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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
Honorable R. Lawton McIntosh,
Circuit Court Judge

Appellate Case No. 2025-000381

TROY BRAXTON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

PETITIONER'S STATEMENT OF QUESTIONS

Whether petitioner's guilty plea was rendered involuntary because he did not understand the full consequences of his plea due to his plea counsel's inaccurate advice that pleading guilty to voluntary manslaughter would limit his sentencing exposure to 2-to-30 years?

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS

I. Whether the PCR court correctly found Counsel was not deficient where Counsel advised Petitioner that by pleading guilty to voluntary manslaughter, instead of proceeding to trial on murder, his sentencing exposure for the killing would be reduced to two (2) to thirty (30) years, but the sentence, including for the other charges, would be subject to the judge's discretion since the guilty plea was without recommendation or negotiation?

II. Whether Petitioner failed to prove prejudice by failing to prove a reasonable probability that but for Counsel's advice, he would have rejected the plea for voluntary manslaughter and insisted on going to trial for murder where the record reflects the determinative factor in Petitioner's decision not to proceed to trial was limiting his sentence for the killing?

STATEMENT OF THE CASE

In June 2020, the Spartanburg County Grand Jury indicted Troy Braxton ("Petitioner") for murder (2020-GS-42-03479); four (4) counts of armed robbery (-03475, -03476, -03477, -03478); possession of a weapon during the commission of a violent crime (-03474); possession with intent to distribute ("PWID") marijuana (-03473); and failure to stop for blue lights ("FTS") (-03472). In May 2022, the Spartanburg County Grand Jury indicted Petitioner for assault and battery of a high and aggravated nature ("ABHAN") (2022-GS-42-02555) for an unrelated incident.

On March 13, 2023, Petitioner pled guilty before the Honorable J. Derham Cole, Sr. Michale Morin, Esq., represented Petitioner on the ABHAN charge. E. Joshua Schultz, Esq., ("Counsel") represented Petitioner on the other charges. Solicitor Barry Barnette prosecuted the case. In exchange for his plea, Petitioner pled guilty to voluntary manslaughter, the lesser included of murder. Judge Cole sentenced Petitioner to a total sentence of forty-three (43) years: a concurrent sentence of twenty-five (25) years for voluntary manslaughter; fifteen (15) years for three (3) counts of armed robbery; ten (10) years for ABHAN; five (5) years for PWID marijuana; and five (5) years for the weapon charge and a consecutive sentence of fifteen (15) years for one (1) count of armed robbery and three (3) years for FTS.

A notice of appeal was filed. The Court of Appeals dismissed Petitioner's appeal for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed. *State v. Braxton*, S.C. Ct. App. Order filed May 24, 2023. The remittitur was sent on June 9, 2023.

On January 29, 2024, Petitioner filed an application for post-conviction relief ("PCR") alleging ineffective assistance of counsel. On July 8, 2024, the State ("Respondent" or "the State") filed its Return. On September 5, 2024, an evidentiary hearing was convened before the Honorable R. Lawton McIntosh. Petitioner was present and represented by Susannah C. Ross, Esq. Assistant

Attorney General Bryan T. Hall represented the State. Judge McIntosh denied Petitioner's PCR application, finding he failed to meet his burden. This petition follows.

STATEMENT OF THE FACTS

On December 31, 2019, Petitioner went to a restaurant, pulled out a gun, stole cell phones from the victims, and fled the scene. (App. 42-43). On January 10, 2020, police responded to a location in reference to a shooting in which a victim had been shot in the groin. (App. 44). On January 21, 2020, police observed Petitioner driving with a wrong tag and committing traffic offenses. When police initial blue lights, Petitioner fled. When Petitioner was captured following a chase, police found drugs in Petitioner's car. Police noticed the car driven by Petitioner, a white Honda, matched the description of a vehicle in videos related to the murder in which the victim was shot in the groin. Police subsequently searched Petitioner's phone records, which revealed messages between Petitioner and Corey Lyles, who was present at the armed robbery incident leading to the victim's death, referencing the deceased victim and robbery conspiracy. (App. 45-55).

In a separate incident at the Spartanburg County Detention Center, Petitioner got into an altercation with another inmate. The inmate suffered substantial injuries including a skull fracture. Petitioner was charged with ABHAN in relation to the incident. (App. 65-66).

STANDARD OF REVIEW

Appellate courts give great deference to the PCR court's factual findings and will uphold them if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts will review the PCR court's conclusions of law *de novo* and will reverse if the PCR court's decisions are controlled by an error of law. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms (i.e. deficient performance), and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694).

Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. When evaluating a claim for ineffective assistance of counsel, the court is to examine counsel's conduct by the law available at the time of trial and "every effort be made to eliminate the distorting effects of hindsight.". *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting *Strickland*, 466 U.S. at 689).

ARGUMENT

The PCR Court correctly determined Petitioner pled guilty freely, voluntarily, knowingly, and intelligently since the record reflects Petitioner had an awareness of the charges against him, the potential sentence for each charge, and his constitutional rights. A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have plead guilty but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Dalton v. State*, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007).

To find a defendant entered a guilty plea knowingly and voluntarily, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. This involves awareness of "the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers" and "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) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Statements made during a guilty plea should be considered conclusive unless the applicant presents valid reasons why he should be allowed to depart from the truthfulness of his statements. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874.

I. The PCR court correctly found Counsel was not deficient where Counsel advised Petitioner that by pleading guilty to voluntary manslaughter, instead of proceeding to trial on murder, his sentencing exposure for the killing would be reduced to two (2) to thirty (30) years, but the sentence, including for the other charges, would be subject to the judge's discretion since the guilty plea was without recommendation or negotiation.

Counsel was not deficient in advising Petitioner that by pleading guilty to voluntary manslaughter, his sentencing exposure for the killing would be reduced to two (2) to thirty (30)

years. To prove counsel was ineffective where the applicant pled guilty, the applicant must prove counsel was deficient in advising him. *Hill*, 474 U.S. at 59; *Dalton*, 376 S.C. at 136, 654 S.E.2d at 873. Counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). The applicant must overcome this presumption to obtain relief. *See Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 ("The defendant is required to overcome the presumption that counsel was effective in order to obtain relief.").

The record reflects Counsel rendered competent advice to Petitioner regarding his sentencing exposure. The solicitor stated at the guilty plea, in Petitioner's presence, that the only offer made was for Petitioner to plead guilty to voluntary manslaughter, instead of murder, and the plea would be straight up for *all the other charges*. (App. 8:2-5 (emphasis added)). Petitioner indicated to the plea court that Counsel explained to him the charges, the elements of each charge, and the potential sentences for each charge. (App. 23; 29; 34-35). Counsel testified at the PCR hearing that he explained to Petitioner the charges in his case, the elements of the offenses, and the potential sentences for each charge. (App. 146-47). Counsel testified that he advised Petitioner that voluntary manslaughter carries a sentence of two (2) to thirty (30) years and is an eighty-five percent (85%) offense. (App. 148-49). Counsel testified that he advised Petitioner that by pleading guilty to the solicitor's offer of voluntary manslaughter, Petitioner *could* serve less time than a conviction for murder which carries a sentence of thirty (30) years to life. (App. 149; 152-53 (emphasis added)).

Counsel testified he advised Petitioner that since he was pleading guilty without negotiation or recommendation from the State, the sentence [including the total sentence] would be up to the judge's discretion. (App. 150). Counsel testified that the sentence being left to the judge's discretion meant the judge could run the sentences currently or consecutively. (App. 154).

Further, the plea court explained to Petitioner that the sentences would be left up to the discretion of the court "whatever that might be." (App. 37:2-3, 37:18-19). Counsel testified that although they were hoping for the least sentence possible, Petitioner was "well aware" that he could get more than thirty (30) years for all the offenses. (App. 153). The PCR court found Counsel's testimony *credible*. (App. 170 (emphasis in original)).

Counsel's advice was correct: by pleading guilty to voluntary manslaughter, Petitioner's sentencing exposure *for the killing* was reduced to two (2) to thirty (30) years but the total sentence and sentences for the other crimes were subject to the judge's discretion. Apart from Petitioner's testimony at the PCR hearing, there is no evidence in the record to support Petitioner's assertion that Counsel advised or assured him that the *total* sentence would be limited to up to thirty (30) years. Thus, Petitioner failed to overcome the presumption that Counsel rendered competent advice.

Further, the plea court informed Petitioner of the possible sentences of each of the other charges: armed robbery, ABHAN, PWID marijuana, possession of a weapon during the commission of a violent crime, and FTS. (App. 23-28). The fact that Petitioner hoped to get a total sentence of up to thirty (30) years concurrently does not render his plea involuntary where Counsel and the plea court advised him that the sentence would be within the judge's discretion. *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (emphasis added) (stating the fact that a defendant "hoped" and "expected" to get a reduced sentence does not render a plea invalid); *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984) (stating the fact that defendant "thought" judge would give lighter sentence is not a ground for relief). Therefore, the PCR court correctly found Counsel was not deficient in advising Petitioner.

II. Petitioner failed to prove prejudice by failing to prove a reasonable probability that but for Counsel's advice, he would have rejected the plea for voluntary

manslaughter and insisted on going to trial for murder where the record reflects the determinative factor in Petitioner's decision not to proceed to trial was limiting his sentence for the killing.

Although this Court need not address prejudice since Counsel was not deficient, Petitioner failed to prove prejudice. Petitioner failed to prove a reasonable probability that but for Counsel's advice, he would have proceeded to trial for murder and the other charges. Where an applicant alleges counsel's advice was deficient, the prejudice inquiry is "whether 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." *Rodriguez v. State*, 444 S.C. 431, 437, 907 S.E.2d 153, 156 (Ct. App. 2024) (holding the applicant failed to prove a reasonable probability that he would have rejected the plea offer and insisted on going to trial if he had been properly advised on his immigration consequences (internal quotations omitted) (citation omitted)). To determine whether the applicant would have insisted on going to trial, the courts should look to contemporaneous evidence to substantiate the applicant's expressed preferences and ascertain the applicant's determinative factor in pleading guilty. *Lee v. United States*, 582 U.S. 357, 369 (2017) ("Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences.").

The determinative factor in Petitioner's decision to plead guilty was reducing his sentencing exposure for the killing. Petitioner's expressed preference was to avoid a thirty (30) to life sentence for the murder charge. The evidence from the record supports this finding.

Petitioner testified that he changed his mind from going to trial and decided to plead guilty after speaking to his mother, who "made [him] reconsider" going to trial on the murder charge. (App. 129:5-11; App. 142:1-5). Petitioner testified that the two (2) to thirty (30) year sentence for

the manslaughter might mean that he would not get more than thirty (30) years. (App. 129). The record supports a reasonable inference, based on Counsel's credible testimony, that Petitioner knew and understood that "not more than thirty (30) years" meant for the voluntary manslaughter charge. Further, at the plea hearing, Petitioner indicated that he wanted to take advantage of the voluntary manslaughter plea because he believed the evidence would support and likely result in the jury convicting him of murder at trial. (App. 54:23-55:3; 56:22-57:5).

Where Petitioner's primary concern was limiting his sentencing exposure for the killing, he failed to prove that it would have been rational for him to proceed to trial on the murder charge where he believed the evidence supported a conviction and would have resulted in sentence of thirty (30) years to life. *Padilla*, 559 U.S. at 372 (stating the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances). Consistent with Counsel's testimony, Petitioner's best chance of receiving a lesser sentence was to plead guilty to voluntary manslaughter instead of going to trial for murder.

Petitioner informed the plea court that he was pleading guilty freely and voluntarily. (App. 38). Petitioner further indicated that no one promised him anything, forced, or threatened him to plead guilty. (App. 38). Therefore, the record reflects Petitioner pled guilty voluntarily and intelligently, and the PCR court correctly denied relief.

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CONCLUSION

Based on the foregoing argument, the PCR court correctly found Petitioner failed to meet his burden. Accordingly, the State respectfully requests this Court to affirm the PCR court's rulings and deny Petitioner's writ for certiorari.

Respectfully submitted,

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October 20, 2025