

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

SEP 10 2014

S.C. Supreme Court

Certiorari to Williamsburg County

R. Knox McMahon, Circuit Court Judge

ALEXANDER SAMUEL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-002630

JOHNSON PETITION FOR WRIT OF CERTIORARI

CARMEN V. GANJEHSANI
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

Petitioner’s guilty plea was involuntary where he was led to believe that if he
pled guilty and testified against a co-defendant he would receive less time
than the co-defendant when in fact he and the co-defendant received the
same amount of time..... 6

CONCLUSION 8

PETITION TO BE RELIEVED AS COUNSEL 9

ISSUE PRESENTED

Whether Petitioner's guilty plea was involuntary where he was led to believe that if he pled guilty and testified against a co-defendant he would receive less time than the co-defendant when in fact he and the co-defendant received the same amount of time?

STATEMENT

Indictments

On March 9, 2009, Petitioner Alexander Samuel was indicted by the Williamsburg County Grand Jury for (1) one count of first degree burglary; (2) three counts of armed robbery; (3) three counts of kidnapping; and (4) one count of criminal conspiracy. App. 137-140.

Guilty Plea

On July 14, 2009, Petitioner pled guilty to first degree burglary, one count of armed robbery, and criminal conspiracy before the Honorable Ralph King Anderson, Jr. App. 1 – 61. Petitioner was represented by W. LeGrand Carraway, and the State was represented by Assistant Solicitor Kimberly V. Barr. App. 1.

The solicitor advised Judge Anderson that in exchange for his guilty plea and the dismissal of the remaining counts against him, Petitioner had agreed to cooperate and testify at the trial of his co-defendants. App. 4, ll. 5-21. Petitioner placed on the record that he would testify that it was his idea to commit the robbery and that his co-defendants carried out the burglary and robbery. App. 4, l. 22 – 10, l. 8.

The solicitor informed Judge Anderson that the State recommended a total sentence of twenty-three (23) years for Petitioner. App. 20, ll. 5-25. Judge Anderson deferred sentencing on Petitioner's guilty plea until after the trial of the co-defendants who were not pleading guilty. App. 31, ll. 15-19.

On October 21, 2009, Petitioner appeared before Judge Anderson for sentencing. App. 63-74. The solicitor represented to Judge Anderson that Petitioner had complied with the plea agreement by cooperating. App. 68, ll. 14-20. Pursuant to the plea agreement,

Judge Anderson sentenced Petitioner to twenty-three (23) years for first degree burglary, twenty-three (23) years concurrent for one count of armed robbery, and five (5) years concurrent for criminal conspiracy, for a total of twenty-three (23) years. App. 72, l. 11 – 73, l. 7.

Application for Post-Conviction Relief and Evidentiary Hearing

On October 19, 2010, Petitioner filed his application for post-conviction relief (“PCR”). App. 76-83. The State filed its Return on or about April 9, 2013. App. 84-88.

An evidentiary hearing was held before the Honorable R. Knox McMahon on October 3, 2013. App. 89-114. Petitioner was represented by Charles T. Brooks, III, and the State was represented by Assistant Attorney General Daniel F. Gourley, II. App. 89. Both Petitioner and his plea counsel testified at the evidentiary hearing. App. 93-113.

Petitioner testified that he only met with his plea counsel one time before he ended up pleading guilty. App. 94, l. 18 – 95, l. 2. Petitioner stated that after he pled guilty and agreed to testify against his co-defendants in exchange for a sentence of twenty-three (23) years, he found out that a co-defendant he testified against also received twenty-three (23) years without even having made a deal like Petitioner did. Petitioner asserted that if he had known that, he would have went forward with a trial instead of pleading guilty. App. 95, ll. 3-16. Petitioner believed his plea counsel had given him “bad advice” about making a plea deal and agreeing to cooperate when this co-defendant received the same exact sentence without making any agreement to cooperate or the like. Petitioner also testified that the resulting sentences for Petitioner and this particular co-defendant was unfair because the co-defendant was more culpable than Petitioner. App. 95, l. 25 – 96, l. 21; 98, ll. 6-16; 104, ll. 3 – 21.

Plea counsel revealed during his testimony that one co-defendant who chose to proceed with trial was actually found not guilty by the jury. App. 111, l. 13 – 112, l. 5.

Order of Dismissal

Judge McMahon issued his Order of Dismissal on November 26, 2013 denying and dismissing Petitioner's PCR application and finding that Petitioner had not established any constitutional violations or deprivations that would require the court to grant his application. App. 116-122.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was involuntary where he was led to believe that if he pled guilty and testified against a co-defendant he would receive less time than the co-defendant when in fact he and the co-defendant received the same amount of time.

Petitioner was entitled to the grant of post-conviction relief and the vacation of his guilty plea where he did not enter his guilty plea knowingly, voluntarily, and intelligently. When Petitioner pled guilty, he believed he was receiving a substantial benefit in exchange for cooperating against a co-defendant. He was unaware that the co-defendant would receive the same exact sentence even though the co-defendant did not cooperate with the State.

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969); see also Hill v. Lockhart, 474 U.S. 52, 56 (1985) (“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.’” (quoting North Carolina v. Alford, 400 U.S. 25, 31(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). “[T]he 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.” Holden v. State, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

When Petitioner pled guilty, he was led by the State and his plea counsel to believe that he was receiving a substantial benefit by agreeing to cooperate and testify against a co-defendant. Unbeknownst to Petitioner, however, that particular co-defendant would receive an identical sentence even though the co-defendant did not cooperate with the State. Had Petitioner been fully informed that he was in fact not receiving any kind of differing benefit or reduced sentence from that of the co-defendant against whom he agreed to testify, Petitioner would have proceeded to trial. The fact that another co-defendant who proceeded to trial was found not guilty by a jury demonstrates why Petitioner should have not pled guilty for no significant benefit and should have instead proceeded to trial. Accordingly, the PCR court erred in denying Petitioner post-conviction relief, and Petitioner is entitled to a new trial.

CONCLUSION

For the reasons set forth herein, Petitioner Alexander Samuel respectfully requests this Court to grant his Petition for Writ of Certiorari with the ultimate relief of a new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO WILLIAMSBURG COUNTY
R. KNOX MCMAHON, CIRCUIT COURT JUDGE

ALEXANDER SAMUEL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-002630

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alexander Samuel 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 October 3, 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 Alexander Samuel.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender
ATTORNEY FOR PETITIONER

This 10th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County
R. Knox McMahon, Circuit Court Judge

ALEXANDER SAMUEL,

PETITIONER,

V.


STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-002630

CERTIFICATE OF SERVICE

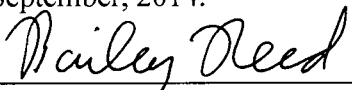
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Alexander Samuel, #337536, at Broad River Correctional Institution this 10th day of September, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day
of September, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.