

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherster County
Ernest Kinard, Circuit Court Judge

WILLIAM DAVID DOVE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TRISTAN M. SHAFFER

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ATTORNEY FOR PETITIONER

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S.C. Supreme Court

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ISSUES PRESENTED

1. Did the PCR court err in holding that Petitioner's guilty plea was voluntary when trial counsel advised him that he would receive a life sentence if he went to trial?

STATEMENT

Procedural History

Petitioner was indicted at the April 2010 term of the Chester County Grand Jury for purse snatching; grand larceny between \$1,000 and \$5,000 third or subsequent offense; burglary in the first degree; and burglary in the second degree. Petitioner was then indicted at the September 2010 term of the Chester County Grand Jury for burglary in the degree and malicious injury to personal property between \$1,000 and \$5,000.

On February 11, 2011, Petitioner was called to trial on the charges of burglary in the first degree and grand larceny between \$1,000 and \$5,000 third or subsequent offense. After losing a pre-trial motion regarding the admissibility of Petitioner's statement, Petitioner pled guilty to the lesser-included offense of petit larceny third or subsequent offense and pled to burglary in the first degree as indicted.

Petitioner was sentenced by the Honorable W. Jeffrey Young to concurrent terms of fifteen years for burglary in the first degree and ten years for petit larceny third or subsequent offense. Applicant then pled to all other charges as indicted and waived presentment to the Grand Jury for charges of burglary second degree and malicious injury to personal property under \$2,000. Judge Young sentenced

Applicant to concurrent terms of ten years for each charge of burglary in the second degree, five years for malicious injury, three years for purse snatching, and thirty days for malicious injury.

Applicant filed a timely notice of appeal. An Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal. *State v. Dove*, Op. No. 2012-UP-491 (filed August 22, 2012).

Petitioner filed an application for post-conviction relief (PCR) alleging ineffective assistance of counsel and that his guilty plea was involuntarily entered into. App. 103-108. An evidentiary hearing was convened on February 4, 2013 before the Honorable Ernest Kinard. App. 115. Petitioner was represented by Tristan M. Shaffer App. 115. The State was represented by Suzanne White. App. 115.

In an order filed September 19, 2013, the PCR court denied relief. App. 181-190. This petition follows.

Factual History

Petitioner was charged with a variety of burglary and property crimes in Chester County. Petitioner's family would state that law enforcement in Chester had a preconceived notion that Petitioner committed many unsolved crimes. App. 146,

ll. 13-21. Petitioner's family believed that law enforcement would not give Petitioner a chance, and repeatedly tried to have him locked up for crimes even when there was not evidence to support them. App. 146, ll. 17-21.

Prior to his trial, the State offer to allow Petitioner to plea to the minimum sentence for burglary in the first degree. Trial Counsel advised Petitioner to "take it and run." App. 143, ll. 3-5. Petitioner was advised that he would receive a life sentence if he was to go forward with a trial. App. 121, l. 19 – App. 122. l. 2; App. 154, ll. 1-11; App. 165, ll. 4-20. Petitioner decided to plead guilty to avoid what he believed was a guaranteed life sentence if convicted. App. 165 l. 19 – App. 166 l. 1.

ARGUMENT

- I. The PCR court erred in holding that Petitioner's guilty plea was voluntary when trial counsel advised him that he would receive a life sentence if he went to trial.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. *See Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *see also, Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). A defendant's choice to exercise his right to a jury trial cannot be considered as a factor for sentencing. *See Davis v. State*, 336 S.C. 329, 520 S.E.2d 801 (1999); *see also, State v. Hazel*, 317 S.C. 368, 370, 453 S.E.2d 879, 880 (1995); *cf. North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072 (1969). A plea under the threat of an unconstitutional punishment is not voluntarily entered.

Trial Counsel advised that Petitioner that his options were either to take the fifteen year offer or receive a life sentence if he lost at trial. Additionally, Petitioner was advised that he would likely lose his trial. Applicant was also advised that if he lost the only likely result was a life sentence.

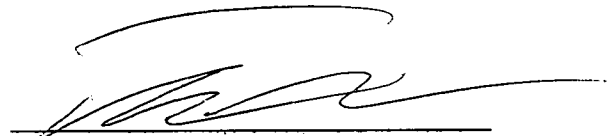
Trial Counsel failed to inform Petitioner that Judge Young could not punish Petitioner for exercising his right to trial. Instead Counsel lead applicant to believe that a life sentence would have been an inevitable result if he was convicted after a

trial. Trial Counsel's advice concerning this matter constitutes deficient performance that rendered Petitioner's plea involuntary.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court review the PCR Court's denial of post-conviction relief.

Respectfully submitted,



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This 10th day of November, 2014.

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