 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

OCT 29 2014

S.C. Supreme Court

CASEY JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-000496

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

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ISSUE PRESENTED

Whether the PCR court erred in finding that Petitioner's guilty plea was entered knowingly, voluntarily, and intelligently where Petitioner's plea counsel did not provide him with his discovery, including audio evidence, prior to his guilty plea and where Petitioner was unaware at the time he pled guilty that his voice could not be heard on the audio?

STATEMENT

Indictment

On September 10, 2008, Petitioner Casey Jenkins was indicted by the Berkeley County Grand Jury for trafficking in cocaine in an amount in excess of 200 grams. App. 121-122.

Guilty Plea

On January 18, 2012, Petitioner appeared before the Honorable R. Markley Dennis, Jr. to plead guilty to trafficking in cocaine in an amount of 28-100 grams, first offense. App. 1-17. Petitioner was represented by J. Mitchell Lanier, and the State was represented by Assistant Solicitor Benjamin T. Shelton. App. 1.

The State had agreed to a sentence between seven to twelve years. App. 3, ll. 9-13. The State alleged that on May 4, 2008, the Berkeley County Sheriff's Office used a confidential informant ("CI") to set up a controlled cocaine purchase from Petitioner. The CI purportedly made several recorded telephone calls to the Petitioner to set up the buy. The drugs were to be delivered to the CI's home. Officers surrounded the home before the buy was to occur. The State claimed that Petitioner arrived and exited his car with a brown plastic bag which he then allegedly threw under a vehicle parked at the residence when he saw the officers. Petitioner was detained and the bag containing cocaine was recovered and seized. The amount of the cocaine test weight was 371.75 grams. App. 7, ll. 8-25. The State agreed that Petitioner had no prior record. App. 8, l. 1.

Judge Dennis sentenced Petitioner to eight years. App. 17, ll. 22-23; 123. 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 July 17, 2012, alleging in part that plea counsel failed to conduct any investigation that Petitioner was never in possession of the drugs where the drugs were already under another vehicle prior to Petitioner’s arrival at the CI’s home. App. 19-26. The State filed its Return on or about February 21, 2013. App. 28-32.

An evidentiary hearing was held before the Honorable Kristi Lea Harrington on January 13, 2014. App. 74-110. Petitioner was represented by Charles T. Brooks, III, and the State was represented by Assistant Attorney General Ashleigh R. Wilson. App. 74. Petitioner and the assistant solicitor, Benjamin T. Shelton, both testified at the hearing. App. 84-107. Plea counsel for Petitioner had passed away prior to the hearing. App. 112.

Petitioner testified that he was coerced into pleading guilty by his plea counsel. Plea counsel told Petitioner that all of the evidence was stacked against him and that the State had audio evidence and recorded conversation against him. App. 86, l. 7 – 87, l. 11. Plea counsel, however, did not show or go over the actual evidence against Petitioner with Petitioner and only showed Petitioner a “few papers.” App. 96, ll. 21-24; 106, l. 23 – 107, l. 1.

Prior to his plea, Petitioner never heard the audio evidence against him. He never listened to the alleged audio evidence against him with his plea counsel. Petitioner later learned after his guilty plea that his voice could not be heard on the audio. App. 107, ll. 2-17.

Petitioner also asserted that he did not bring any drugs to the CI’s house. When he exited his vehicle, officers immediately came upon him with guns drawn and ordered him to

the ground. Officers could not find any drugs on Petitioner or in or near his vehicle. The drugs were eventually found underneath the vehicle of one of the residents of the home. App. 88, ll. 4-13.

At the conclusion of the evidentiary hearing, Petitioner's PCR attorney argued that his guilty plea was involuntarily made where he was not provided with his discovery prior to his guilty plea and was not made aware of the weaknesses in the audio evidence. App. 108, ll. 4-13. Judge Harrington took the case under advisement. App. 109, ll. 23-25.

Order of Dismissal

Judge Harrington filed her Order of Dismissal on March 6, 2014 dismissing Petitioner's PCR application. App. 112-120. Judge Harrington ruled that plea counsel's failure to provide Petitioner with his discovery, including the audio evidence against him, prior to his guilty plea did not render Petitioner's plea involuntary. App. 117-119.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in finding that Petitioner’s guilty plea was entered knowingly, voluntarily, and intelligently where Petitioner’s plea counsel did not provide him with his discovery, including audio evidence, prior to his guilty plea and where Petitioner was unaware at the time he pled guilty that his voice could not be heard on the audio.

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, 90 S.Ct. 1463, 1474 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him).

“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). Specifically, “the 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).

Furthermore, “[a] defendant who enters a plea on the advice of counsel may 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 errors, the defendant would not have pled guilty, but would have insisted on going to trial.” Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009) (citing Hill v. Lockhart, 474 U.S. 52, 57-58 (1985)); see Ray v. State, 303 S.C.

374, 401 S.E.2d 151 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made in light of the erroneous advice given by plea counsel).

In this case, plea counsel's performance was deficient, as it fell below an objective standard of reasonableness. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). Specifically, Petitioner's plea counsel did not review with Petitioner the State's evidence against him, including the audio evidence. It was undisputed at the PCR hearing that plea counsel did not listen to this audio evidence with Petitioner prior to Petitioner's guilty plea. Petitioner was unaware when he pled guilty that his voice could not be heard on the audio. App. 96, ll. 21-23; 106, l. 23 – 107, l. 17.

Petitioner therefore entered his guilty plea without full knowledge of the facts of the case, rendering his guilty plea involuntary. Petitioner was moreover denied his right to participate in his defense. Accordingly, the PCR court erred in finding that plea counsel provided effective assistance of counsel and that Petitioner's guilty plea was entered freely and voluntarily. Petitioner is entitled to post-conviction relief and to a new trial.

CONCLUSION

For the reasons set forth herein, Petitioner Casey Jenkins respectfully requests that this Court 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 BERKELEY COUNTY
KRISTI LEA HARRINGTON, CIRCUIT COURT JUDGE

CASEY JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-000496


PETITION TO BE RELIEVED AS COUNSEL

Counsel for Casey Jenkins 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 13, 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 Casey Jenkins.

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 Berkeley County

Kristi Lea Harrington, Circuit Court Judge

CASEY JENKINS,

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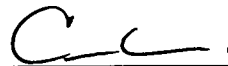
STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-000496

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 Casey Jenkins, #349382, at Allendale 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.

Bailey Dod (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.