

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

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S.C. Supreme Court

GREGORY GOSNELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001068

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the record support the PCR court's conclusion that Petitioner voluntarily pled guilty where both Petitioner and counsel testified that Petitioner's discovery materials were taken from him in jail and were never restored to him?

STATEMENT

On November 1, 2011, the Greenville County Grand Jury indicted Petitioner Gregory Earl Gosnell for murder. App. 166-167. The State alleged that early on the morning of November 5, 2010, Petitioner, carrying a large flashlight, entered the opened front door of home belonging to a sixty-five year old man with whom Petitioner had previous arguments over a girl. Petitioner allegedly pounded on the victim's bedroom door before entering and striking the victim on the head multiple times with the flashlight. App. 89, line 1—App. 90, line 6.

On September 10, 2012, Petitioner appeared at a pretrial hearing before The Honorable Larry B. Hyman, Jr. Brian Johnson and Evelyn Mitchell represented Petitioner, and Bryna S. Seay represented the State. App. 1. The trial court held a hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964), and ruled that certain statements Petitioner made to police a few days after the alleged crime were admissible at trial. App. 33, line 10—App. 77, line 4. Petitioner then interrupted the proceedings and requested to plead guilty to voluntary manslaughter. App. 77, line 21—App. 80, line 23. The judge engaged Petitioner in a routine plea colloquy and accepted Petitioner's plea. App. 82, line 1—App. 92, line 25. The judge then sentenced Petitioner to seventeen and one-half years' incarceration. App. 98, lines 12-24.

On January 4, 2013, Petitioner filed an application for post-conviction relief alleging ineffective assistance of counsel. App. 101-109. The State filed a return on May 7, 2013. App. 110-115. On February 21, 2014, Petitioner appeared at an evidentiary hearing before The Honorable G. Edward Welmaker. Caroline Horlbeck represented Petitioner and Karen Ratigan represented the State. App. 116.

Petitioner testified that he was never able to adequately review the State's evidence against him because trial counsel would not provide it for him. Specifically, the discovery packet that

counsel initially provided Petitioner was taken by jail officials. Petitioner informed counsel and asked him to secure the discovery again for Petitioner to review. Counsel never did. App. 127, line 9—App. 129, line 1. As a result, Petitioner had to blindly trust counsel’s evaluation of the case:

Q: . . . When you say not do anything for you, what does that mean?

A: Not try to help me.

Q: Okay. All right. And how did . . . you being scared that Mr. Johnson wouldn’t help you . . . force you into a plea?

A: Just what he told me; I was going to get life if I didn’t plead guilty. That scared me into pleading guilty.

App. 141, lines 10-18. Trial counsel also testified and confirmed that Petitioner informed him his discovery materials were taken at the jail, and he refused to secure the materials for Petitioner to review again. App. 151, line 23—App. 152, line 7.

On April 9, 2014, the PCR court issued its order of dismissal concluding Petitioner failed to establish ineffective assistance of counsel. App. 157—App. 165. Specifically, the order stated no evidence showed that counsel pressured Petitioner into a guilty plea. App. 161.

ARGUMENT

The evidence in the record does not support the PCR court’s conclusion that counsel did not pressure Petitioner into a guilty plea; instead, it shows counsel forced Petitioner to plead by preventing him from evaluating the evidence for himself.

The evidence in the record does not support the PCR court’s conclusion that plea counsel did not pressure Petitioner into a guilty plea; instead, it shows counsel forced Petitioner to plead by preventing him from evaluating the evidence for himself. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by

which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. The two-part test adopted in *Strickland* “applies to challenges to guilty pleas based on ineffective assistance of counsel.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985); *see generally Brady v. United States*, 397 U.S. 742, 758 (1970) (“Guilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.”).

Specifically, 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,” a defendant sufficiently undermines the required voluntary and intelligent character of a plea. *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009); *accord State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (holding record must reflect that defendant freely and intelligently waived constitutional trial rights and had full understanding of the consequences of the plea); *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) (holding the difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea”). It follows that deficient advice may deprive a defendant of his Constitutional right “to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal.” *Jones v. Barnes*, 463 U.S. 745, 751 (1983).

In this case, the evidence in the record does not support the PCR court's conclusion that counsel did not pressure Petitioner into a guilty plea. Both Petitioner and counsel averred that Petitioner's discovery materials were taken by jail officials. Both also testified counsel did nothing to restore the materials to Petitioner; he never even inquired with Petitioner as to why an official took the materials to determine if the State was in effect wrongfully withholding access to legal

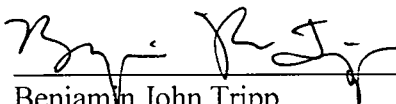
resources material to Petitioner's criminal trial. Therefore, Petitioner could not adequately review the State's evidence against him.

At the PCR hearing, Petitioner testified that he had to blindly accept "just what counsel told him," which ultimately "scared him into pleading." Petitioner's sudden interruption of the pretrial hearing to request to plead further shows the decision was not a studied or confident. Thus, the record shows Petitioner's plea was not knowing and voluntary. Petitioner pled guilty because of pressure and lack of an alternative. In failing to provide Petitioner access to the State's evidence against him, counsel's representation fell below an objective standard of reasonableness. Accordingly, the PCR court's order was unfounded, and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Gregory Earl Gosnell's petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of December, 2014.

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IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
G. EDWARD WELMAKER, CIRCUIT COURT JUDGE

GREGORY GOSNELL,

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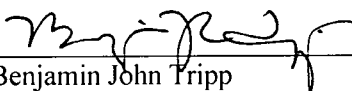
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gregory Gosnell states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on February 21, 2014. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He 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 him as counsel for Gregory Gosnell.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of December, 2014

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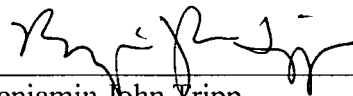
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RESPONDENT

APPELLATE CASE NO. 2014-001068

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 Karen Ratigan, Esquire and Gregory Gosnell, #135877, at Lieber Correctional Institution this 17th day of December, 2014.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of December, 2014.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.