

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lexington County

S.C. Supreme Court

William P. Keesley, Circuit Court Judge

EDDIE ALEWINE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001452

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Does the record support the PCR court's finding that Petitioner made a voluntary decision to proceed to trial after fully considering his options where Petitioner testified at the PCR hearing that he wanted to plead guilty; where Petitioner testified that trial counsel never relayed a plea offer to him; and where trial counsel confirmed that the State offered a plea but never testified to relaying the offer to Petitioner?

STATEMENT

On May 7, 2012, the Lexington County Grand Jury indicted Petitioner Eddie Frank Alewine for distribution of crack cocaine. App. 310-311. On June 18, 2012, Petitioner proceeded to trial before The Honorable D. Craig Brown and a jury. Wayne Floyd represented Petitioner and Dale Scott represented the State. App. 1. The State presented evidence that on August 30, 2011, an officer with the Lexington County Sheriff's Department set up a controlled buy of \$100 in crack cocaine using an undercover informant at an IGA grocery store in Gilbert. App. 61, line 1—App. 79, line 24. The undercover informant appeared and testified that Petitioner was the person from whom he purchased the crack cocaine that day. App. 108, line 1—App. 121, line 17. At the conclusion of the trial, the jury found Petitioner guilty as charged. App. 235, lines 18-23. The trial judge sentenced Petitioner to eighteen years' incarceration.¹

On June 21, 2013, Petitioner filed an application for post-conviction relief alleging ineffective assistance of counsel. App. 256-264. The State filed a return on December 11, 2013. App. 265-269. On April 17, 2014, Petitioner appeared at an evidentiary hearing before The Honorable William P. Keesley. Kristy G. Goldberg represented Petitioner and Walt Whitmire represented the State. App. 270.

Petitioner testified that he had previously pled guilty for prior drug convictions. App. 279, lines 13-18. As with those convictions, he did not want to proceed to trial for the current charge and was willing to take any plea offer. However, trial counsel never relayed a plea offer to him. App. 277, line 12—App. 278, line 4. Trial counsel testified and confirmed that the State offered a plea to the offense charged with no sentence recommendation. App. 289, lines 8-20.

On June 3, 2014, the PCR court issued its order of dismissal concluding Petitioner failed to establish ineffective assistance of counsel. App. 302-309. Specifically, the order stated that

trial counsel's testimony showed Petitioner made a voluntary decision to proceed to trial after fully considering his options.

ARGUMENT

Trial counsel's testimony does not support the PCR court's conclusion that Petitioner made a voluntary decision to proceed to trial after fully considering his options.

Trial counsel's testimony does not support the PCR court's conclusion that Petitioner made a voluntary decision to proceed to trial after fully considering his options. 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 right to effective assistance of counsel extends to plea negotiations. *See Missouri v. Frye*, 132 S. Ct. 1399, 1408 ("This Court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused."). Counsel's performance can be deficient based on incorrect advice to a defendant deciding whether to accept a plea offer. *See Lafler v. Cooper*, 132 S. Ct. 1376, 1391 (2012) ("As to prejudice, respondent has shown that but for counsel's deficient performance there is a reasonable probability he and the trial court would have accepted the guilty plea. In addition, as a result of not accepting the plea and being convicted at trial, respondent received a minimum sentence 3 & half times greater than he would have received under the plea. The standard for ineffective assistance under *Strickland* has thus

¹ The conviction was Petitioner's third crack-cocaine related offense.

been satisfied.” (citations omitted)). Deficient performance by plea counsel can therefore 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 determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). “Specifically, the 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.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

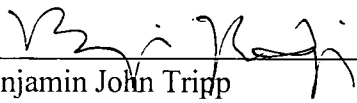
In this case, the complete record shows Petitioner wanted to plead guilty rather than proceed to trial. The evidence against Petitioner was insurmountable: police officers set up a controlled drug buy, and their undercover informant testified that he purchased crack cocaine from Petitioner. Moreover, Petitioner had resolved previous drug charges through guilty pleas. Finally, Petitioner testified at the PCR hearing that he wanted to plead guilty.

Trial counsel’s only material testimony was a confirmation that the State offered a plea to the offense charged with no sentence recommendation. While Petitioner testified that trial counsel never relayed a plea offer to him, trial counsel never testified to the contrary. Accordingly, trial counsel’s testimony could not support a finding that Petitioner made a voluntary decision to proceed to trial after fully considering his options. Trial counsel’s failure to respect Petitioner’s desire to plead guilty therefore violated his Constitutional right to make the fundamental decision of whether to plead or proceed to trial, and the PCR judge committed reversible error in concluding Petitioner failed to establish ineffective assistance of counsel.

CONCLUSION

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

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of January, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

EDDIE ALEWINE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2014-001452

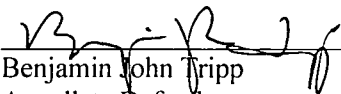
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eddie Alewine 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 April 17, 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 Eddie Alewine.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 28th day of January, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
William P. Keesley, Circuit Court Judge

EDDIE ALEWINE,

PETITIONER,

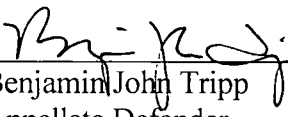
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

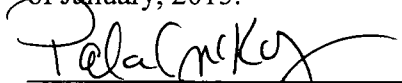
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on John Walt Whitmire, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Eddie Alewine, #351282, at Broad River Correctional Institution this 28th day of January, 2015.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 28th day
of January, 2015.



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