

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2014-000025

Yesenia Cortez Ramirez, Petitioner, ..

v.

State of South Carolina, Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Did the PCR Court properly hold that Petitioner's guilty plea was not involuntary when Petitioner failed to establish any deficiency on Counsel's behalf and probative evidence exists to support the ruling?

STATEMENT OF THE CASE

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Petitioner was indicted at the May 2010 term of the Spartanburg County Grand Jury for two counts of accessory before the fact to murder and accessory before the fact to burglary – 1st degree (10-GS-42-3161, count 1, count 2, & count 3, respectively). Petitioner was represented by N. Douglas Brannon, Esquire and Chris Kennedy, Esquire. On September 16, 2011, the Petitioner pled guilty as indicted to the charge of accessory before the fact to burglary – 1st degree, but waived presentment of and pled to two counts of accessory after the fact to murder. Petitioner was sentenced by the Honorable J. Mark Hayes II for a period of fifty years for accessory before the fact to burglary – 1st degree, and fifteen years for each count of accessory after the fact to murder to be served concurrently. The Petitioner did not appeal her conviction or sentence.

The Petitioner subsequently filed a PCR application on February 3, 2012. The Respondent made its Return on or about October 9, 2012. An evidentiary hearing into the matter was convened on June 28, 2013, at the Spartanburg County Courthouse. The Petitioner was present at the hearing and was represented by Staci M. Rollins, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. Following the hearing, The Honorable R. Lawton McIntosh denied the PCR application by written Order dated September 25, 2013.

A timely Notice of Appeal was filed on Petitioner's behalf and a Petition for Writ of Certiorari was submitted. This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

The proper standard of review of a post conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

I. The PCR Court properly held that Petitioner’s guilty plea was not involuntary when Petitioner failed to establish any deficiency on Counsel’s behalf and probative evidence exists to support the ruling.

Petitioner pled guilty to one count of accessory before the fact to burglary – 1st degree, and two counts of accessory before the fact to murder. (App. p. 3). Following her plea, Petitioner was sentenced to serve a total of fifty years. (App. p. 26). Petitioner alleges that her guilty plea was not knowingly, intelligently, or voluntarily made. (PWC p. 4).

The Petitioner alleges that she did not plead guilty freely and voluntarily. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d

136 (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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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 errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Petitioner's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Petitioner's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

Petitioner testified that she never received an explanation about the paperwork involved with her case. (App. p. 68). She further testified that she did not understand anything at the plea hearing. (App. p. 71). However, the PCR court found that Petitioner's testimony lacked credibility. (App. p. 106). Furthermore, the court found that the record reflected that Petitioner was able to respond appropriately to what was asked of her in the plea hearing and indicated a full understanding of the charges against her, the plea process and what she was pleading to. (App. p. 98-99).

Counsel testified in the PCR hearing that he met with Petitioner seven times prior to the guilty plea, and that an interpreter was present for each meeting. (App. p. 83). He also testified that he was under the impression that Petitioner wanted to go to trial until she explained to him that she needed to plead guilty to avoid being cursed. (App. p. 87). Counsel testified that he not

only explained to Petitioner the potential sentences she could receive, but also the questions the trial court would ask her and her constitutional rights. (App. p. 88). He went on to testify that an interpreter read the sentencing sheets to Petitioner “word-for-word” with regard to the charges and possible sentences. (App. p. 89, line 9). Furthermore, Counsel testified that he was confident, based on prior experience with Petitioner, that she would let him know if she did not understand something, and that Petitioner made no indication that she did not understand something during the guilty plea hearing. (App. p. 94).

During the plea colloquy, the court allowed Petitioner the opportunity to confer with Counsel if she did not understand something. (App. p. 4). The court went on to make sure Petitioner understood the charges against her and the possible sentences for each charge. (App. p. 15). Petitioner responded appropriately to the court’s questions throughout the hearing and gave no indication that she was unable to understand.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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 errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). The Petitioner failed to meet her burden of proof as to this claim.

Counsel testified that he was fully prepared to go to trial until Petitioner insisted that she plead guilty. (App. p. 88). Counsel explained to Petitioner the plea process and her constitutional rights prior to pleading guilty, and testified that it was Petitioner’s decision to plead guilty. (App. p. 90).

Respondent submits that the Petitioner failed to meet her required burden of proof and probative evidence exists to support the court's denial of her post-conviction relief application.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General
SC Bar #78225

By: 
ATTORNEYS FOR THE RESPONDENT

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October 10, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Court of Common Pleas
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YESENIA CORTEZ RAMIREZ,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

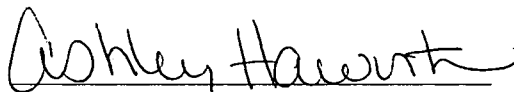
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Lara M. Caudy, Esquire
SC Commission of Indigent Defense - Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 10th day of October, 2014


ASHLEY HAWORTH
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

October 10, 2014

RECEIVED
OCT 10 2014
S.C. Supreme Court

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

RE: Yesenia Cortez Ramirez v. State of South Carolina
Lower Court Case No: 2012-CP-42-0675
Appellate Case No. 2014-000025

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Suzanne H. White
Assistant Deputy Attorney General
SC Bar No. 78225

SHW/ah
Enclosures

cc: Lara M. Caudy, Esquire (2 copies)
Trisha Allen. Victim Services (1 copy)