

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO YORK COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No.: 2014-000180

Arkella Rena Brown.....Petitioner,

v.

State of South Carolina.....Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Is the issue of whether Petitioner's guilty plea was knowingly, voluntarily, and intelligently made "where she pled guilty with the understanding it was going to be a 'straight up' plea with the assistant solicitor presenting the facts and instead the elected solicitor personally addressed the court and requested a lengthy prison sentence, and where the state would have proceeded with the same charges against Petitioner's daughter if Petitioner did not plead guilty" properly preserved for appeal?

STATEMENT OF THE CASE

Arkella Brown, (Petitioner), was indicted at the February 2013 term of the York County Grand Jury for Forgery value less than \$10,000 (2013-GS-46-0810), Criminal Conspiracy (2013-GS-46-0811), and three counts of Forgery, 3rd or subsequent offense (2013-GS-46-0813, -0815, -0816). The Petitioner was represented by Dan Hall, Esquire. On May 9, 2013, the Petitioner pled guilty to all charges as indicted. The Honorable Paul M. Burch sentenced the Petitioner to confinement for seven (7) years for Forgery, value less than \$10,000, three (3) years, concurrent, for Criminal Conspiracy, seven (7) years, concurrent, for two of the Forgery, 3rd or subsequent charges and three (3) years, concurrent for the remaining forgery charge. The Petitioner did not appeal her convictions or sentences.

Petitioner subsequently filed an application for post-conviction relief (PCR) on July 23, 2013. Respondent made its Return on October 14, 2013. On December 9, 2013, an evidentiary hearing was held at the Moss Justice Center in York, South Carolina. Petitioner was present and represented by W. Michael Hemlepp, Jr., Esquire. Respondent was represented by J. Rutledge Johnson of the South Carolina Attorney General's Office. On December 10, 2014, the Honorable John C. Hayes, III denied and dismissed Petitioner's application with prejudice by written Order. Petitioner subsequently filed a Petition for Writ of Certiorari on August 22, 2014. This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

The proper standard for reviewing a PCR 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 PCR proceeding, the Petitioner bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

The issue of whether Petitioner’s guilty plea was knowingly, voluntarily, and intelligently made “where she pled guilty with the understanding it was going to be a ‘straight up’ plea with the assistant solicitor presenting the facts and instead the elected solicitor personally addressed the court and requested a lengthy prison sentence, and where the state would have proceeded with the same charges against Petitioner’s daughter if Petitioner did not plead guilty” is not properly preserved for appeal. Nevertheless, this argument is without merit.

Petitioner asserts her guilty plea was not knowingly, intelligently and voluntarily made “where she pled guilty with the understanding it was going to be a ‘straight up’ plea with the assistant solicitor presenting the facts and instead the elected solicitor personally addressed the court and requested a lengthy prison sentence, and where the state would have proceeded with the same charges against Petitioner’s daughter if Petitioner did not plead guilty”. This issue is not preserved on appeal. Regardless, this argument is without merit.

“To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised but not ruled on, it is not preserved for appeal.” State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996). Only a matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974).

The PCR did not make a finding as to the voluntariness of Petitioner’s plea as it was not presented as an issue in Petitioner’s application for post-conviction relief nor was there a Rule 59(e) SCRPC motion filed to preserve the issue. Therefore, this issue is not properly before this Court.

Even assuming *arguendo* this issue is properly before this Court, Petitioner's plea was knowingly, voluntarily and intelligently made with full understandings of the consequences of her plea.

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).

In the case at bar, Petitioner signed a waiver of rights form, which extensively discussed her charges, the potential sentences and her agreement to plead guilty. (App. pp. 1-2). Additionally, this form included her understanding that she was pleading guilty with no recommendation from the State. (App. p. 2). Petitioner further signed that she acknowledged and understood her constitutional rights including, the right to an attorney, the right to have witnesses on her behalf and confront those accusing her, the right to remain silent and the right to a jury trial. (App. p. 3). Petitioner then signed that she understood that she was forgoing these

rights, waiving all defenses and pleading guilty. (App. p. 3-4). Most importantly, Petitioner signed and acknowledged that she was entering her plea freely, voluntarily, knowingly and intelligently. (App. p. 3).

At her guilty plea, Petitioner testified she wanted to plead guilty to each of her charges and understood her potential exposure was thirty-five (35) years. (App. pp. 15-16). She stated nobody had promised her anything or threatened her in any way to get her to plead guilty and that she was pleading on her own free will and accord. (App. p. 17). The plea judge found her plea to be freely, voluntarily and intelligently made. (App. p. 18). The assistant solicitor then recited the facts of the case, after which the elected solicitor recited Petitioner extensive criminal record dating back to 1990. (App. pp. 18-20). The elected solicitor then asked the plea judge to impose a sentence which reflected her prior record, which included a significantly harsher sentence than probation. (App. p. 20). Counsel then explained to the plea court that that day was first he knew the elected solicitor was going to speak on the community's behalf, but did have a chance to explain that to Petitioner. (App. p. 21). Counsel further explicated that Petitioner had indicated to him that she still wished to plead guilty. (App. p. 22).

Even after hearing all of the argument by the elected solicitor, Petitioner accepted responsibility for her actions and admitted her guilt. Specifically, Petitioner testified:

First of all, I was deeply apologizing for my actions...It just got hard on me, and I just fell through the crack. I have not did(sic) any of this in a long time...And I just ask that you forgive me for what I did, and I do accept all the responsibility...

(App. pp. 25-26.)

At no point during Petitioner's guilty plea does Petitioner explain to the plea court that because the elected solicitor spoke about asking for a more severe sentence than probation, she

did not want to plead guilty and wanted to pursue a trial. Likewise, at no point in the plea hearing is there any mention of the allegation that because the State would have proceeded with charges against her daughter had Petitioner not pled guilty, then she would have not pled guilty. Interestingly, the first mention that she did not wish to plead guilty because the elected solicitor spoke about her prior criminal record was during the PCR hearing. Additionally, the first time Petitioner mentioned anything concerning her daughter was during the PCR hearing. This self-serving testimony has no impact on whether her guilty plea was knowingly, intelligently, and voluntarily made. She had a difficult choice to make, but chose to plead guilty free from any threat or coercion with full understanding of the consequences of her plea and knowledge of her constitutional rights, the charges and potential sentences. Thus, under Boykin and Blackledge, Petitioner should not now be allowed to depart from the truth of her statements during her guilty plea.

Clear “evidence of probative value” exists to sustain the PCR judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Therefore, Petitioner has failed to meet her burden of proof as to this argument.

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,

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By:



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December 4, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

The Honorable John C. Hayes, III, Circuit Court Judge

ARKELLA RENA BROWN, 310705

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lara M. Caudy, Esquire
South Carolina Office of Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 4th day of December 2014.



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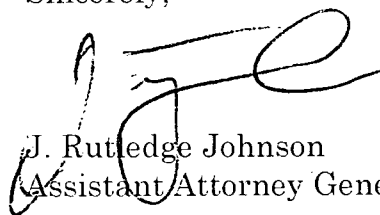
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**RE: Arkella Rena Brown, #310705 v. State of South Carolina
2014-000180**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,



J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

cc: Lara M. Caudy, Esquire
Trisha Allen, Victim Services