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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

CERTIORARI TO MARION COUNTY

Court of Common Pleas

Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No.: 2026-000238

Christopoher E. Bennett., SCDC No.: 00392357..... Appellant

v.

State of South Carolina .....Respondent

PETITION FOR WRIT OF CERTIORARI

CHARLES T. BROOKS, III
SC Bar No.: 11762
309 Broad Street
Sumter, South Carolina 29150
803-418-5708

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STATEMENT OF ISSUES OF APPEAL

1. The Appellant's trial counsel was ineffective in his failure to thoroughly and properly explain to the Appellant the specific waivers or consequences of the refusal of a first plea offer made by prosecution; said failure of trial counsel caused the Appellant irreparable harm.

STATEMENT OF THE CASE

Christopher Bennett was indicted by the Marion County grand jury of Criminal Sexual Conduct, 2nd Degree (2 counts). He made a guilty plea before the Honorable B. Alex Hyman and a Jury on October 27, 2023. He was convicted and sentenced to twenty (20) years. He was represented by Jeffrey Lucas. The State was represented by David Richardson.

The appeal timely follows.

STATEMENT OF FACTS

The Appellant was indicted and charged in 2022, with two counts of Criminal Sexual Conduct with a Minor, 2nd Degree, resulting from offenses occurring in Marion County. The Appellant attorney Jeffrey T. Lucas, II, to represent him for the pending criminal matters.

The Appellant plead guilty to one count of Criminal Sexual Conduct-2nd Degree, and received a 20-year sentence on October 27, 2023. The Appellant's sentencing has been classified as a violent offense and he has to complete eighty-five (85%) of the prescribed sentence before he will be eligible for parole.

Prior to this October 2023 plea, the Appellant was given an initial plea offer to a lesser offense, Criminal Sexual Conduct with a Minor, 3rd degree, with an offered sentence of fifteen (15) years. This initial offer of sentence would have been classified as non-violent with the Appellant being eligible for parole after completing only sixty-five (65%) of the sentence.

Solicitor David Richardson testified that he made the "better" plea offer (CSC 3rd) to the Appellant's defense attorney after all of the Discovery (including the DNA results) had been relayed to Appellant's attorney.

Mr. Lucas did not adequately explain that plea offer or the consequences of refusing that plea offer to the Appellant. Trial counsel did not inform the Appellant that the original plea offers, of the DNA evidence being available, or of the nature of the sentence as it relates to being classified as "violent" or "non-violent" and therefore the Appellant was not properly advised or informed by counsel. Finally, after the initial plea offer was made, and no longer an option to the Appellant, the Appellant was given a more thorough understanding of the evidence against him,

the Appellant chose to enter his guilty plea to the Court. Unfortunately, the Appellant was only able to accept a secondary plea offer to an offense of Criminal Sexual Conduct, 2nd Degree and thereupon sentenced to twenty (20) years, violent.

ARGUMENT

The Sixth Amendment right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be 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. The same principle applies to a capital sentencing proceeding -- such as the one provided by Florida law -- that is sufficiently like a trial in its adversarial format and in the existence of standards for decision that counsel's role in the proceeding is comparable to counsel's role at trial. Strickland v. Washington, 466 US 668 (1984) Pp. 466 U. S. 684-687.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or setting aside of a death sentence requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Pp. 466 U.S. 687-696.

The proper standard for judging attorney performance is that of reasonably effective assistance, considering all the circumstances. When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness. Judicial scrutiny of counsel's performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. These standards require no special amplification in order to define counsel's duty to investigate, the duty at issue in this case. Pp. 466 U.S. 687-691.

With regard to the required showing of prejudice, the proper standard requires the defendant to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. A court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. Pp. 466 U. S. 691-696. Page 466 U. S. 670

In a PCR proceeding, the burden is on the petitioner to prove the allegations in the application. Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). In reviewing the PCR court's decision, an appellate court is concerned only with whether any evidence of probative value exists to support that decision. Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006). Thus, an appellate court gives great deference to the PCR court's findings of fact and conclusions of law. Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). However, a PCR court's findings will not be upheld if no probative evidence exists to support those findings. Thompson, 340 S.C. at 115, 531 S.E.2d at 296. Smith v. State, 407 S.C. 270, 754 S.E.2d 900 (S.C. App. 2014)

"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, 106 S.Ct. 366, 88 L.Ed.2d 203 (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) (emphasis added) (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). Van Sellner v. State, 416 S.C. 606, 787 S.E.2d 525 (S.C. 2016), 611

The applicant testified that he had never been through the criminal justice system before and that he was totally dependent upon the advice of his counsel. (See PCR Transcript of Christopher Bennett Testimony). The Prosecutor, David Richardson, testified that he had offered a plea deal of Criminal Sexual Conduct 3rd degree with a sentence of fifteen (15) years. He further testified that all of the discovery including the DNA analysis had been sent to the applicant's defense attorney prior to extending that plea offer. (See PCR transcript of testimony of David Richardson). The applicant's defense attorney was unclear of whether he as counsel for the applicant had relayed the plea offer and explained it to the applicant considering all of the discovery. It is noted that the offer of Criminal sexual conduct 3rd degree of fifteen (15) years would have been a non-violent offense with the applicant eligible for parole after 65% of serving the sentence, whereas the applicant is eligible for parole after serving eighty-five (85%) of the twenty (20) year sentence which is a difference of eight (8) years. Appellant respectfully asks this Court to reverse his conviction and remand his case for a new trial.

CONCLUSION

The Order denying the relief for the applicant should be reversed and the applicant granted a new trial. Counsel for the Appellant was ineffective in his failure to explain the initial plea offer and its consequences with his client. Counsel's performance was deficient and it definitely harmed the Appellant.

Respectfully Submitted,
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