

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Charleston County

S.C. Supreme Court

Kristi Lea Harrington, Circuit Court Judge

TYRONE DENNIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-000472

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Petitioner's guilty plea to first degree burglary was involuntary where he had only agreed to plead guilty to second degree burglary and his plea counsel did not ensure that he was aware that the negotiated guilty plea was for first degree burglary?

STATEMENT

Indictments

On July 11, 2011, Petitioner Tyrone Dennis was indicted by the Charleston County Grand Jury for two counts of first degree burglary. App. 2, ll. 3-6; 71-74.

Guilty Plea

On October 15, 2012, Petitioner appeared before the Honorable R. Markley Dennis, Jr. to enter a guilty plea to the two indictments. App. 1-14. Petitioner was represented by Cantrell M. Frayer, and the State was represented by Assistant Solicitor Randall C. Stoney, III. App. 1. The State agreed to negotiated sentences of fifteen years to run concurrent. App. 3, ll. 13-16. Judge Dennis accepted Petitioner's guilty plea and sentenced Petitioner to concurrent terms of fifteen years for the charges of first degree burglary. App. 14, ll. 8-16; 73-74. Petitioner did not file a direct appeal.

Application for Post-Conviction Relief and Evidentiary Hearing

Petitioner filed an application for post-conviction relief ("PCR") on January 18, 2013. App. 16-22. In his application, Petitioner asserted that had agreed to plead guilty to second degree burglary and not first degree burglary. App. 21. The State filed its Return on November 1, 2013. App. 23-27.

An evidentiary hearing was held before the Honorable Kristi Lea Harrington on January 14, 2014. App. 29-56. Petitioner was represented by William L. Runyon, Jr., and the State was represented by Assistant Attorney General Ashleigh R. Wilson. App. 29. Both Petitioner and plea counsel testified at the hearing. App. 36 – 54.

Petitioner testified that he pled guilty to the two burglary charges with the understanding that he was pleading guilty to second degree burglary and not first degree

burglary. App. 37, l. 23 – 38, l. 1. He asserted that the plea agreement was that the charges would be reduced from first degree burglary to second degree burglary with a negotiated sentence of fifteen years. App. 39, ll. 4-9. Petitioner further testified that he did not receive his sentence sheets until a month after he pled guilty and realized for the first time that the plea he entered was for first degree burglary. App. 41, ll. 2-15; 43, ll. 22-24.

Plea counsel testified that Petitioner decided to plead guilty the Thursday before his Monday trial date. App. 45, l. 23 – 46, l. 46, l. 6. She testified that once Petitioner indicated to her that he wanted to enter a plea, she asked the solicitor what was the best he could do and she was told the best the solicitor would do was a negotiated sentence of fifteen years. Plea counsel stated she went back to Petitioner and informed him the best the State could do was offer a negotiated sentence of fifteen years. According to plea counsel, Petitioner accepted that offer. App. 48, ll. 8-24.

Plea counsel claimed that the solicitor would not reduce the first degree burglary charges to second degree burglary because the policy of the solicitor's office was that once the case was on the trial docket, the solicitor would not then reduce the charges. App. 49, ll. 2-21. Plea counsel assumed Petitioner understood that he was pleading guilty to first degree burglary. App. 50, ll. 16-18.

Order of Dismissal

Judge Harrington filed her Order of Dismissal denying Petitioner's PCR application on March 3, 2014. App. 58-67. Judge Harrington ruled that Petitioner was fully aware that he was pleading guilty to first degree burglary instead of second degree burglary and that his guilty plea was therefore freely and voluntarily entered. App. 64-65.

This petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea to first degree burglary was involuntary where he had only agreed to plead guilty to second degree burglary and his plea counsel did not ensure that he was aware that the negotiated guilty plea was for first degree burglary.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). "Where allegations of ineffective assistance of counsel are made, the question becomes, 'whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' " Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686). As such, courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668).

First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.' " Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

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). Therefore, in the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000); 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))). “The second, or ‘prejudice,’ requirement ... focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. 52 at 59. In other words,

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.

Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)); see also Hill, 474 U.S. at 59 (footnote omitted).

“The defendant’s undisputed testimony that he would not have pled guilty to the charges but for trial counsel’s advice is sufficient to prove that defendant would not have pled guilty.” Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

In this case, Petitioner unknowingly pled guilty to two counts of first degree burglary where he had only agreed to plead guilty to two counts of second degree burglary. App. 37, l. 25 – 38, l. 1. He did not realize the mistake until he received his sentencing sheets a month after he pled guilty. App. 41, ll. 2-15; 43, ll. 22-24.


While plea counsel testified that she thought Petitioner understood he was pleading guilty to two counts of first degree burglary, she had a duty to make certain that Petitioner knew the terms of the guilty plea so that Petitioner's guilty plea would be knowing, voluntary, and intelligent. App. 50, ll. 16-18. Plea counsel testified that she advised Petitioner that the best the State would do was a plea offer of "a negotiated 15 years," but it is not clear from what she told Petitioner whether the offer was for first or second degree burglary. App. 48, ll. 17-21. Plea counsel's deficient performance rendered Petitioner's guilty plea involuntary.

Petitioner was also prejudiced by his plea counsel's deficient performance. Even though the negotiated sentence of fifteen years would have been the same if the guilty plea had been correctly entered as a plea to two counts of second degree burglary, Petitioner would have been parole eligible where second degree burglary is a parolable offense and first degree burglary is not. App. 39, ll. 6-9; S.C. CODE ANN. § 16-11-311; 16-11-312; 24-13-100. Petitioner is accordingly entitled to the vacation of his guilty plea and for the case to be remanded for a new trial.

CONCLUSION

For the reasons set forth herein, Petitioner Tyrone Dennis 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 29th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
KRISTI LEA HARRINGTON, CIRCUIT COURT JUDGE

TYRONE DENNIS,

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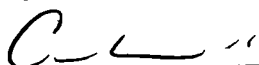
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrone Dennis 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 January 14, 2014. 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 Dennis.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender
ATTORNEY FOR PETITIONER

This 29th day of October, 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 Ashleigh R Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Tyrone Dennis, #199175, at Perry Correctional Institution this 29th day of October, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of October, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.