STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

R. Ferrell Cothran, Jr., Circuit Court Judge

TRAVONTE JAMAL WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002033

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to fully advise Petitioner of the maximum sentence he could receive when he pled guilty and where Petitioner testified that he would not have pled guilty if he would have known that he could be sentenced to more than thirty years imprisonment?

STATEMENT

An Aiken County Grand Jury indicted Petitioner at the June 2009 term of General Sessions for murder, two counts of first degree burglary, armed robbery, and grand larceny, and at the December 2009 term for second degree arson. App. 112-123. On May 31, 2011, Petitioner pled guilty to voluntary manslaughter, two counts of first degree burglary, armed robbery, grand larceny, and second degree arson before the Honorable Doyet A. Early, III. App. 1. Assistant Solicitor J. Strom Thurmond, Jr. represented the state, and Kelley Perkins Brown represented Petitioner. Id.

Petitioner was sentenced by Judge Early to twenty-five years imprisonment for voluntary manslaughter, fifteen years consecutive on one count of first degree burglary, fifteen years concurrent on the other count of first degree burglary, fifteen years concurrent for armed robbery, fifteen years concurrent for second degree arson, and ten years concurrent for grand larceny. App. 36, l. 20 – 37, l. 16. Petitioner did not appeal his convictions or sentence.

On May 21, 2012, Petitioner filed an application for post-conviction relief (PCR). App. 39-52. The state filed a return to this application dated August 6, 2012. App. 53-59. The matter proceeded to an evidentiary hearing on July 12, 2013 before the Honorable R. Ferrell Cothran, Jr. App. 60. Assistant Attorney General Daniel Gourley represented the state, and Sonja R. Tate represented Petitioner. Id. By order dated August 19, 2013, Judge Cothran denied Petitioner relief. App. 103-111.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when plea counsel failed to fully advise Petitioner of the maximum sentence he could receive when he pled guilty and where Petitioner testified that he would not have pled guilty if he would have known that he could be sentenced to more than thirty years imprisonment.

Relevant Facts

At the beginning of Petitioner's guilty plea, Judge Early went through each indictment Petitioner was pleading guilty to and asked plea counsel whether she adequately advised Petitioner of the sentencing range for each offense and certain classifications each offense might carry, including whether the offense was considered violent, non-violent, most serious, or serious. Plea counsel stated she had advised Petitioner of this information along with his constitutional rights, including his right to a trial by jury. App. 4, l. 4 – 6, l. 23.

Judge Early then turned to Petitioner and again went through each indictment Petitioner was pleading guilty to and explained to Petitioner the sentencing range for each offense and whether the offense was considered violent, non-violent, most serious, or serious. Petitioner stated he understood what the charges carried, their respective classifications, and what those classifications meant. After this colloquy, Judge Early asked Petitioner whether he had any questions. Petitioner asked the judge about our state's community supervision program, but afterwards indicated he had no further questions. App. 6, l. 24 – 10, l. 20.

Judge Early then asked Petitioner, "Now, understanding everything that you're charged with, understanding the potential sentences on each one of them - - You're looking at two life sentences, a thirty-year sentence, twenty-five-year sentence, another thirty-year sentence, and a ten-year sentence. I have the discretion to run them all together, run them stretched out, or any

combination therefore. Do you understand that? When I say stretched out, that means you do one and then the next one. That is called consecutive." To which Petitioner responded, "Yes, sir, I understand." App. 10, l. 21 – 11, l. 5.

Petitioner then indicated he wished to plead guilty acknowledging he was giving up his right to remain silent and his right to a trial by jury. App. 11, l. 6 – 13, l. 4. Petitioner also admitted that he was pleading guilty because he was guilty. App. 14, l. 9 – 15, l. 19. Judge Early then found Petitioner's "decision to plead guilty to all six indictments to be freely, voluntarily, and intelligently made." App. 15, ll. 20-22.

PCR Hearing

Petitioner testified at the PCR hearing that he thought thirty years was the most time he could be sentenced to when he pled guilty. App. 69, ll. 4-5. He explained that if he had understood that he could be sentenced to more than thirty years, he would not have pled guilty. Petitioner said he "believed thirty years was the most [he] could get because the solicitor had previously recommended [thirty years]," even though he earlier acknowledged he had rejected the state's plea offer of thirty years imprisonment. App. 69, ll. 11-17; see also App. 66, ll. 1-25.

On cross-examination, Petitioner testified that he did not know he was facing two life sentences until "[he] got to the plea agreement."[1] Petitioner admitted that after speaking with the judge during his guilty plea he knew that he was facing two life sentences and that he "could get life without parole." App. 74, l. 11 – 75, l. 20.

Petitioner further testified on cross-examination that plea counsel "advised him of a potential thirty year plea deal," but he did not want the thirty year deal. Petitioner explained "[plea counsel] said that I could receive a life sentence . . . And I was like - - I didn't want the life sentence

[1] Presumably, Petitioner was referring to his actual guilty plea hearing.

so I would like to go ahead and plea." App. 76, ll. 10-24. He explained that he pled guilty in order to avoid being sentenced to life without parole. App. 75, ll. 21-23.

Petitioner testified that after he rejected the thirty year offer, plea counsel told him, "Well let me see what I can talk to the solicitor to see if I can get something lower." Petitioner explained, "So by assumption when we went to go plea, I thought she had worked it out with the solicitor already . . . So that's why I had went ahead and pled." App. 77, ll. 1-8.

Plea counsel, Kelley Perkins Brown, explained that she was court appointed to represent Petitioner in November 2009 and that she met with him approximately five or six times "face-to-face" before he pled guilty. They also had conversations on the phone and her investigator met with Petitioner as well. App. 79, ll. 1-21. Brown maintained she reviewed with Petitioner the "possible punishments" he was facing and that he understood he was facing two life sentences. App. 81, ll. 10-17.

She testified that the solicitor offered to recommend the mandatory minimum of thirty years imprisonment if Petitioner pled guilty to murder. However, Petitioner rejected this offer because "he did not want to walk into the courtroom agreeing to thirty years." So Brown explained that she and the solicitor worked out a deal where Petitioner could potentially be sentenced to less than thirty years. She said, "[W]e knew that with the charges, structuring the reduction from murder to voluntary manslaughter charge would remove the thirty year mandatory minimum. The only mandatory minimums that there would be at that point would be the fifteen years on the first [degree] burglaries, but we did discuss the fact that that left it wide open for the judge to give more or less and that was the risk." App. 82, l. 16 – 83, l. 22.

On cross-examination, Brown again stated that she advised Petitioner what the maximum sentence was for murder, voluntarily manslaughter, and "also for first degree burglary and arson and

all the other charges that he had." She explained, "We discussed the fact that with all the charges that he had, what all [the] possible penalties were and that if you stacked them up you're looking at this much. If they're run together, you're looking possibly at this much." App. 88, ll. 2-20.

Brown also made clear "it wasn't that [Petitioner] did not want to enter a guilty plea and was insisting on a trial, it was that [Petitioner] did not want to walk in the courtroom agreeing to a negotiated thirty year sentence." App. 86, ll.10-14.

Order of Dismissal

The PCR court found the transcript of Petitioner's guilty plea reflects that his "plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea." App. 109. Moreover, the court found plea counsel discussed with Petitioner the pending charges, the elements of the charges and what the state was required to prove, Petitioner's constitutional rights, his version of the facts, and any possible defenses. The court further found that Petitioner understood the terms of his guilty plea. Therefore, the court found plea counsel was not ineffective and denied Petitioner relief. App. 109-110.

Discussion

The United States Supreme Court has held that guilty pleas are "no more foolproof than full trials to the court or to the jury. Accordingly, we take great precautions against unsound results, and we should continue to do so, whether conviction is by plea or by trial." Brady v. United States, 397 U.S. 742, 758 (1970). Additionally, the South Carolina Supreme Court has held that the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Holden v. State, 393

S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000)) (internal quotations omitted). However, "the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Id. at 573, 713 S.E.2d at 615 (quoting Roddy, 339 S.C. at 33, 528 S.E.2d at 420) (internal quotations omitted).

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court adopted the two-part standard in Strickland v. Washington, 466 U.S. 668 (1984), and applied the Strickland standard to guilty plea challenges based on ineffective assistance of counsel. To prove ineffective assistance of counsel from a guilty plea, the defendant must show: (1) "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases" and (2) that "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S. at 57-59.

Here, Petitioner's guilty plea was not made knowingly and voluntarily because he did not adequately understand the consequences of his guilty plea, specifically that he could be sentenced to more than thirty years imprisonment. Plea counsel was ineffective because she did not properly advise Petitioner that he could be sentenced to more than thirty years. After Petitioner rejected the solicitor's offer to recommend thirty years in exchange for his guilty plea to murder, Petitioner was under the impression that plea counsel was going to speak with the solicitor and obtain a more favorable offer. Therefore, when he agreed to plead guilty to voluntary manslaughter, Petitioner incorrectly thought the maximum he could be sentenced to was thirty years imprisonment. Plea

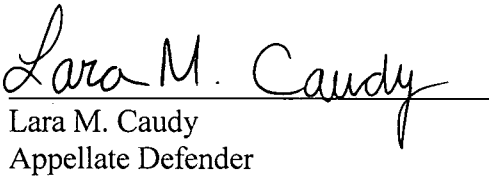
counsel was ineffective for not ensuring Petitioner was adequately aware of the potential sentence he faced by pleading guilty.

Petitioner was prejudiced because he would not have pled guilty if he had been properly informed that he could be sentenced to more than thirty years imprisonment. See App. 69, ll. 11-13. Therefore, this Court should ultimately reverse Petitioner's convictions and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO AIKEN COUNTY
R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

TRAVONTE JAMAL WILLIAMS,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travonte Jamal Williams states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent Petitioner.

2. She has reviewed the records and transcript of Petitioner's post-conviction relief hearing which was held on July 12, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.

3. She 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 her as counsel for Travonte Jamal Williams.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender
ATTORNEY FOR PETITIONER

This 24th day of March, 2014

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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 Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Travonte Jamal Williams, #346287, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 24th day of March, 2014.

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day of March, 2014.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.