

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Doyet A. Early, III, Circuit Court Judge

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DEC - 6 2013

S.C. Supreme Court

STEPHEN CORLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-000781

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding that Petitioner's plea was knowing and voluntary where plea counsel misadvised Petitioner that the two counts of reckless homicide that were dismissed pursuant to the plea carried more severe consequences than the felony DUI counts to which Petitioner pled guilty?

STATEMENT

Indictments

On May 23, 2011, Petitioner Stephen Corley was indicted by the Aiken County Grand Jury for two counts of death by operating a vehicle under the influence of drugs or alcohol (felony DUI resulting in death) in violation of S.C. CODE ANN. § 56-5-2945(A)(2). App. 130-131; 135-136. Petitioner was also indicted for two counts of reckless homicide. App. 3, ll. 13-17.

Guilty Plea

On September 21, 2011, Petitioner appeared before the Honorable William H. Seals, Jr. App. 1. Petitioner was represented by Fred Wallace Woods, Jr., and the State was represented by Solicitor J. Strom Thurmond, Jr. Id.

The State informed Judge Seals that as part of the plea, the State would be dismissing the two indictments for reckless homicide. Petitioner pled guilty to the two counts of felony DUI resulting in death without any recommendation by the State. App. 3, l. 9 – 8, l. 6; 37, ll. 1-4.

Petitioner's plea counsel explained that on the day of the tragic accident, Petitioner's grandmother had passed away. Petitioner was overcome with grief and did consume some alcohol before driving that day and having the automobile accident which resulted in the deaths of two individuals, Alexander Bush and Katie Scott. App. 37, l. 24 – 42, l. 15; 47, ll. 20-23.

Petitioner, who had no prior criminal record, was sentenced by Judge Seals to twenty-two years (22) imprisonment on each count of felony DUI resulting in death to run

consecutive for a total of forty-four (44) years. App. 3, ll. 21-22; 51, ll. 17-23. Petitioner did not file a direct appeal.

PCR Application and Evidentiary Hearing

Petitioner filed his application for post-conviction relief (“PCR”) on February 27, 2012, asserting among other things that his plea counsel failed to investigate his case and his plea was involuntary. App. 53 – 59. Petitioner subsequently filed an amendment to his PCR application on April 17, 2012. App. 60 – 64. The State filed its Return on May 30, 2012. App. 65 – 70.

An evidentiary hearing was held before the Honorable Doyet A. Early, III on January 23, 2013. App. 71 – 116. Petitioner was represented by Jacqueline F. Busbee, and the State was represented by Assistant Attorney General Megan E. Harrigan. App. 71. Both Petitioner and his plea counsel testified at the hearing. App. 74, l. 9 – 114, l. 6.

Petitioner testified that he met with his plea counsel only once outside of the courthouse. At that meeting, he and his plea counsel viewed the scene of the accident. Otherwise, Petitioner only saw his plea counsel at court hearings. App. 75, ll. 14-22; 84, ll. 11-16.

When Petitioner went to the courthouse on September 21, 2011, he believed he was going to court for a roll call. He testified that he did not know he would be pleading guilty that day. He only found out he was going to plead guilty when he arrived at court. App. 75, l. 23 – 76, l. 14. Petitioner did not feel that his plea counsel was prepared to go to trial had he not pled guilty. His plea counsel never advised Petitioner of the evidence in the case and never went over the discovery with him. Petitioner also had not been advised that his plea counsel had contacted any of the witnesses to the accident and had interviewed those

witnesses. App. 80, ll. 1-16; 84, l. 22 – 85, l. 5. His plea counsel also never discussed possible defenses with him. App. 85, ll. 6-9.

Petitioner also testified that he himself suffered injuries as a result of the accident, including head trauma. Petitioner was diagnosed with having migraines after the accident. On the day he pled guilty, he was suffering from a migraine. He continues to suffer from post-traumatic stress as a result of the accident. App. 78, l. 12 – 79, l. 25; 91, ll. 12-18.

Petitioner further testified that his plea counsel did not fully explain to him all of the charges he had pending against him. App. 76, ll. 6-8. If the charges against him had been fully explained to him by his plea counsel, Petitioner testified that he would have moved forward with a trial. App. 81, ll. 16-20.

At the evidentiary hearing, plea counsel testified that he believed he may have met with Petitioner twice, once at the scene of the accident. App. 93, ll. 15 – 19. Plea counsel insisted that he explained the charges to Petitioner. Plea counsel said he explained to Petitioner that the reckless homicide charges “would have exposed him to much more severe consequences, believe it or not, than he received.” App. 94, ll. 2-13. Plea counsel stated he therefore negotiated “down from two counts of reckless homicide to [Petitioner] pleading guilty to DUI with death results.” App. 94, ll. 13-15. Plea counsel also admitted he had not interviewed any of the eye witnesses. App. 108, ll. 22-24.

Order of Dismissal

On March 13, 2013, Judge Early filed his Order of Dismissal denying Petitioner post-conviction relief and finding that plea counsel had conducted an adequate investigation. Judge Early also ruled that Petitioner’s plea was entered knowingly and voluntarily. App. 118 – 127. This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in finding that Petitioner's plea was knowing and voluntary where plea counsel misadvised Petitioner that the two counts of reckless homicide that were dismissed pursuant to the plea carried more severe consequences than the felony DUI counts to which Petitioner pled guilty.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). “Where allegations of ineffective assistance of counsel are made, the question becomes, ‘whether 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.’ ” Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686). As such, courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668).

First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’ ” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against

unsound results.” Brady v. United States, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969). Therefore, in the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000); see also Hill v. Lockhart, 474 U.S. 52, 56 (1985) (“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.’ ” (quoting North Carolina v. Alford, 400 U.S. 25, 31(1970))). “The second, or ‘prejudice,’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. 52 at 59. In other words,

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.

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)); see also Hill, 474 U.S. at 59 (footnote omitted).

“The defendant’s undisputed testimony that he would not have pled guilty to the charges but for trial counsel’s advice is sufficient to prove that defendant would not have pled guilty.” Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

In this case, Petitioner pled guilty to two counts of felony DUI resulting in death without a correct understanding of all the charges brought against him, including the two reckless homicide counts that were dismissed as a part of his plea. Petitioner's plea counsel testified at the evidentiary hearing that the two counts of reckless homicide would have "exposed [Petitioner] to much more severe consequences . . . than he received." App. 94, ll. 10-13. Petitioner's plea counsel negotiated a plea deal which resulted in the dismissal of the two counts of reckless homicide in exchange for Petitioner pleading guilty to two counts of felony DUI resulting in death. App. 94, ll. 13-15.

Relying on this advice, Petitioner pled guilty. Plea counsel's advice, however, that the reckless homicide charges would have exposed Petitioner to much more severe consequences, was incorrect. The charge of reckless homicide carries a maximum imprisonment term of ten (10) years while felony DUI resulting in death carries a maximum term of twenty-five (25) years. See S.C. CODE ANN. § 56-5-2910(A) (2010); § 56-5-2945(A)(2).

By advising Petitioner to plead to the two counts of felony DUI with the dismissal of the two reckless homicide charges, plea counsel took away the possibility that Petitioner could have been convicted by a jury of only reckless homicide at trial, thereby receiving a much shorter sentence than the forty-four (44) years he did receive and at the maximum a twenty (20) year sentence.

The case of Banshee v. State, 308 S.C. 369, 418 S.E.2d 313 (1992) is instructive. In Banshee, the defendant was convicted after a jury trial of armed robbery, kidnapping, possession of a sawed-off shotgun, and conspiracy in connection with a robbery of a restaurant. At the close of the evidence, defense counsel moved to dismiss a receiving

stolen goods charge which the trial court granted. This Court found defense counsel rendered ineffective assistance of counsel in moving to dismiss the receiving stolen goods charge. This Court stated: “With the removal of the non-violent charge of receiving stolen goods, the jury was left with two extreme alternatives, to-wit, convict him of the violent crimes or acquit him.” This Court held the jury should have been permitted to consider the third alternative of receiving stolen goods. Id. at 369-71, 418 S.E.2d at 313-14.

As in Banshee, there was a possibility that a jury would have convicted Petitioner of only the reckless homicide charges which carried a maximum of ten (10) years imprisonment for each count. Petitioner’s plea counsel took this option away by misadvising Petitioner to plead to the felony DUI charges since plea counsel believed the reckless homicide charges carried a more severe penalty. Petitioner’s guilty plea was thereby rendered unknowing and involuntary where he was misadvised by his plea counsel that the reckless homicide charges were more severe than the felony DUI charges. See also Hammond v. United States, 528 F.2d 15 (4th Cir. 1975) (holding defendant’s guilty plea was involuntary where he had been induced to enter plea based upon erroneous sentencing advice).

Petitioner was prejudiced by his plea counsel’s erroneous advice. Petitioner testified at the evidentiary hearing that had he truly understood the charges and the sentences those charges carried, he would have went forward with a trial instead of pleading guilty. App. 81, ll. 16-20; see Smith, 369 S.C. at 138, 631 S.E.2d at 261 (stating defendant’s testimony that he would not have pled guilty but for his counsel’s advice is sufficient to prove that defendant would not have pled guilty).

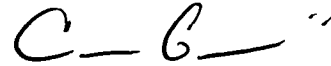
In addition, Petitioner was prejudiced where had a jury only convicted him of the two reckless homicide charges, he would have faced a maximum of twenty (20) years imprisonment instead of the forty-four (44) years he received from the plea judge. See Banshee, 308 S.C. at 371, 418 S.E.2d at 314 (finding defendant was prejudiced by his defense counsel's motion to dismiss the receiving stolen goods charge where defendant's "conviction for armed robbery and kidnapping, constituting a second violent offense, resulted in sentences of 25 years and life, and ineligibility for parole," while had defendant been convicted of receiving stolen goods, "the charge would not have constituted a second violent offense, and [defendant] would have remained eligible for parole.").

Petitioner is therefore entitled to post-conviction relief for his plea counsel's deficient performance in advising Petitioner that the reckless homicide charges would have exposed him to more severe consequences than the felony DUI resulting in death charges.

CONCLUSION

For the reasons set forth herein, Petitioner Stephen Corley respectfully requests this Court to grant his petition for writ of certiorari with the ultimate relief of new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of December, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County
Doyet A. Early, III, Circuit Court Judge

STEPHEN CORLEY,

PETITIONER,

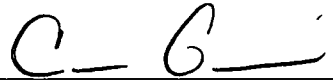
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

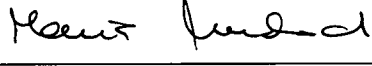
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Stephen Corley, #347938, McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, at this 6th day of December, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day
of December, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.