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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Frank R. Addy, Circuit Court Judge

CHRISTOPHER RAY SMITH,

PETITIONER-RESPONDENT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT-PETITIONER

APPELLATE CASE NO. 2025-002107

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT

The post-conviction relief court erred finding defense counsel was not ineffective where counsel misadvised Mr. Smith regarding what percentage of his sentence he would serve before he was eligible for parole, which rendered Mr. Smith's May 17 guilty pleas invalid because they were not intelligently made..... 5

CONCLUSION 15

ISSUE PRESENTED

Did the post-conviction relief court err finding defense counsel was not ineffective where counsel misadvised Mr. Smith regarding what percentage of his sentence he would serve, which rendered Mr. Smith's guilty pleas invalid because they were not intelligently made?

STATEMENT OF THE CASE

Christopher Ray Smith's charges arose from three separate incidents occurring in April 2019, January 2020, and July 2020. On December 17, 2020, a Beaufort County grand jury indicted him for the April 2019 incident and the January 2020 incident including: possession with intent to distribute (PWID) oxycodone (2020-GS-07-00334); trafficking heroin (2020-GS-07-00358); trafficking cocaine (2020-GS-07-00359); PWID oxycodone (2020-GS-07-01417); PWID buprenorphine (2020-GS-07-01418); PWID amphetamine (2020-GS-07-01419); and PWID alprazolam (2020-GS-07-01420). App. 148-149; 152-155; 156-159; 168-183.

Mr. Smith waived presentment on the following indictments: trafficking methamphetamine (2020-GS-07-01415); trafficking heroin (2020-GS-07-01416); PWID amphetamine (2021-GS-07-01077); PWID buprenorphine (2021-GS-07-01078); and PWID oxycodone (2021-GS-07-01079). App. 160-161; 164-165; 184-185; 188-189; 192-193.

On May 17, 2022, Mr. Smith pleaded guilty to the charges stemming from the January 2020, incident PWID oxycodone (01417), trafficking heroin (00358), trafficking cocaine (00359), PWID buprenorphine (01418), PWID amphetamine (01419), and PWID alprazolam (01420) before the Honorable Carmen Mullen. App. 1-22. Jeffrey Stephens represented Mr. Smith. App. 1. Samantha Molina prosecuted for the state. App. 1. Judge Mullen deferred sentencing until the following day. App. 21, ll. 19-19-20.

On May 18, 2022, Mr. Smith pled guilty to the charge stemming from April 2019 and the charges stemming from the July 2020 incident PWID oxycodone (00334), trafficking methamphetamine (01415), trafficking heroin (01416), PWID amphetamine (01077), PWID buprenorphine (01078), and PWID oxycodone (01079) before Judge Mullen. App. 24-40. Judge Mullen sentenced Mr. Smith to an aggregate term of twenty-five years for all the charges and ran

the sentences concurrent. App. 38, l. 1—40, l. 11; 150-195.

Thereafter, Mr. Smith filed an application for post-conviction relief (PCR). App. 42-49. On April 15, 2025, an evidentiary hearing was held before the Honorable Frank Addy, Jr. App. 62-124. Tommy Thomas represented Mr. Smith. App. 62. Assistant attorney general Kylee Kanealey appeared for the state. App. 62. On May 8, 2025, Judge Addy issued a form 4 order granting PCR in part and denying PCR in part. App. 125-128. On August 11, 2025, Judge Addy signed an order granting PCR in part and denying PCR in part. App. 129-137. In the order Judge Addy granted PCR as to the May 18, guilty pleas: PWID oxycodone (00334), trafficking methamphetamine (01415), trafficking heroin (01416), PWID amphetamine (01077), PWID buprenorphine (01078)), and PWID oxycodone (01079). App. 127; 137.

In the order Judge Addy stated “this court is concerned that the plea court misadvised counsel and [Mr. Smith] by stating that, assuming he pled to and was sentenced on both the January and July incidents together, they would constitute only a single serious strike against [Smith], which is an incorrect statement of the law. App. 126; 135. Judge Addy found defense counsel had an obligation to “correct the plea court’s” wrong advice that pleading to all four serious charges at the same time would result in a single serious strike and not two. App. 126; 136. Judge Addy also found Mr. Smith’s testimony credible as to his confusion about the May 18, 2022, guilty plea and the consequences following his convictions. Judge Addy concluded that Mr. Smith had shown deficiency and prejudice with regard to the guilty pleas entered on May 18, 2022, and granted PCR as to those convictions and sentences. App. 126-127; 136-137.

As to the remaining convictions, Judge Addy denied PCR finding Mr. Smith failed to

show deficiency or prejudice.¹ App. 125-126; 134. Judge Addy found that regarding the limited time spent with Mr. Smith, “the underlying factual allegations from the January 27, 2020, incident are not very complicated and, therefore extensive repeated meetings were not necessary for [] counsel to adequately prepare.” App. 126; 134. Judge Addy found credible defense counsel’s testimony that he would not have misadvised Mr. Smith regarding parole. App. 126; 135.

This petition follows.

¹ The relevant convictions for this appeal from Judge Addy’s partial denial are: PWID oxycodone (01417), trafficking heroin (00358), trafficking cocaine (00359), PWID buprenorphine (01418), PWID amphetamine (01419), and PWID alprazolam (01420). App. 152-155; 156-159; 168-183.

ARGUMENT

The post-conviction relief court erred finding defense counsel was not ineffective where counsel misadvised Mr. Smith regarding what percentage of his sentence he would serve before he was eligible for parole, which rendered Mr. Smith's May 17 guilty pleas invalid because they were not intelligently made.

May 17, 2022, guilty plea hearing

Mr. Smith's case involving the January 27, 2020,² incident was called to trial the week of May 16-20, 2022. On May 17, 2022, he pled guilty to those charges before Judge Mullen. App. 1-22. At the beginning of the hearing the solicitor informed the court that Mr. Smith had additional pending charges including indictments that had not yet been presented to the grand jury.³ App. 2, ll. 6-14.

A discussion with the judge regarding the pending charges and how best to resolve them was had. App. 3-8. Defense counsel stated, "because these cases aren't indicted because I'm behind the – I'm not prepared to, you know, beat them on these charges . . . I think we're going to try to get him back next month to try to resolve the new charges. App. 2, l. 24-3, l. 8. When asked by the judge defense counsel did not know Mr. Smith's age. App. 3, ll. 16-17. Defense counsel reminded the judge he had not looked at anything regarding the pending charges. App. 4, ll. 20-22; 6, ll. 23-24. In response Judge Mullen suggested defense counsel take one day and review the pending charges to see if Mr. Smith could plead guilty to the remainder of his charges

² The relevant indictments are: PWID oxycodone (01417), trafficking heroin (00358), trafficking cocaine (00359), PWID buprenorphine (01418), PWID amphetamine (01419), and PWID alprazolam (01420). App. 152-155; 156-159; 168-183.

³ The charges not presented to the grand jury are: trafficking methamphetamine (01415), trafficking heroin (01416), PWID amphetamine (01077), PWID buprenorphine (01078)), and PWID oxycodone (01079). App. 160-161; 164-165; 184-185; 188-189; 192-193.

the following day and she would defer sentencing on the guilty pleas entered on that day in order to sentence Mr. Smith on all the charges at one time. App. 5, ll. 7-12. Judge Mullen explained she was concerned about the strikes. App. 5, ll. 11-12. She advised that sentencing on all the charges should be done “simultaneously.” App. 5, ll. 22-24. A recess was taken so that defense counsel could consult with Mr. Smith. App. 8, ll. 13-25.

When the parties returned defense counsel told the judge Mr. Smith wanted to enter guilty pleas to the charges stemming from the January 2020 incident, that were pending trial that morning and asked the judge to defer sentencing until the following day so that the remainder of the charges could be addressed at that time. App. 9, ll. 2-8.

Judge Mullen asked Mr. Smith if he understood that he could go forward with a jury trial that day because there was a jury selected and present and Smith acknowledged that he understood. Judge Mullen stated, “it is also my understanding . . . you have a second pending set of charges.” App. 11, ll. 9-12. The judge then asked the state to explain what additional pending charges were. The solicitor stated that six months after the January 2020, incident Mr. Smith was charged with trafficking heroin, trafficking methamphetamine, PWID buprenorphine, and PWID oxycodone. App. 11, ll. 13-24. The solicitor told the judge there was also a pending PWID oxycodone indictment from an earlier incident in April 2019. App. 11, l. 24--, 12, l. 5.

The judge told Mr. Smith that what he was pleading to that day had mandatory minimums and was a serious offense which meant it was “not parole eligible.” App. 12, ll. 17-22. Judge Mullen stated trafficking in heroin had a mandatory minimum sentence of twenty-five years and a maximum of forty years and trafficking cocaine had a mandatory of three years and maximum of ten years. The judge stated PWID oxycodone had a range of zero to fifteen years, buprenorphine was zero to five, and alprazolam was zero to three years. App. 13, l. 15—14, l. 6.

Smith told the judge wished to go forward on the six charges from January 2020 and agreed he was pleading guilty because he was guilty. App. 14, l. 22—15, l. 7. The solicitor read each offense and Judge Mullen asked if Smith were guilty to which he replied, “yes.” App. 18, l. 12—21, l. 3.

Judge Mullen advised Mr. Smith she was deferring sentencing “for part of your own good.” App. 12, ll. 6-8. She explained it was important that he plead guilty to the pending charges the following day because if he did not “the state can actually bring those against you and you will end up having a strike today, and then if you are convicted of those another strike.” App. 13, ll. 6-12.

May 18, 2022 guilty plea and sentencing hearing

The following day, Mr. Smith appeared before Judge Mullen to plead guilty to the remainder of his charges and to be sentenced for all the charges. App. 24-40; 26, l. 16—27, l. 15. At the beginning of the hearing defense counsel told the judge he had gone through discovery for the pending charges but stated the review was “in a little bit of a rushed capacity.” App. 25, ll. 7-14. 2. Prior to Smith’s guilty plea Judge Mullen stated, “Mr. Smith I broke yesterday to give you an opportunity to go through this second set of indictments, and also an additional April charge as well for your plea. Obviously, our goal [] is that these would all run together and all would only count as one strike.” App. 28, ll. 9-15.

The solicitor stated that on April 11, 2019, police on patrol saw a vehicle wrecked into a ditch and while attempting to help the occupant found Mr. Smith. The solicitor alleged Mr. Smith was “slurring” and provided a fake name. Once police determined he gave a false name he was arrested for “false info” and was searched incident to arrest. In his pockets he had a large

amount of cash and in the car police found: plastic baggies, a bundle of cash, digital scale, oxycodone, and a ledger. App. 30, l. 25—31, l. 25. The judge asked and Mr. Smith agreed that the oxycodone was his. App. 31, ll. 1-8.

The solicitor stated that on July 16, 2020, police were surveilling a hotel in Beaufort County and received information Mr. Smith was staying at the hotel. The police had “active warrants” for Mr. Smith and when he left his room he was arrested. Mr. Smith was searched and his room was searched which produced: cash, oxycodone, “a couple grams of ice,” “an ounce or two of heroin,” and some symboxone and adderall.” App. 33, ll. 5-25. When asked, Mr. Smith admitted guilt. App. 34, ll. 11-14.

In mitigation defense counsel stated, “I won’t waste too much of the court’s time.” Counsel went on to say Smith had gotten “pretty heavily involved in the drug trade in a short amount of time.” Counsel went on to quickly detail that Mr. Smith abused substances and was romantically involved with a woman who was addicted to prescription medication and that relationship drove him into more drug abuse and distribution. Counsel told the judge Mr. Smith’s biggest regret was that his mother would not live to see him released from prison. App. 35, l. 15—36, l. 23.

Judge Mullen sentenced Mr. Smith to concurrent terms of twenty five years’ imprisonment for trafficking heroin (00358), ten years’ imprisonment for trafficking cocaine (00359), 15 years’ imprisonment for PWID oxycodone (01417), five years’ imprisonment for PWID buprenorphine (01418), five years’ imprisonment for PWID amphetamine (01419), three years’ imprisonment for PWID alprazolam (01420), five years’ imprisonment for PWID amphetamine (01077), five years’ imprisonment for PWID buprenorphine (01078), fifteen years’ imprisonment for PWID oxycodone (00334), twenty five years’ imprisonment for trafficking

heroin (01416), ten years' imprisonment for trafficking methamphetamine (01415), and fifteen years' imprisonment for PWID oxycodone (01079)⁴. App. 38-40; 194.

PCR hearing

Mr. Smith testified at the evidentiary hearing held on April 15, 2025. App. 66-93. Mr. Smith testified he hired Jeffrey Stephens to represent him on these charges. App. 72, l. 15—73, l. 17. He said defense counsel had a video visit with him and then one subsequent visit several months later. After that he did not see defense counsel until right before these charges were placed on the docket for trial. App. 73, ll. 11-25.

During defense counsel's visits Mr. Smith says they discussed the case (January 2020) and the potential to suppress the drug evidence found during the search. Mr. Smith contended there was no preparation for a guilty plea or trial and that his numerous other charges were not discussed individually. Mr. Smith stated there were no plea negotiations discussed during their meetings. App. 74, l. 18—76, l. 7. Mr. Smith was surprised when he learned through his mother that his case was on the docket for trial. App. 76, l. 20—77, l. 10. Smith acknowledged he was shown some discovery in his case including drug analysis reports but contended he reviewed them without defense counsel. App. 78, ll. 2-16.

Mr. Smith testified that he decided on the day his trial was to begin to plead guilty because, "I just felt like the way things were going in that pre-trial motion . . . I was just, I guess, afraid of the way things were going." App. 82, l. 19—83, l. 2. He then asked counsel to please negotiate a guilty plea for him because it had never been discussed prior. App. 83, ll. 2-8. He

⁴ It does not appear that Judge Mullen put on the record the sentence for the indictment ending in 01079, PWID oxycodone however the sentence sheet reflects a sentence of fifteen years' imprisonment to run concurrent to the other sentences. App. 194.

was told he would receive the mandatory minimums for the charges.⁵ App. 84, ll. 8-17. Mr. Smith was told that due to federal laws being changed there was a change coming to South Carolina law that would impact his parole in that he would do sixty-five percent of his sentence versus eighty-five percent of his sentence. He understood from his discussion with counsel that if he decided to go to trial he would possibly get more time than the twenty-five years minimum. App. 84, ll. 14-85, l. 9.

Mr. Smith testified that it was his belief that he would do a total of twelve years but instead he will serve twenty-one years and that the parole consideration was “absolutely” part of his decision to plead guilty instead of continuing to trial on those charges. App. 85, ll. 6-21.

Mr. Smith testified counsel only briefly went over the charges he pled guilty to on May 18, 2022. App. 86, l. 15—88, l. 11. He stated he was confused about the “changing laws [and] the drug sentencing structures.” App. 88, ll. 12-17. Mr. Smith testified he was advised he should plead to all the charges at once and not on two occasions to avoid an additional serious strike. App. 88, ll. 18-25.

Mr. Smith contended his guilty pleas were not intelligently made in part because he was not able to balance the risks of proceeding to trial with the risks of pleading guilty and if he had a proper understanding of the consequences of pleading guilty he would have instead gone forward with trial. App. 89, l. 13—90, l. 2.

Jeffrey Stephens testified at Mr. Smith’s PCR hearing. App. 94-119. Counsel stated he was hired in September of 2021, but did not have “much of an opportunity to speak with [Mr. Smith] immediately after [he] was retained.” App. 106, ll. 13-21. He admitted he only met with Mr. Smith on three or four occasions. App. 108, ll. 14-25. Counsel was “surprised” that Mr.

⁵ Counsel for Mr. Smith contends this is regarding the January 2020, incident listed above.

Smith's case was placed on the docket for trial in May 2022. App. 109, ll. 3-14. He and Mr. Smith had not discussed a guilty plea prior and had always planned to go to trial on the January 2020 charges. App. 110, ll. 4-16.

Regarding Mr. Smith's understanding of the consequences of his May 17, guilty pleas specifically parole, he could not recall if he advised him correctly. Defense counsel said he was aware that Mr. Smith would have to do eighty-five percent and not sixty-five percent and that he could not "believe" that he would advise him incorrectly but ultimately, he admitted, "I can't say exactly what I told him." App. 98, l. 12—99, l. 9. Defense counsel stated he discussed with Mr. Smith potential changes in the law "that might allow him to have another look at his sentence." App. 98, l. 23—99, l. 3. He testified, "I think Mr. Smith is correct that I know from my discussions with the defense attorneys at the time, we were hopeful that they do something to adjust the mandatory minimums," but he did not know if they discussed the percentage that must be served. App. 116, ll. 13-25.

Regarding the May 18, hearing charges defense counsel acknowledged he did not have time to go into great detail with Mr. Smith because they had been preparing for trial on the other charges. App. 112, l. 13—113, l. 17. He stated, "things were rushed." App. 114, ll. 1-18.

Discussion

While this petition only concerns six drug charges (the May 17 guilty pleas) it is important to note that Mr. Smith pleaded guilty to twelve drug offenses in the span of two days. Five of the twelve indictments had not yet been presented to the grand jury. Both Mr. Smith and defense counsel testified at the PCR hearing that they were surprised to learn that his case was placed on the trial docket in May 2022, indicating that not only was Mr. Smith not prepared but likely counsel was not prepared to go forward.

However, Mr. Smith did go forward and he pleaded guilty to six drug charges on May 17, on the advice of defense counsel. Defense counsel was ineffective where he failed to articulate to Mr. Smith the consequences of pleading guilty, specifically counsel wrongly advised Mr. Smith that he would only serve sixty-five percent of his sentence. Because Mr. Smith was not aware of the consequences of his guilty pleas, the guilty pleas were not intelligently made and his guilty pleas as to PWID oxycodone (01417), trafficking heroin (00358), trafficking cocaine (00359), PWID buprenorphine (01418), PWID amphetamine (01419), and PWID alprazolam (01420) are invalid.

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)).

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. “It is elementary that in order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea.” *State v. Hazel*, 275 S.C. 392, 394, 271 S.E.2d 602, 603 (1980) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)).

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. *Holden v. State*, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011) (citing *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007)).

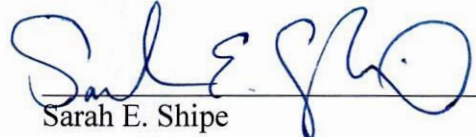
The record reflects counsel was not prepared for Mr. Smith's impending May 2022, trial on the six drug charges related to the January 2020, incident. After losing his motion to suppress the drug evidence, Mr. Smith requested defense counsel negotiate a guilty plea. Mr. Smith was advised he could plead straight up and would receive the minimum sentence in the case. He was also advised by defense counsel as to how much of his sentence he would actually serve.

Counsel failed to clearly articulate to Mr. Smith that, while he hoped there would be a change in the law that could positively impact Smith's sentence, he would actually have to serve eighty-five percent of his sentence. The PCR court found credible defense counsel's testimony that he “would not have misadvised [Mr. Smith] concerning the eighty-five percent implications.” However, that was not counsel's testimony. In fact, counsel could not recall the exact discussion that he had with Mr. Smith and stated that he did not *think* he would have misadvised him but was not sure what he advised. Counsel did recall that he discussed potential changes in the law, which aligns with Mr. Smith's PCR testimony. Mr. Smith testified that he believed, after discussing it with counsel, that he would only have to serve sixty-five percent of his sentence.

Mr. Smith went forward with six guilty pleas on May 17, 2022, believing—pursuant to counsel’s advice—that he would only serve sixty-five percent of his sentence. Mr. Smith’s lack of knowledge of the consequences of his guilty pleas rendered his guilty pleas invalid because they were not intelligently made.

CONCLUSION

Based on the foregoing argument, Mr. Smith respectfully requests this Court grant the petition for writ certiorari and order further briefing as to the issue presented.

A handwritten signature in blue ink, appearing to read "Sarah E. Shipe", written over a horizontal line.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of March, 2026.