioner received. This constitutes deficient performance. Any reasonably competent criminal defense attorney would have known that South Carolina does not recognize conditional guilty pleas. See State v. Collins, 185 N.E.3d 146, 150 (Ohio Ct. App. 2002) (holding Collins's trial counsel rendered ineffective assistance by failing to advise Collins that a guilty plea would waive his right to appeal the trial court's denial of his motion to suppress and that Collins was prejudiced because the record established that Collins would not have pled guilty if he would have understood that a guilty plea waived his right to appeal).

Trial counsel's deficient performance rendered Petitioner's guilty plea involuntary because Petitioner was induced into pleading guilty by counsel's statement that Petitioner could appeal the denial of his pretrial motions to suppress. See Lineberry v. State, 747 N.E.2d 1151 (Ind. Ct. App. 2001) (holding "Lineberry's plea was induced by the unfulfillable promise that he could appeal the denial of his motion to suppress, and therefore the plea was involuntary.").

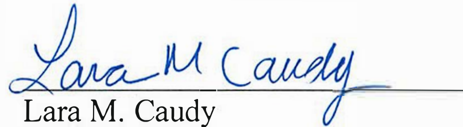
Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability Petitioner would have rejected the state's offer to plead guilty and proceeded to trial but for counsel's erroneous advice. Petitioner consistently maintained he wanted to go to trial. Petitioner testified that he only pled guilty because counsel told him he would "just appeal it."

Respectfully, because there is no evidence to support the PCR court's ruling, this Court should reverse Petitioner's convictions and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of July, 2025.