

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County

Edward W. Miller, Circuit Court Judge

RECEIVED
AUG 27 2014
S.C. Supreme Court

TYRONE BERNARD PATRICK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002701

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

INDEX

INDEX 1

ISSUE PRESENTED 2

STATEMENT 3

ARGUMENT 4

CONCLUSION 6

PETITION TO BE RELIEVED AS COUNSEL..... 7

ISSUE PRESENTED

The PCR judge erred in ruling that petitioner's guilty pleas were given voluntarily in the case because petitioner protested his innocence, desired a jury trial, and was coerced into pleading guilty after his motion to suppress the drug evidence was denied as he believed there was no other choice but to plead guilty and avoid a fifty-year sentence

STATEMENT

Petitioner Tyrone Bernard Patrick entered an Alford¹ plea to trafficking in crack cocaine, possession of crack cocaine with intent to distribute within close proximity of a school, and possession of a weapon during the commission of a violent crime during the Pickens County General Sessions Court before Judge G. Edward Welmaker. Petitioner was sentenced to imprisonment for an aggregate period of twenty years. Frank Eppes represented petitioner at the plea proceeding and Assistant Solicitor Sam Tooker appeared on behalf of the state. App. 1-24. Petitioner did not enjoy the benefit of a direct appeal in the case.

On January 20, petitioner filed a PCR application with the Pickens County Office of the Clerk of Court. App. 26-32. The respondent filed a return dated June 12, 2012, requesting that a hearing be held in response to petitioner's PCR action. App. 33-38.

A PCR hearing was convened on October 21, 2013, at the Pickens County General Sessions Court before Judge Edward W. Miller. Petitioner was present at the hearing and represented by R. Mills Ariail and Karen C. Ratigan appeared on behalf of the State. App. 40-87.

On November 25, 2013, Judge Miller filed an order of dismissal denying petitioner's PCR allegations in the case. App. 89-97.

Petitioner appealed Judge Miller's Order of Dismissal issued in the case. This petition follows.

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

ARGUMENT

The PCR judge erred in ruling that petitioner's guilty pleas were given voluntarily in the case because petitioner protested his innocence, desired a jury trial, and was coerced into pleading guilty after his motion to suppress the drug evidence was denied as he believed there was no other choice but to plead guilty and avoid a fifty-year sentence.

Apparently, police officers raided the home of Stephaney Foster while petitioner was there at her residence and when a gun and drugs were found there, both Foster and petitioner were charged with drug and weapon offenses by the state. App. 45, 1.5-21. Petitioner's position was that he desired a trial because he was neither in actual nor constructive possession of the weapon or the drugs and was therefore not guilty as charged. App. 50, l. 1 – p. 53, l. 20 – 25; App 58, lines 4-7.

During the guilty plea proceeding, petitioner asked the trial judge if he could be found “guilty of a crime [via] mere presence” only. App. 6, lines 12-17. Also, during the plea proceeding, petitioner insisted that the drugs were “claimed by another person.” App. 8, lines 18-22. Finally, petitioner stated that he was “entering this plea of guilty because...if found guilty.. [he would] get way more time,” i.e. a fifty-year sentence. App. 12, lines 19-21.

During the PCR hearing, petitioner testified as follows

Q. ...What information did you have that you gave to [trial counsel] that showed you were innocent?

A. ...When I came to the residence at night it was lotta people in there and when we, when I went to sleep and they busted this residence I was woke up outta the bed and drug out the house. Everything in this residence was put on, was just placed on me so my thing with [trial counsel] was just by me bein' (sic) present in this house does this make me guilty.

Q. Okay, so whose house was it?

A. It was Stephaney Foster's house.

Q. Okay, so you were sleepin' at Stephaney Foster's house with how many other people?

A. Well I went to sleep with about nine people in the house.

Q. When you were arrested, how many people?

A. Just me and her. App. 50, lines 2-21.

Q. And did [trial counsel] explain to you before the guilty plea what an Alford plea was, that you weren't having to admit – to admit your guilt, did he explain that to you?

A. The Alford plea came about because I we – I told him I'm innocent, why should I plead guilty to sumtin' (sic) I'm innocent of.

Q. Okay, but –

A. He said –

Q. --- so what I'm saying is did he ask – did he explain what an Alford plea was to you?

A. No, he said we could take a Alford plea and I said, What's a Alford plea, he said, Well that means you aint gotta say you you guilty as the charge.

Q. Okay. And did [trial counsel] tell you that the plea offer was for a negotiated 20-year sentence? Did he explain that?

A. Basically I was gonna get 20 years or 50 years, that's that's what was related to me, my family and everybody that was in there. App. App. 70, l. 7 – 24.

Also, note that apparently a pre-trial hearing was held on a motion to suppress the drugs and weapon found in the house and that the suppression motion was denied. App. 64, l. 8 – p. 65, l. 24; App. 69, l. 23 – p. 70, l. 2.

The question to be answered in deciding a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's plea was voluntarily and intelligently entered. State v. Smith, m255 S.C. 417, 179 S.E.2d 2000 (1971) citing to Sweat v. State, 225 S.C.

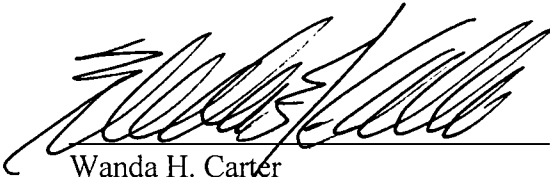
293, 178 S.E.2d 657 (1971). A guilty plea must be given voluntarily in order to be valid. Boykin v. Alabama, 395 U.S. 695 (1969). A defendant who pleads guilty on the advice of counsel can only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that but for counsel's error, the defendant would not have pled guilty, but would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Additionally, a plea received despite a defendant's protests of innocence cannot be considered voluntarily given. Rolen v. State, 384 S.C. 409, 683 S.E. 2d 471 (2009). In Rolen, trial counsel was found ineffective in failing to move for the withdrawal of the defendant's guilty plea where the defendant repeatedly asserted his innocence prior to sentencing at this plea proceeding. Also in Rolen, the trial judge had formally accepted the defendant's guilty plea prior to his protestations of innocence. In South Carolina, a trial judge can reject a guilty plea if the defendant protests his innocence. State v. Paris, 354 SCI, 578 S.E. 2d 751 (2003).

In the case at bar, petitioner's protests of innocence preceded his guilty pleas. Clearly, petitioner desired a jury trial in order to prove to the jury that he was neither in actual nor constructive possession of the items found during the search of the house in question. Also, petitioner was coerced into pleading guilty once the motion to suppress the drugs was denied, and when he learned he could receive a fifty-year sentence if found guilty in the event of a trial. Therefore, petitioner took the thirty-year plea offer and pled guilty. Counsel erred in allowing petitioner to plead guilty and not allow the jury to decide his case. Moreover, counsel's error in allowing petitioner to be coerced to plead guilty despite his protests of innocence constituted deficient legal representation. But for the error, petitioner would have opted to exercise his right to a trial by jury in the case. Counsel's error violated petitioner's Sixth Amendment right to effective legal assistance during a plea proceeding. Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of August, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO PICKENS COUNTY
EDWARD W. MILLER, CIRCUIT COURT JUDGE

TYRONE BERNARD PATRICK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002701

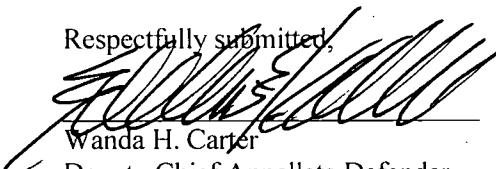
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrone Bernard Patrick 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 October 21, 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 Tyrone Bernard Patrick.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 27th day of August, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Edward W. Miller, Circuit Court Judge

TYRONE BERNARD PATRICK,

PETITIONER,

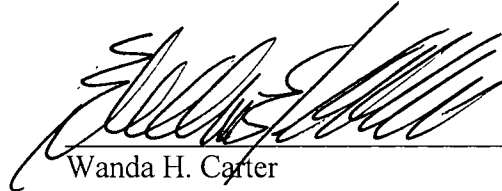
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

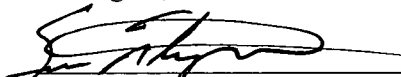
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen C. Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Tyrone Bernard Patrick, #233697, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 27th day of August, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of August, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.