

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Eugene C. Griffith, Jr., Circuit Court Judge

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MAR 13 2014

S.C. Supreme Court

DENNIS T. DEAL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001615

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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QUESTION PRESENTED

Whether the evidence supports the PCR court's conclusion that Petitioner knowingly accepted a plea deal for a fifteen-year sentence on the condition that he pass a drug test two days later where Petitioner already had drugs in his system?

STATEMENT

On December 14, 2011, Petitioner Dennis Deal appeared at a plea hearing before The Honorable Frank R. Addy. App. 1; App. 12, ln. 12—App. 33, ln. 23. Janna Nelson represented Petitioner and Andrew Hodges represented the State. App. 1. Petitioner waived presentment and pled guilty to charges of shoplifting third offense and first degree assault and battery stemming from separate incidents. App. 3, ln. 1—App. 4, ln. 25; App. 12, ll. 13-17; App. 97-100.

The State recommended a ten-year sentence for the assault and battery charge and consecutive five-year sentence for the shoplifting charge. App. 14, ll. 15-21. The State was also amenable to a deferral of Petitioner's sentencing for two days so that Petitioner could have time out of the State's custody to wrap up affairs. App. 13, ll. 7-10; App. 14, ln. 22—App. 16, ln. 18. After a routine plea colloquy, the plea court found that a sufficient factual basis existed for the plea and that Petitioner pled knowingly and voluntarily. App. 17, ln. 1—App. 28, ln. 22.

The plea judge agreed to delay sentencing for two days on the condition that Petitioner submit to a drug test upon his return. If Petitioner failed, the court would sentence Petitioner to the maximum twenty-year sentence on the charges. App. 14, ln. 22—App. 16, ln. 18. Plea counsel then requested a prior test in case Petitioner had any drugs in his system at that time. The plea judge denied the request, stating traces of any drugs Petitioner had used prior to his admission into jail in September would have already disappeared. App. 29, ln. 11—App. 30, ln. 4.

On December 16, 2011, Petitioner again appeared before the plea judge. The State informed the judge that Petitioner tested positive for cocaine use prior to the hearing. App. 33, ln. 24—App. 34, ln. 23. Plea counsel informed the court that “when we came in this morning he freely

admitted to the activity” App. 36, ll. 4-5. The plea judge then sentenced Petitioner to consecutive ten year sentences.¹ App. 39, ll. 3-20.

On July 24, 2012, Petitioner filed an application for post-conviction relief. App. 42-51. On November 8, 2012, the State filed a return. App. 53-58. On June 3, 2013, Petitioner attended a PCR hearing before The Honorable Eugene C. Griffith, Jr. John D. Compton represented Petitioner and J. Rutledge Johnson represented the State. App. 60. At the hearing, Petitioner testified that he was already under the influence of crack cocaine at the December 14, 2011 plea hearing. He had used crack cocaine prior to going to jail and while in jail. Further, plea counsel was aware that he was addicted to crack cocaine. App. 63, ln. 23—App. 65, ln. 9. Petitioner testified that had plea counsel properly required a test before he was released from custody, he would have rejected the plea deal. App. 66, ln. 16—App. 67, ln. 9.

On July 1, 2013, the PCR court issued an order of dismissal. The order concluded that Petitioner knowingly and voluntarily pled guilty because he was aware of the condition on the fifteen-year sentence and because he received a twenty-year sentence solely because of his own actions. App. 93-94.

ARGUMENT

The record does not support the PCR court’s conclusion that Petitioner knowingly pled because it was impossible for Petitioner to pass the drug test and receive the fifteen-year sentence.

The record does not support the PCR court’s conclusion that Petitioner knowingly pled because it was impossible for Petitioner to pass the drug test and receive the fifteen-year sentence.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to

¹ The judge also revoked two years of probation Petitioner was serving for separate prior offenses. App. 37, ln. 13—App. 39, ln. 20.

effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687.

In the context of a guilty 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,” a defendant sufficiently undermines the required voluntary and intelligent character of a plea. *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009); *accord State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (holding record must reflect that defendant freely and intelligently waived constitutional trial rights and had full understanding of the consequences of the plea); *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) (holding the difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea”).

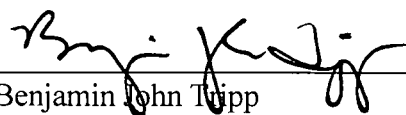
Here, at the time of the plea deal, Petitioner was addicted to crack cocaine and had used the drug prior to and while in jail. Thus, he inevitably would have tested positive two days later at the December 16, 2011 hearing. He had no chance to receive the fifteen-year sentence, and he was therefore essentially pleading to the maximum possible sentence. Plea counsel was deficient in having Petitioner accept the plea offer with a condition that he could not possibly meet. Plea counsel was also deficient in failing to inform the plea judge that requiring Petitioner to pass a drug test was unworkable. Because plea counsel led Petitioner to accept a deal believing that fifteen years was a possible sentence when it was actually impossible, Petitioner did not knowingly agree to the deal.

Based on the evidence, Petitioner also suffered prejudice from the lack of proper advice. He testified that had plea counsel properly required a test before he was released from custody, he would have rejected the plea deal. Indeed, because he was facing an inevitable twenty-year sentence based upon the drug test, he would plainly have been best served by taking his chances in front of a jury.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Dennis Deal's petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENWOOD COUNTY
EUGENE C. GRIFFITH, JR., CIRCUIT COURT JUDGE

DENNIS T. DEAL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001615


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dennis T. Deal states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on June 3, 2013. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Dennis T. Deal.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of March, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County
Eugene C. Griffith, Jr., Circuit Court Judge

DENNIS T. DEAL,

PETITIONER,

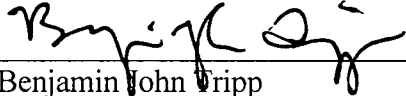
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

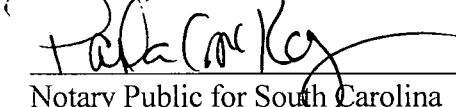
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Dennis T. Deal, #294446, at Walden Correctional Institution, 4340 Broad River Road, Columbia, SC 29210, this 13th day of March, 2014.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of March, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.