STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

WILLIAM H. REID,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002412

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

The PCR judge erred in ruling that petitioner's pleas were given voluntarily because clearly petitioner pled guilty believing that trial counsel's motion to suppress the drugs (due to unreliable confidential informant) obtained in his case had already been submitted to and denied by the trial judge, and that he had no other choice but to plead guilty, which in turn meant that his pleas were not "a voluntary and intelligent choice among alternatives available to [him]"[1] as he thought he was between "rock and a hard place"[2] in his case.

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[1] North Carolina v. Alford, 400 U.S. 25 (1970); Brady v. United States, 397 U.S. 742 (1970)

[2] App. 48, lines 6 – 7.

STATEMENT

Petitioner William H. Reid pled guilty to trafficking in cocaine and possession with intent to distribute methamphetamine during the April 2011 term of the Spartanburg County General Sessions Court before Judge J. Durham Cole. Petitioner was sentenced to imprisonment for a period of eight years. Attorneys Stanley L. Myers and Christian G. Spradley represented petitioner at the plea proceeding, and Assistant Solicitor Travis A. Moore appeared on behalf of the state. App. 1-17. Petitioner did not enjoy the benefit of a direct appeal in the case.

On December 19, 2011, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 19-25. The respondent filed a return dated September 11, 2012, requesting that a hearing be held in the case. App. 26-30.

A PCR hearing was convened on June 25, 2013, at the Spartanburg County Courthouse before Judge R. Lawton McIntosh. App. 32-94. Petitioner was present at the PCR hearing and represented by M Terry Haselden, and Assistant Attorney General Suzanne H. White appeared on behalf of the State. On September 25, 2013, Judge McIntosh filed an Order of Dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 109 – 118.

Petitioner appealed Judge McIntosh's Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in ruling that petitioner's pleas were given voluntarily because clearly petitioner pled guilty believing that trial counsel's motion to suppress the drugs (due to unreliable confidential informant) obtained in his case had already been submitted to and denied by the trial judge, and that he had no other choice but to plead guilty, which in turn meant that his pleas were not "a voluntary and intelligent choice among alternatives available to [him]"[3] as he thought he was between "a rock and a hard place"[4] in his case.

During the guilty plea proceeding, the solicitor apprised the trial judge of the facts in the case. The solicitor stated that on June 4, 2008, petitioner led an informant to a particular residence and showed him where cocaine and methamphetamine were located inside. Thereafter, a search of that house was conducted and drugs were found therein. App. 12, lines 1-20.

The PCR record established that after being retained in the case, trial counsel prepared a motion to suppress the drugs found on the ground that there was no proof of the reliability of the informant, which in turn rendered the search warrant affidavit and the search warrant defective, and the following search illegal. App. 35, lines 19-20. Also, the PCR hearing record established that petitioner no longer lived in the house at the time the drugs were found there because he and his wife had already separated by then. App. 35, lines 8-12; App. 36, lines 15 – 20. App. 41, l. 24 – p. 42. l.1.

Petitioner testified during the PCR hearing and explained that he was arrested in June 2008, but that he and his wife separated as early as April 2008. App. 40, 1. 20, p. 42, 1.1. Also, petitioner testified that he pled guilty because counsel led him to believe that the motion to suppress

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[3] North Carolina v. Alford, 400 U.S. 25 (1970); Brady v. United States, 397 U.S. 742 (1970)

[4] App. 48, lines 6 – 7.

the drugs (based on the unreliable confidential informant) had been submitted and presented to the judge and denied by the trial judge prior to the plea proceeding. Therefore, petitioner stated in effect that he had no other choice but to plead guilty in the case. App. 42, 1.23 - p.44, 1.9. Petitioner added that trial counsel "prepared a wonderful motion...but it was just never presented." App.18, 11.4-5.

Petitioner's testimony regarding the matter follows:

> Q: At the time you pled guilty were you aware that the motion had never been filed?
>
> A: No, I was not. App. 44, lines 10-12.

Petitioner contended that his desire was to exercise his right to a trial by jury had he known the motion had not been filed. App. 46,1.1-4; App. 47, l. 1 – p. 48, l. 7. Petitioner explained further as follows:

> Q. Okay. Well, if you had known what you know now, okay, that the motion to suppress had not been filed and had not been addressed in court what would you have done on that day?
>
> A. I would have went to trial 'cause he knew I would have went to trial 'cause I was already dressed to go to trial. And then we consult with my family member, you know what I'm saying, my mother and my girlfriend at that time stating that, you know, I need to go ahead and plead guilty because I'm gonna come up out of here with 25 years and, you know, and that when my mother basically stated, you know, said that I'm of age and, you know what I'm saying and go ahead and plead to 8 because I don't think I can be around for no 25, and you know what I'm saying, whatever, so you know, I was kind of stuck between a **rock and a hard place**.App. 47, l. 8 – p. 48, l. 7.

Trial counsel testified at the PCR hearing and explained that in the process of plea negotiations, during which time he worked out an eight-year plea deal, he mentioned the suppression motion to the trial judge, and that trial judge indicated that he did not know what his ruling would have been, but that he (trial judge) was not impressed or 100% "convinced" on the

motion. App. 76, 1.16 - p. 86, 1.16; App. 86, 1.8-19. Counsel elaborated on the fact that he prepared the motion to suppress, but was saving the motion (if plea negotiations failed) to argue after the jury was sworn in the event of a trial in the case. App. 64, 1, 19 - p. 65, 1. 1. App. 75, 1.16 – p. 76, l. 15.

Central to the case was the argument that the search warrant was defective due to the absence of statements in the supporting warrant affidavit from a reliable and knowledgeable confidential informant, and that the search that followed (which uncovered the presence of the drugs confiscated from the house) was illegal. Thus, this search constituted an illegal search and seizure, which meant the drugs could have been suppressed in the case. Trial counsel drafted a motion to this effect. However, petitioner believed that at the time of his plea said motion to suppress had been presented and denied; and therefore, he interpreted this to mean that the core of his defense had been lost and he had no other alternative available other than to enter the guilty pleas as the only option open to him at that time. Thus, petitioner's choice to plead guilty as charged was not an informed choice or an intelligent choice because said motion to suppress had not been formerly presented to and denied by the trial judge, which meant that rather than pleading guilty, petitioner had another option, i.e., having the motion presented via a jury trial. Had the suppression motion been denied at trial, then at least the issue would have been preserved for appellate review rather than waived forever due to his submission of guilty pleas on the state's charges. In addition, petitioner had the additional option of raising the issue of whether he was in actual or constructive possession of the drugs in question at trial and on appeal since he did not reside at the house on the date the drugs were seized.

A guilty plea must be an informed and intelligent decision. State v. Lopez, .523.6.373, 574 S.E.2d 210 (2002), citing to Boykin v. Alabama, 395 U.S. 238 (1969). The longstanding test for

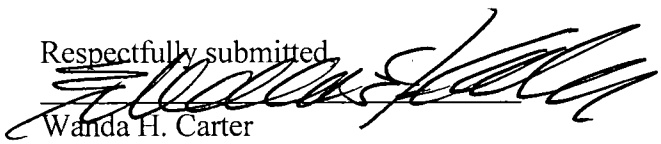
determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternate courses of action open to the defendant. Taylor v. State, 404 S.C. 350, 745, S.E.2d 97 (2013), and Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011), citing to North Carolina v. Alford, 400 U.S. 25 (1970). Here, petitioner's unawareness of the alternate action of having his suppression motion aired and ruled upon at trial was available to him as an option via a trial by jury meant that his guilty pleas were entered by default and thus deemed involuntary in nature and also unconstitutional as a result. Hence, petitioner's guilty pleas cannot stand as constitutionally valid.

Counsel's error involving the misrepresentation of the status of the suppression motion as having been formerly filed and ruled upon resulted in petitioner's confusion about what choices and alternatives were available to him in his case. Counsel's misrepresentation was tantamount to ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution such that but for the error, there was a reasonable probability that petitioner would have exercised his right to a trial by jury and the presentation of two plausible defense issues at trial and on appeal rather than opting to have pled guilty as charged. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, petitioner requests that his petition be granted and full briefing allowed on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of August, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
R. LAWTON MCINTOSH, CIRCUIT COURT JUDGE

WILLIAM H. REID,

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STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002412

PETITION TO BE RELIEVED AS COUNSEL

Counsel for William H. Reid, Jr. states:

1. She is Deputy Chief 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 June 25, 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 William H. Reid, Jr..

Respectfully submitted,

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 6th day of August, 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 Suzanne H. White, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and William H. Reid, Jr., #345611, at Allendale Correctional Institution, PO Box 1151, Hwy 47, Fairfax, SC 29827, this 6th day of August, 2014.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day
of August, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.