ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

YESENIA RAMIREZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000025

BRIEF OF PETITIONER

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where she pled guilty when she lacked a full understanding of the nature of the charges against her and the guilty plea proceeding due to her lack of education and experience with the criminal justice system and her inability to speak English and fully communicate with the court and her attorney, and where she testified that she would not have pled guilty if she would have fully understood the charges against her?

STATEMENT

A Spartanburg County Grand Jury indicted Petitioner at the May 2010 term of General Sessions for accessory before the fact of first degree burglary and two counts of accessory before the fact of murder. App. 110-112. On September 16, 2011, Petitioner pled guilty before the Honorable J. Mark Hayes, II to accessory before the fact of first degree burglary and two counts of accessory after the fact of murder. App. 1. She waived presentment to the Grand Jury on both counts of accessory after the fact of murder during the hearing. App. 3, ll. 13-25. Solicitor Barry Barnette appeared on behalf of the state, and N. Douglas Brannon and Christopher Kennedy represented Petitioner. App. 1. Petitioner was sentenced by Judge Hayes to fifty years imprisonment for accessory before the fact of first degree burglary and fifteen years concurrent for each count of accessory after the fact of murder. App. 26, ll. 10-20. Petitioner did not appeal.

On February 3, 2012, Petitioner filed an application for post-conviction relief (PCR). App. 28-35. In her application, she alleged ineffective assistance of counsel and stated, "I was not present when these crimes were committed, I was set-up." App. 30. The state filed a return to this application dated October 9, 2012. App. 49-54. The matter proceeded to an evidentiary hearing on June 28, 2013 before the Honorable R. Lawton McIntosh. App. 55. Assistant Attorney General Suzanne H. White represented the state, and Staci M. Rollins represented Petitioner. App. 55. By order dated September 25, 2013, Judge McIntosh denied Petitioner relief. App. 101-109.

On June 27, 2014, Petitioner filed a petition for writ of certiorari. The state filed a return on October 10, 2014. By order dated December 10, 2014, this Court granted the petition.

This brief follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where she pled guilty when she lacked a full understanding of the nature of the charges against her and the guilty plea proceeding due to her lack of education and experience with the criminal justice system and her inability to speak English and fully communicate with the court and her attorney, and where she testified that she would not have pled guilty if she would have fully understood the charges against her.

Guilty Plea

At the start of Petitioner's guilty plea, Judge Hayes directed the Clerk of Court to place an interpreter under oath. This interpreter was for the benefit of Petitioner who spoke very little English. App. 3, ll. 5-10. Petitioner informed that court that she was forty years old, that she "never went to school," and that she had nine children, the oldest age twenty-eight and the youngest age seven. App. 4, l. 20 – 5, l. 5.

During a routine colloquy, Judge Hayes advised Petitioner of her constitutional rights, including her right to a jury trial and her right to remain silent. Petitioner indicated that she wished to waive her constitutional rights and plead guilty. App. 6, l. 12 – 7, l. 24. Petitioner also stated that she was satisfied with her attorney and that the two had had sufficient time to discuss the elements of the charges against her, the facts behind the charges, and any possible defenses she may have had. App. 5, l. 24 – 6, l. 11.

The solicitor then told the judge the facts of the case. He explained that Petitioner had contact with a man named Juan Carlos Estrada Vazquez ("Carlos"), who had engaged in drug transactions with the decedents. Carlos was upset with one of the decedents because he thought the decedent "had ripped" him off. The solicitor maintained that Petitioner came to Spartanburg from

Atlanta to do house cleaning for Carlos and was asked to return to Atlanta to pick up several men. When Petitioner returned to Spartanburg with the men, Carlos and a man named Jose supplied the men with guns. Petitioner then drove the men to a location close to where the decedents lived and dropped them off. The solicitor explained that the men then killed the decedents and called Petitioner and Jose to pick them up. Petitioner drove the men back to Jose's house. According to the solicitor, an Avalanche, which is a sports utility vehicle, was "given to the defendant for payment for the house cleaning." App. 8, l. 3 – 10, l. 23.

When prompted by the trial judge, Petitioner agreed that she thought the solicitor's recitation of the facts was "substantially correct." However she said, ". . . but my lawyer is going to explain." A bench conference was then held off the record with both plea counsel and the solicitor present. App. 13, ll. 14 – 23. What occurred during this bench conference was never placed on the record. Immediately after the bench conference, plea counsel requested "one moment to explain" and there was a brief pause in the proceedings. When asked by Judge Hayes if she was in fact guilty of accessory before the fact of first degree burglary and accessory after the fact of murder, Petitioner responded, "Yes, sir." App. 14, l. 4 – 16, l. 7.

The judge then took a short break to consider all the evidence before announcing the sentence of the court. When he returned to the bench, plea counsel told the court, without any further explanation, "we had a change in translators and we would need to swear this translator." The court placed the new interpreter under oath. App. 25, ll. 2-11.

Judge Hayes ultimately found there was a substantial factual basis for the plea and that Petitioner's decision to plead guilty was freely, voluntarily, knowingly, and intelligently made. He therefore accepted the plea. App. 25, ll. 12-19. Despite the fact that Petitioner had no prior record, Judge Hayes sentenced her to fifty years imprisonment. App. 16, ll. 17-18; App. 26, ll. 10-20.

PCR Hearing

Petitioner's PCR counsel informed the court at the beginning of the PCR hearing that Petitioner "felt that the interpretation [during her guilty plea] was not effective and she also felt that she didn't understand the guilty plea." App. 57, ll. 20-22. PCR counsel also told the court, "My understanding of her grounds are that she did not understand what she pled guilty to and that she felt that her counsel was ineffective in communication . . ." App. 63, ll. 18-21. Additionally, the assistant attorney general told the court that Petitioner alleged "actual innocence" in her PCR application. App. 62, ll. 17-22.

Petitioner, who is from Mexico, testified that when she was ten years old she was taken from her mother by two men and brought to California where she was "kept in a closed room." She had her first child at the age of twelve. App. 22, ll. 2-5; App. 77, ll. 12-18. She explained that she was never educated and had no experience with the American legal system before she was arrested in this case. App. 64, l. 10 – 65, l. 6.

Petitioner maintained that she met with plea counsel four times before her guilty plea and that each time she met with him he brought an interpreter with him. However, Petitioner testified that the first three times she met with plea counsel they "never discussed anything about [her] case." Instead, she said they discussed her employment history, "the fact that [she] used to practice . . . witchcraft," and "the death of his sister." App. 65, l. 7 – 66, l. 9. Petitioner testified that plea counsel eventually discussed with her "what [she] was facing, the time that [she] was facin[g] and if [she] was to go to . . . trial then the other ones that were arrested with [her] would . . . testify" against her. App. 66, ll. 10-15.

Additionally, Petitioner explained that there was an interpreter at her guilty plea proceeding. However, during the middle of the proceeding, the first interpreter said "she had to leave because

she had to go pick up her kids" so another interpreter took over. App. 66, l. 19 – 67, l. 9. Petitioner said, "I didn't understand a a lot [during the guilty plea proceeding] . . . [I] didn't know how to answer. I've never been in a situation like this and I was askin[g] the lady [the interpreter] what should I, uh, reply . . . So I asked her what should I reply and to ask the attorney [plea counsel] how should I answer and I was told to say yes to everything 'cause I didn't know how to respond." App. 67, 10-23.

Petitioner testified that she met with plea counsel and the interpreter at the courthouse before her guilty plea proceeding, but "there wasn't a time that they explained to me or read to me in Spanish to explain what was goin[g] on, uh, with the paperwork." She said she pled guilty because plea counsel told her "either way if you plead guilty or not that you would probably get life [imprisonment]." She also explained that she "went to the hearing saying that I would plead guilty because Mr. Brannon [plea counsel] said that afterwards he would explain everything, so he said that I understand that you weren't in that place or you didn't see anything and you weren't involved in this but, uh, one hand and all, one and all is all I know." App. 67, l. 24 – 69, l. 1; see App. 80, ll. 12-17.

Furthermore, Petitioner testified that "if Mr. Brannon had told the interpreter to read me the charges and, uh, whatever was in the paperwork in Spanish to allow me to understand what I was signin[g], I would have never signed." She said, "I swear that no one read that paper to me in Spanish." App. 76, l. 11 – 77, l. 7. She also maintained that she never would have pled guilty if she would have fully understood the charges against her "because I know that I didn't do this." App. 70, l. 16; App. 77, l. 24 – 78, l. 1.

Lastly, Petitioner testified, "I'm payin[g] a price, a heavy price for somethin[g] that I didn't do and [I hope] that God hears me that I had nothin[g] to do with this . . . I didn't participate in this action and I plead the Court that they will listen, I didn't participate in this." App. 72, ll. 8-13.

During the beginning of his testimony, plea counsel, Douglas Brannon, explained the facts of the case as he understood them. He testified that Petitioner was a resident of the Atlanta area and that "she received a phone call from a man named Carlos who was apparently the leader of this, uh, drug ring and he asked her to come to his house to clean his house . . . and she agreed and and she came from Atlanta to Spartanburg County." Brannon said Petitioner was then "asked to drive back to Atlanta to pick up three men who were allegedly business associates of Mr. Carlos, uh, so she did that . . . [A]t some point Carlos asked her if she had the ability to divine who it was that was allegedly stealing drugs and money from him . . . and this Carlos wrote a bunch of names down on pieces of paper and cut them into small pieces of paper, put them in the middle of this table and and through her . . . works, uh, two pieces of paper came outta this pile and and it turns out that the two people whose names were written on those pieces of paper are the people who were killed." App. 83, l. 5 – 84, l. 11.

Brannon continued, "She was to be paid, part of her fee was that Avalanche and her and Jose got into the front seat of this Avalanche and the three men that she went to Atlanta to bring back got in the back of the car. They dropped the three men off at a location, they rode around a little while, there was a phone call to Jose, they went back to another area, the three men got in the car and they left and then later that evening she talked significantly about being at the trailer and being held at gunpoint and not being allowed to leave . . . but she was subsequently allowed to leave and took the three men back to Atlanta along with some other family members, uh, that that was the role that or that's what she told me she knew about this case." App. 84, l. 11 – 85, l. 4.

Brannon testified that he met with Petitioner seven times before her guilty plea and that each time he brought an interpreter with him. During these meetings, Brannon said that they discussed the case including the "theory of hand of one hand of all." App. 83, ll. 5-12; App. 85, l. 23 – 86, l. 1. He maintained that he never received any indication from her that she did not understand what she was being charged with. App. 86, ll. 2-12. He also testified, "I never talked with her about a guilty plea until she said she had to plead guilty, it - - **this was always a trial.**" Brannon explained that Petitioner "never told me that she knew why she went to get those three men and . . . I don't know that she knew . . . why she went to get those men." App. 85, ll. 14-22 (emphasis added). He said, "[T]hat's why I thought it was a trial because she . . . didn't specifically know what the three guys were gonna do, she . . . wasn't at the house where the people died, I, you know, I thought it was a trial." App. 88, ll. 3-11.

Brannon said that when he was talking to Petitioner about proceeding to trial he "asked her how she, how she wanted me to describe her to the jury in my opening statement and she said, I want you to tell the jury that I'm a witch and and I said, I I I can't do that in South Carolina, I I can't, and then she went on to tell me that in her religion a witch is like a preacher and I said, Well then let me call you a preacher, and she said, No, no, no, no, no no you gotta call me a witch and then she went right from there into, I have to plead guilty because if I have had anything to do with another person's death or injury, my family, not just me, but my family for seven generations will be cursed." App. 86, l. 23 – 87, l. 24.

Brannon testified that after Petitioner decided to plead guilty he advised her of her constitutional rights and explained the guilty plea proceeding to her. He said, "I've handled a lotta pleas in front of Judge Hayes so not only did I tell her the questions that he would ask [her], I told her the order in which he would ask them, uh, and I certainly never told her how to answer a

question." App. 88, ll. 12-19. Brannon also maintained that the sentencing sheets and other paperwork were read to Petitioner and explained to her in Spanish by an interpreter. He said, "I showed Ms. Ramirez [Petitioner] the sentencing sheets and then I got up and Secora [the interpreter] read word-for-word what the sentencing sheets say and I'm only talking about where it says the . . . charge, the possible sentence and and those things, so I don't mean she read verbatim what the paper said but as far as what the charge was and the potential sentence." App. 88, l. 20 – 89, l. 15.

Furthermore, Brannon explained, "Well I know that every time that I spoke with her [Petitioner] including the day of the plea Secora Walt was the translator, alright, ya know we changed translator in the middle of that plea but Secora was there for the, for the signing of the sentencing sheets in the beginning of the plea. Her and Secora would have conversations without me, I mean . . . there was a rapport between the translator and the client. Uh, I had had Ms. Ramirez ask me to talk slower from time to time . . . I was comfortable that if she didn't understand something, she would tell Sequora she didn't understand something and there were often times when Sequora would back up and say, Let me say it this way, and she would say something else but at no point during the discussions of the guilty plea either the day before the plea or the day of the plea did she indicate she didn't understand what was going on." App. 93, l. 24 – 94, l. 15.

Order of Dismissal

The PCR court denied Petitioner relief. In the Order of Dismissal, the court stated, "In regards to [Petitioner's] claim that she lacked understanding of the charges and plea, this Court finds that not only did her testimony lack credibility, but that she failed to meet her burden of proof. This Court notes that [Petitioner], during the PCR hearing, has been able to respond with assistance of an interpreter and her responses were consistent with being able to understand the questions. Contrary to her testimony at the hearing, the record reflects that [Petitioner] responded to the [trial] court's

questions appropriately and indicated a full understanding of the plea process and of the charges that she was pleading guilty to." App. 106.

The court further found that Petitioner "freely and voluntarily chose to plead guilty" and that "[t]here was no indication . . . [Petitioner] ever wished to proceed to trial on these charges." App. 107.

Discussion

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made because when she pled guilty she lacked a full understanding of the nature of the charges against her and the guilty plea proceeding due to her lack of education and experience with the criminal justice system and her inability to speak English and fully communicate with the court and her attorney. Furthermore, Petitioner was prejudiced because she testified that she would not have pled guilty, but instead would have proceeded to trial, if she would have fully understood the charges against her. See App. 77, l. 24 – 78, l. 1. Moreover, plea counsel provided ineffective assistance of counsel when he allowed Petitioner to plead guilty because of her fear that her family would be cursed for seven generations, not because she was actually guilty. See App. 87, ll. 18-21.

The difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). "The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (internal quotations marks and citations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984), to claims of the same against plea counsel). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the

consequences of his plea and the charges against him." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000)) (internal quotation marks omitted).

First, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. On the other hand, the prejudice requirement focuses on whether "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Id. at 59. "[T]he 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, 393 S.C. at 572-574, 713 S.E.2d at 615 (citing Roddy, 339 S.C. at 33, 528 S.E.2d at 420).

Additionally, "[t]he right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled." Strickland, 466 U.S. at 685 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275-276 (1942)).

In this case, plea counsel's performance was deficient, as it clearly fell below an objective standard of reasonableness. See Strickland, 466 U.S. at 687-688. Specifically, plea counsel was ineffective because he had a duty to explore why Petitioner decided to plead guilty. Plea counsel testified that he always "thought it was a trial" because there was **no evidence** that Petitioner knew "why she went to get those three men" or "what the three guys were gonna do," and because she was not in the house when the individuals were killed. App. 85, ll. 20-22; App. 87, ll. 1-3; App. 88, ll. 3-11. Based on plea counsel's testimony, which the PCR court found credible, the only reason

Petitioner wanted to plead guilty was because she thought her family would be cursed for seven generations if she had anything to do with another person's death, not because she was actually guilty of the charges pending against her. App. 87, ll. 18-21; see App. 107. A reasonably competent criminal defense attorney would have ensured that his client fully understood the elements of the charges against her and was in fact guilty before advising her to plead guilty, especially to charges in which she was facing a possible sentence of life without parole.

Furthermore, there is a reasonable probability that if plea counsel had fully advised Petitioner of the nature of the charges she was pleading guilty to, explored why she wanted to plead guilty, and ensured that she was able to properly communicate with him and the court through the interpreter, she would not have pled guilty, but would have insisted on proceeding to trial. See App. 77, l. 24 – 78, l. 1. Significantly, Petitioner repeatedly maintained her innocence throughout her discussions with plea counsel and during her testimony at the PCR hearing. See App. 70, ll. 14-16; see also App. 71, ll. 13-16; see also App. 72, ll. 8-13; see also App. 77, ll. 21-23.

Petitioner testified that she did not understand what was happening during her guilty plea and that she answered the trial court's questions the way plea counsel and the interpreter told her to. See App. 70, l. 19 – 71, l. 11. She explained that she did what plea counsel told her to do because "I thought that Mr. Brannon was gonna explain that I was not in that location and I had nothin[g] to do with it and the only thing I didn't do was call the police but how could I, I was threatened." App. 71, ll. 3-16. Petitioner's testimony is corroborated by the record of the guilty plea proceeding. When the trial court asked Petitioner during her guilty plea if the facts as stated by the solicitor were "substantially correct," Petitioner responded, "Yes, sir, but my lawyer will explain." A bench conference was then held off the record. App. 13, l. 14 – 14, l. 3. This demonstrates that Petitioner did not understand what she was pleading guilty to and thought plea counsel was going to inform

the court that she was innocent of the charges. If plea counsel would have properly informed the court that Petitioner did not know "why she went to get those three men" or "what the three guys were gonna do" and that she "wasn't at the house where the people died," then it is extremely likely the trial court would not have accepted Petitioner's guilty plea and would have scheduled the case for trial. See App. 85, ll. 20-22; see also App. 88, ll. 3-11; see also State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009).

Lastly, Petitioner testified at the PCR hearing that she would not have pled guilty if she would have understood the nature of the charges pending against her. App. 77, l. 24 – 78, l. 1. Thus, Petitioner was prejudiced by plea counsel's deficient performance. See Lockhart, 474 U.S. at 59.

As a result of Petitioner's involuntarily guilty plea and the resulting prejudice, her convictions and sentence should be reversed and this case remanded to the Spartanburg County Court of General Sessions for a new trial.

CONCLUSION

Petitioner respectfully requests this Court reverse the decision of the PCR court, vacate her convictions and sentence, and remand for a new trial.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER.

This 9th day of January, 2015

STATE OF SOUTH CAROLINA

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YESENIA RAMIREZ,

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CERTIFICATE OF SERVICE

I certify that a true copy of the brief of petitioner, in this case has been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of January, 2015.

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 9th day
of January, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.