

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County
The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2013-002565

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S.C. Supreme Court

DOMINIC GILBERT,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

I. Whether there is probative evidence to support the lower court's finding that the Petitioner's guilty plea was freely, voluntarily, and intelligently entered when the Petitioner was fully advised of the consequences of pleading guilty and the record is void of any evidence showing counsel unduly pressured or coerced the Petitioner to plead guilty?

STATEMENT OF THE CASE

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Petitioner was indicted at the January 2011 term of the Beaufort County Grand Jury for attempted murder (2011-GS-07-2391) and possession of a sawed off shotgun (2010-GS-07-2392). The Petitioner was represented by Helen Dovell, Esquire.

On February 27, 2012, the Petitioner pled guilty to the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). The remaining weapon charge was dismissed by the State. The Petitioner pled guilty and was sentenced by the Honorable Roger M. Young, Sr. to confinement for a period of eight (8) years. The Petitioner did not appeal his conviction or sentence.

The Petitioner filed an application for post-conviction relief on July 16, 2012. The State filed its Return on February 25, 2013. An evidentiary hearing in the matter was held on August 30, 2013 at the Beaufort County Courthouse. The Petitioner was represented by John M. Tatum, III, Esquire. Ashleigh R. Wilson, Esquire, represented the State of South Carolina. By Order filed November 14, 2013, the Honorable Deadra L. Jefferson denied and dismissed the Petitioner's application with prejudice. The Petitioner filed a Notice of Appeal and Petition for Writ of Certiorari. This Return follows.

ARGUMENT

There is probative evidence to support the lower court's ruling that the Petitioner's guilty plea was entered freely and voluntarily when the Petitioner was fully advised of the consequences of pleading guilty and the Petitioner failed to carry his burden of proving counsel pressured, coerced, or threatened him to plead guilty.

The Respondent submits the lower court correctly found the Petitioner's guilty plea was freely, voluntarily, and intelligently entered. 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. Boykin v. Alabama, 395 U.S. 238 (1969). The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

On appeal, this Court must affirm the circuit court's denial of post-conviction relief when there is probative evidence to support the findings of the circuit court. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 369 (1997); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The Respondent submits the Petitioner was fully advised by the Court of the consequences of his guilty plea. The record reflects the Petitioner pled guilty with two of his three co-defendants. The Court began by advising the Petitioner of the nature of the charges he was pleading guilty to. The Court advised the Petitioner that he was pleading guilty straight-up to assault and battery of a high an aggravated nature and that the possession of a sawed off shotgun charge would be dismissed by the State. (App. 2:18-24). The Court advised the Petitioner that he was facing a sentence of up to twenty (20) years for ABHAN and the Petitioner indicated he understood the nature of the charge he was pleading guilty to and the potential sentence. (App. 3:18-24). The Court also advised the Petitioner of his right to a jury trial, his right to challenge the State's evidence, and his right to remain silent. The Petitioner indicated his desire to waive these rights and plead guilty. (App. 4:8-21, 5:2-7). The Petitioner represented to the Court that he was pleading guilty because he was actually guilty and that he was not under the influence of any drugs or alcohol. (App. 6:6-8, 17-19).

This colloquy between the Petitioner and the plea court reflects the Petitioner was well aware of the consequences of pleading guilty. The Petitioner was advised of his right to remain silent, his right to challenge the State's evidence against him, and his right to a jury. Prior to pleading guilty, the Petitioner was aware of all the alternative courses of action open to him. The record reflects a knowing and voluntary waiver of the Petitioner's constitutional rights.

The Respondent submits the record is void of any undue pressure or coercion by plea counsel which forced the Petitioner to plead guilty. In support of his claim that plea counsel

unduly pressured and coerced him to plead guilty¹, the Petitioner relies mainly on his testimony during his evidentiary hearing and the fact that counsel brought in members of his family and other public defenders to discuss the guilty plea with him. The Respondent submits it was not improper for counsel to enlist the Petitioner's family and other public defenders to discuss with him a decision she thought was in his best interest. Counsel's advice to the Petitioner to plead guilty to ABHAN was not improper in light of the risk of a much harsher sentence had the Petitioner proceeded to trial on attempted murder. By enlisting the assistance of others to help the Petitioner make his decision, counsel was exercising her obligation to make sure the Petitioner was fully informed of what was in his best interest. Counsel's actions were particularly beneficial to the Applicant in light of his tender age at the time of the incident and his guilty plea. The Respondent submits counsel's performance in this regard was not inappropriate and erred to the Petitioner's benefit.

The Respondent also submits this Court should not consider the Petitioner's testimony at the evidentiary hearing that he felt threatened and pressured by counsel dispositive. The lower court held the Petitioner's testimony at the evidentiary hearing was not credible. (App. 71:19-21, 86). This Court should find conclusive the fact that the Petitioner told the plea court twice that he was not threatened by anyone to plead guilty. (App. 8:15-20, 9:13-18). The Petitioner has failed to present any valid reason why he should be allowed to depart from the truth of the statements he made during his guilty plea. See Crawford v. United States, 519 F.2d 347 (4th Cir.1975). The Petitioner never represented to the court during his guilty plea that he was pressured or coerced to plead guilty by his counsel.

¹ The Petitioner also asserts that the plea judge strong armed the Petitioner into pleading guilty and waiving his right to a jury trial. The Respondent submits the Petitioner has presented no evidence in support of this claim and it is wholly without merit.

Lastly, the Respondent submits the Petitioner freely and voluntarily waived his right to a jury trial. The Petitioner asserts the Petitioner did not freely and voluntarily waive his right to a jury trial since he told the Court during his guilty plea that he wanted a jury trial. The record reflects the Petitioner was advised by the plea court of his right to a jury trial and the Petitioner told the Court he wished to waive his right to a jury trial and plead guilty. (App. 3:18-24). As the guilty plea progressed, the Court advised the Petitioner that unlike his co-defendant's pleas, his guilty was straight-up and his sentence would be whatever the Court decided. (App. 10:7-11). The Petitioner told the Court that was not his understanding of the guilty plea and that he wanted a jury trial. (App. 10:12-17). The Court explained to the Petitioner that he had spoken with counsel and that if he had the opportunity to get a sentence closer to eight (8) years he should take it. The Court went on to explain that there were no promises made with regard to what his sentence would be. (App. 10:18-11:3). The Petitioner indicated he understood the Court's explanation and never again represented to the Court that he wished to have a jury trial. (App. 11:3-15).

The Respondents submits the Petitioner's statement to the plea court that he wanted a jury trial was only in response to what appeared to be a misunderstanding by the Petitioner as to the sentence he could receive from the Court. After the plea court clarified, the Petitioner indicated he understood the terms of the guilty plea and never re-asserted his interest in proceeding to trial. The Respondent submits the Petitioner freely and voluntarily waived his right to a jury trial and continued with the guilty plea proceeding after the Court explained the benefit he would receive by pleading guilty.

The Respondent submits the Petitioner has failed to carry his burden of proving his guilty plea was not freely, voluntarily, and intelligently entered. The Respondent submits the Petitioner

was fully advised of the consequences of pleading guilty. The Respondent also submits the record is void of any form of coercion or undue influence by counsel to get the Petitioner to plead guilty. The Respondent submits this Petition should be denied.


CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
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BY: 

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ATTORNEYS FOR RESPONDENT

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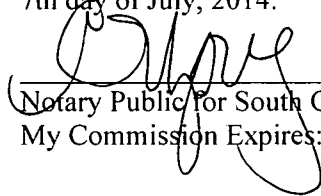
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari to The SC Supreme Court has been served upon opposing counsel, Carmen V. Ganjehsani this 7th day of July 2014.



Anne R. Henley
Legal Assistant

SWORN to before me this
7th day of July, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/28/2014



ALAN WILSON
ATTORNEY GENERAL

July 7, 2014

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Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

RE: Dominic Gilbert v. State of South Carolina
Appellate Case No. 2013-002565

Dear Mr. Shearouse:

Enclosed please find the original Return to Petition for Writ of Certiorari to the South Carolina Supreme Court in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this Return to Petition for Writ of Certiorari.

With highest regards,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh
Enclosures

cc: Lara M. Caudy, Esquire