

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

CERTIORARI TO CHESTER COUNTY  
Court of Common Pleas

The Honorable J. Ernest Kinard, Jr., Post-Conviction Relief Judge  
The Honorable W. Jeffrey Young Trial Court Judge

---

Appellate Case No. 2013-002465

**RECEIVED**

DEC 17 2014

**S.C. Supreme Court**

William David Dove,..... Petitioner,

v.

State of South Carolina, ..... Respondent.

---

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

J. CROOM HUNTER  
Assistant Attorney General  
SC Bar #101253

Post Office Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

QUESTION PRESENTED.....2  
STATEMENT OF THE CASE.....3  
STANDARD OF REVIEW .....4  
ARGUMENT.....4

**The lower court properly found that Petitioner’s plea was voluntary where plea counsel advised Petitioner he would likely be sentenced to life in prison if he lost at trial.**

CONCLUSION.....9

## QUESTION PRESENTED

1. Did the lower court properly find that Petitioner's guilty plea was not involuntary where plea counsel advised Petitioner he would likely receive life in prison if he went to trial?

## STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chester County Clerk of Court. Petitioner was indicted at the April 2010 term of the Chester County Grand Jury for purse snatching (10-GS-12-0204), grand larceny between \$1,000 and \$5,000 – 3<sup>rd</sup> or subsequent offense (10-GS-12-0205), burglary – 1<sup>st</sup> degree (10-GS-12-0206), and burglary – 2<sup>nd</sup> degree (10-GS-12-0208). He was then indicted at the September 2010 term of the Chester County Grand Jury for burglary – 2<sup>nd</sup> degree (10-GS-12-0523) and malicious injury to personal property between \$1,000 and \$5,000 (10-GS-12-0524). He was represented by Tyree D. Lee, Jr., Esquire.

On February 11, 2011, following the beginning of a trial on the charges of burglary – 1<sup>st</sup> degree and grand larceny between \$1,000 and \$5,000 – 3<sup>rd</sup> or subsequent offense, and the subsequent loss of a pre-trial motion regarding the admissibility of Petitioner's statement, Petitioner pled guilty to the lesser-included offense of petit larceny – 3<sup>rd</sup> or subsequent offense (10-0205) and pled guilty to burglary – 1<sup>st</sup> degree as indicted. He was sentenced by the Honorable W. Jeffrey Young to confinement for concurrent terms of fifteen years for burglary – 1<sup>st</sup> degree and ten years for petit larceny – 3<sup>rd</sup> or subsequent offense. Petitioner then pled guilty to all other charges as indicted and waived presentment to the Grand Jury for charges of burglary – 2<sup>nd</sup> degree (11-GS-12-0160) and malicious injury to personal property under \$2,000 (11-GS-12-0161). Judge Young sentenced Applicant to confinement of concurrent terms of ten years for each charge of

burglary – 2<sup>nd</sup> degree, five years for malicious injury (10-0524), three years for purse snatching, and thirty days for malicious injury (11-0161).

Petitioner filed a timely notice of appeal. An Anders brief was filed on Petitioner's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Dove, Op. No. 2012-UP-491 (filed August 22, 2012). The Remittitur was returned on September 7, 2012.

Petitioner subsequently filed an application for post-conviction relief on October 17, 2012. Respondent made its Return on January 29, 2012. An evidentiary hearing into the matter was convened on February 4, 2013, at the Lancaster County Courthouse. Petitioner was present and represented by Tristan M. Shaffer, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. By Order of Dismissal signed September 19, 2013, and filed September 25, 2013, the Honorable J. Ernest Kinard, Jr., denied and dismissed the PCR application with prejudice. (App.pp.181-190).

#### **STANDARD OF REVIEW**

The proper standard for review of 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, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

#### **ARGUMENT**

The United States Supreme Court has established 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 v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668 at 674 (1984). Under the second prong, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support them, and will reverse the decision of the PCR judge when it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007). Vasquez v. State, 388 S.C. 447, 456, 698 S.E.2d 561, 565 (2010).

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. 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).

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. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C 360, 426 S.E.2d 795 (1993).

**1. The lower court properly found that Petitioner's plea was voluntary where plea counsel advised Petitioner he would likely be sentenced to life in prison if he lost at trial.**

Petitioner argues, "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." (Cert. Pet. p.6). This argument is without merit. Rather than being ineffective, Counsel's advice to plead guilty in order to avoid such a harsh penalty was exceedingly reasonable. See Bennett v. State, 371 S.C. 198, 204-05, 638 S.E.2d 673, 676 (2006) (counsel not ineffective for advising client to plea to avoid maximum penalty if convicted).

This case hinges on whether Petitioner's guilty plea was entered involuntarily

upon counsel's advice that if he went to trial and lost, Petitioner would likely receive a life sentence. Respondent submits the record clearly reflects Petitioner's plea was entered freely, knowingly, and voluntarily. The plea transcript reflects Applicant chose to plead guilty to the statutory minimum of fifteen (15) years imprisonment for First Degree Burglary after the trial judge found his statement was admissible at the Jackson v. Denno hearing. (App.p.35). Counsel testified at the plea that he agreed with Petitioner's decision, and the jury "easily ... could find him guilty on it." (App.p.37, line 17). Upon questioning by the Court, Petitioner admitted he was guilty of the charges to which he was pleading guilty. (App.p.42). Later, the plea judge advised Petitioner that he was not obligated to follow the fifteen (15) year recommendation, and he could sentence Petitioner to life imprisonment if he chose to do so. (App.pp.42-43). As such, Petitioner was aware at the time of his plea that he could still be sentenced to life in prison, whether he pled guilty or proceeded to trial. Finally, Petitioner testified at the plea that he was fully satisfied with Counsel's representation, and he did not need further time to deliberate with Counsel. (App.p.46). The record from the plea is quite clear that Petitioner was aware of the fact that he could be sentenced to life in prison on the burglary charge, and he chose to plead guilty to the minimum, in order to avoid spending the rest of his life incarcerated.

Testimony presented at the PCR hearing confirmed Petitioner's decision to plead guilty was made freely, knowingly, and voluntarily. Counsel testified the first plea offer Petitioner received from the state was life without parole. Then a subsequent offer of fifteen (15) years was conveyed. (App.pp.17-18). Petitioner claims he only pled guilty

because Counsel told him he would get a life sentence at trial. However, Counsel testified that after he lost the Denno hearing, Petitioner asked him if he thought he could still win the case. Counsel told Petitioner he did not think they would be able to prevail, at which point Petitioner asked if the plea deal was still available. (App.p.140). Counsel testified that he may have told Petitioner that based on the judge's reputation and Petitioner's criminal history, the judge would have sentenced Petitioner to the maximum allowed after a guilty verdict. (App.p.137). Furthermore, Counsel testified at the PCR hearing that after Petitioner's plea, the judge told Counsel he would have sentenced Petitioner to life, had he gone to trial and been convicted. (App.p.136). Thus, by explaining the potential ramifications of a guilty verdict, Counsel was merely doing his job and advising Petitioner of the most likely outcome. As the record reflects, Petitioner would most likely have been found guilty and sentenced to life. Clearly Petitioner's plea was made voluntarily and of his own accord after competent advice from his attorney.

Furthermore, the PCR judge's Order found Counsel's testimony to be more credible than that of Petitioner. (App.p.186). Petitioner is essentially alleging Counsel was ineffective for advising him of the reality of his situation. However, the record indicates that based on his prior convictions and the reputation of the plea judge, Petitioner was a great candidate for a life sentence and likely would have received one after a conviction. The record clearly indicates Petitioner pled guilty after weighing his options and choosing not to risk spending the rest of his life in prison. Petitioner's claim he would have preferred to go to trial on the multitude of charges that he dispensed with by pleading guilty and avoiding a life behind bars is laughable. As such, Petitioner's

assertions that Counsel was ineffective for merely doing his job and advising Petitioner of the potential consequences of going to trial are unfounded.

Finally, Petitioner has put forth no evidence to support his argument that Counsel's advice was deficient. The "presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible." Blackledge, 431 U.S. at 73-74 (1977). As such, the Petition should be dismissed.

#### CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

ALAN WILSON  
Attorney General

J. CROOM HUNTER  
Assistant Attorney General

Post Office Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By: \_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

\_\_\_\_\_, 20\_\_\_\_

assertions that Counsel was ineffective for merely doing his job and advising Petitioner of the potential consequences of going to trial are unfounded.

Finally, Petitioner has put forth no evidence to support his argument that Counsel's advice was deficient. The "presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible." Blackledge, 431 U.S. at 73-74 (1977). As such, the Petition should be dismissed.

#### CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

ALAN WILSON  
Attorney General

J. CROOM HUNTER  
Assistant Attorney General

Post Office Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By:   
ATTORNEYS FOR RESPONDENT

December 17<sup>th</sup>, 2014

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

Certiorari to Chester County  
Court of Common Pleas

The Honorable J. Ernest Kinard, Jr., Circuit Court Judge

---

WILLIAM DAVID DOVE,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT

---

**CERTIFICATE OF SERVICE**

---

The undersigned hereby certifies that a true copy of **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Tristan M. Shaffer  
Axelrod & Associates, PA  
4701 Oleander Driver  
Myrtle Beach, SC 29577

This 17<sup>th</sup> day of December, 2014

  
ASHLEY HAWORTH  
LEGAL ASSISTANT



ALAN WILSON  
ATTORNEY GENERAL

December 17, 2014

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

**RE: William David Dove v. State of South Carolina**  
**Lower Court Case No: 2012-CP-12-0523**  
**Appellate Case No. 2013-002465**

**RECEIVED**  
DEC 17 2014  
**S.C. Supreme Court**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

J. Croom Hunter  
Assistant Deputy Attorney General  
SC Bar No. 101253

JCH/ah  
Enclosures

cc: Tristan M. Shaffer, Esquire (2 copies)  
Trisha Allen, Victim Services (1 copy)