

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Darlington County

R. Ferrell Cothran, Jr., Circuit Court Judge

S.C. Supreme Court

TAVEIO BOSTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001889

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in concluding Petitioner knowingly and voluntarily pled guilty where Petitioner raised to plea counsel the matter of his mental condition and medications, but where counsel never investigated the matter and testified he steered Petitioner towards a plea in order to resolve the case quicker?

STATEMENT

On April 7, 2011, the Darlington County Grand Jury indicted Petitioner Taveio Ra'Oul Boston on two counts of murder and one count of assault and battery with intent to kill. App. 84-88. On September 14, 2011, Petitioner attended a plea hearing before The Honorable Paul M. Burch. Richard Jones represented Petitioner and Kernard E. Redmond represented the State. App. 1.

During the hearing, the State alleged that on October 26, 2008, Petitioner had an argument with his mother, who was eight months pregnant. At their residence that evening, Petitioner confronted and shot her around five times with a handgun. Petitioner then shot his sister, also in the residence, in the neck before fleeing in his mother's car. Petitioner's mother later died along with the unborn child, but his sister survived. App. 12, ln. 18—App. 15, ln. 12. Petitioner was only fourteen at the time. App. 18, ll. 18-23.

The plea judge engaged Petitioner in a routine plea colloquy. App. 5, ln. 21—App. 12, ln. 15. The judge then sentenced Petitioner to concurrent sentences of twenty years imprisonment for the charge of assault and battery with intent to kill and thirty-six years for each charge of murder. App. 26, ll. 16-20.

On June 12, 2012, Petitioner filed an application for post-conviction relief alleging ineffective assistance of counsel. App. 29-42. The State filed a return on August 12, 2012. App. 43-46. On July 15, 2013, Petitioner attended a hearing before The Honorable R. Ferrell Colthran, Jr. Charles T. Brooks, III represented Petitioner and Karen C. Ratigan represented the State. App. 47.

Petitioner testified that he raised to counsel a potential issue for defense or mitigation regarding his mental condition and medications. However, “[w]henever I asked him to look into

my medications, my history, he didn't do none of that. Every time he came to me he wanted me to plead." App. 54, ll. 1-4. Petitioner recounted other interactions with counsel that lead him to plead guilty:

I pled guilty because I was scared due to the fact he told me if I went to trial . . . I would have got two consecutive life sentences, and I looked at it like if I take the recommendation of 40 years he told me the recommendation would be 40 years and under.

App. 51, ln. 21—App. 52, ln. 2. In the end, Petitioner's decision was based on the lack of options he saw through counsel: "[E]very time Mr. Jones came to see me he didn't have nothing on my case. He came in with a little tablet . . . with nothing on it, nothing buy my name." App. 58, ll. 8-11.

Plea counsel also testified and stated he took over Petitioner's representation from another attorney about a year and a half after his arrest. App. 65, ll. 16-20. He confirmed Petitioner's communications regarding his mental health and medication: "I think [medication] was a fairly major issue with the evaluation that [the previous attorney] had gotten. . . . I do recall having a conversation with him . . ." App. 71, ll. 4-12. However, counsel expressed he was eager to resolve the case: "[Petitioner] was [almost] 17 when he pled guilty The case had been just sitting for about three years. I was trying to get the solicitor to call the case . . ." App. 69, ll. 22-25.

On August 13, 2013, the PCR court issued an order of dismissal. The order stated Petitioner knowingly and voluntarily pled guilty because he told the plea judge that he understood the trial rights he was waiving and that he had not been coerced in any way. Therefore, he could not establish ineffective assistance of plea counsel. App. 75-83.

ARGUMENT

The PCR court erred in finding Petitioner knowingly and voluntarily pled guilty because the evidence in the record establishes that plea counsel strong-armed him into making a guilty plea without fully advising him about the potential impact of his mental health and medication.

The PCR court erred in finding Petitioner knowingly and voluntarily pled guilty because the evidence in the record establishes that plea counsel strong-armed him into making a guilty plea without fully advising him about the potential impact of his mental health and medication. The Sixth Amendment to the United States Constitution guarantees a defendant the right to 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. The two-part test adopted in *Strickland* “applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985); *see generally Brady v. United States*, 397 U.S. 742, 758 (1970) (“Guilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.”).

Specifically, 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”). Thus, a deficiency of this kind by counsel may deprive a defendant of his Constitutional right “to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal.” *Jones v. Barnes*, 463 U.S. 745, 751 (1983).

“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). “Specifically, 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.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

In this case, both Petitioner and counsel’s testimony established that counsel strong-armed him into making a guilty plea without fully advising him about the potential impact of his mental health and medication. Petitioner testified that he raised to counsel the matter of his mental condition and medications. However, counsel never investigated the matter. Counsel testified he was aware it was significant, but rather than explore its impact with Petitioner, he steered Petitioner towards a plea in order to resolve the case quicker. Not only did counsel fail to explore this matter, but he also admonished Petitioner about the maximum sentence to the point that Petitioner saw no option but to plea.

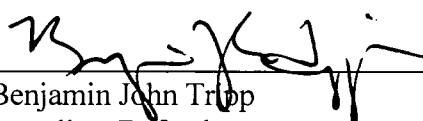
While striving to resolve the case and to protect Petitioner from the maximum sentence was necessary to adequate representation, it was not sufficient. The Constitution required that Petitioner be advised about his case in such a manner that he could make a fully informed decision as to whether to plead guilty. Thus, Petitioner needed full knowledge of the material issues in his case in order to knowingly evaluate his options and decide whether to make a plea

in accord with his own principles and interests. By withholding advisement and presenting Petitioner with no option but to plea, Petitioner was denied the opportunity to pursue his interests.

CONCLUSION

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

Respectfully submitted,



Benjamin John Trupp
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

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STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2013-001889


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Taveio Boston 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 July 15, 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 Taveio Boston.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of April, 2014

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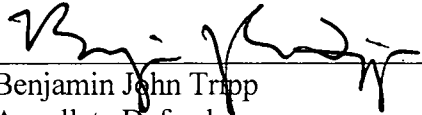
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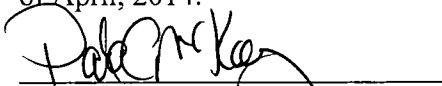
CERTIFICATE OF SERVICE

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 Joshua L. Thomas, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Taveio Boston, #347753, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 17th day of April, 2014.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of April, 2014.


_____(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.