



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

MAR 25 2015

S.C. Supreme Court

March 25, 2015

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

RE: Michael T. Sanders, # 290266 v. State of South Carolina
Appellate Case No. 2014-000955
Lower Court Case No. 2012-CP-15-0917

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Return to Petition for Writ of Certiorari to the South Carolina Supreme Court in the above matter for filing in your office. By copy of this letter we are serving the petitioner with this Return to Petition for Writ of Certiorari.

With highest regards,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh
Enclosures

cc: Lara M. Caudy, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Colleton County
Honorable James R. Barber, III, Circuit Court Judge

Appellate Case No. 2014-000955

MICHAEL T. SANDERS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
#100269

ATTORNEYS FOR RESPONDENT

RECEIVED

MAR 25 2015

S.C. Supreme Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

QUESTION PRESENTED 1

STATEMENT OF THE CASE..... 2

ARGUMENT.....5

CONCLUSION.....12

TABLE OF AUTHORITIES

Cases:

<u>Al-Shabazz v. State</u> , 338 S.C. 354, 527 S.E.2d 742 (1999).	5
<u>Anderson v. State</u> , 342 S.C. 54, 535 S.E.2d 649 (2000).	6
<u>Blackledge v. Allison</u> , 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977).	6
<u>Boykin v. Alabama</u> , 395 U.S. 238, 89 S. Ct. 1709 (1969).	5
<u>Campbell v. Polk</u> , 447 F.3d 270 (4th Cir. 2006).	8
<u>Cherry v. State</u> , 300 S.C. 115, 386 S.E.2d 624 (1989).	6
<u>Crawford v. United States</u> , 519 F.2d 347 (4th Cir.1975).	6
<u>Dover v. State</u> , 304 S.C. 433, 405 S.E.2d 391 (1991).	5
<u>Drayton v. Evatt</u> , 312 S.C. 4, 430 S.E.2d 517 (1993).	8
<u>Edmonds v. Lewis</u> , 546 F.2d 566 (4th Cir.1976).	6
<u>Easter v. Estelle</u> , 609 F.2d 756 (5 th Cir. 1980).	8
<u>Harres v. Leeke</u> , 282 S.C. 131, 318 S.E.2d 360 (1984).	6
<u>Hill v. Lockhart</u> , 474 U.S. 52, 106 S. Ct. 366 (1985).	5
<u>Holden v. State</u> , 393 S.C. 565, 713 S.E.2d 611 (2011).	11
<u>Roscoe v. State</u> , 345 S.C. 16, 546 S.E.2d 417 (2001).	5, 10
<u>State v. Lambert</u> , 266 S.C. 574, 225 S.E.2d 340 (1976).	6
<u>U.S. v. Olson</u> , 846 F.2d 1103 (7th Cir. 1988).	8
<u>Wolfe v. State</u> , 326 S.C. 158, 485 S.E.2d 369 (1997).	6

QUESTION PRESENTED

I. Whether there is probative evidence to support the lower court's finding that the Petitioner's guilty plea was entered freely and voluntarily with the assistance of effective counsel?

STATEMENT OF THE CASE

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Colleton County. The Petitioner was indicted at the August 2011 term of the Colleton County Grand Jury for burglary-first degree (2011-GS-15-0567). David S. Mathews, Esquire, represented the Petitioner. The Petitioner pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Perry M. Buckner sentenced the Petitioner to confinement for twenty years concurrent to the Petitioner's prior Dorchester County burglary conviction in which he also received a twenty year sentence. The Petitioner did not appeal his conviction or sentence.

The Petitioner filed an application for post-conviction relief on November 21, 2011. The Respondent made its Return on July 11, 2013. An evidentiary hearing into the matter was convened on February 19, 2014 at the Beaufort County Courthouse. The Petitioner was present at the hearing and represented by Tommy Thomas, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent. The Petitioner testified on his own behalf at the PCR hearing. The Petitioner's plea counsel, David Mathews, Esquire, also testified at the hearing. By Order filed April 10, 2014, the Honorable James R. Barber, III, denied and dismissed the application with prejudice. This appeal follows.

ARGUMENT

I. There is probative evidence to support the lower court's ruling that the Petitioner's guilty plea was entered freely and voluntary when the Petitioner was fully advised of his constitutional rights and the consequences of his guilty plea by both counsel and the Court and plea counsel's representation in no way affected the voluntariness of the Petitioner's guilty plea.

The Petitioner claims the lower court erred by finding his guilty plea was freely and voluntarily entered. The Petitioner asserts several deficiencies by plea counsel rendered the Petitioner's guilty plea involuntary. The Respondent submits the Petitioner's claim is wholly without merit and there is ample evidence in support of the lower court's finding that the Petitioner's guilty plea was entered freely and voluntarily. (App. 87-88). This Court should deny the Petition for Writ of Certiorari and dismiss this appeal.

The Petitioner alleges that his guilty plea was entered involuntarily. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that a guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

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, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When

determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The South Carolina Supreme Court has held that if the record reflects that the trial court has assured itself that the plea was voluntarily and intelligently entered with full knowledge of the nature of the offense, then lack of precise language in the record expressing these considerations is not of itself a valid reason for reversal. State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 341 (1976). An enumeration of specific rights waived is not required where the record otherwise reveals affirmative awareness of the consequences of a guilty plea. Id.

The Respondent submits there is probative evidence to support the lower court's ruling that the Petitioner's guilty plea was entered freely and voluntarily. A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, 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. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976).

On appeal, this Court must affirm the circuit court's denial of post-conviction relief when there is probative evidence to support the findings of the circuit court. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 369 (1997); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The record is clear that the Petitioner was fully advised by both counsel and the Court of his constitutional rights and the consequences of his guilty plea. At the start of the Petitioner's

guilty plea, counsel told the plea court that he had advised the Petitioner of the nature of the charge he was facing, the maximum penalty for the offense, and the direct consequences of pleading guilty. Counsel went on to tell the plea court that he believed the Petitioner understood the charges he was facing, the penalty, the direct consequences of the guilty plea, and his constitutional rights. (App. 5:14-24). After counsel's assertions to the court, the Petitioner affirmed counsel's statements and told the Court that trial had discussed with him his constitutional rights, the penalty he was facing, and the direct consequences of pleading guilty. (App. 6:3-11).

The Court then went on to further advise the Petitioner of his constitutional rights and the consequences of his guilty plea. The Court advised the Petitioner of the following: that burglary-first degree carried a sentence of fifteen years to life (App. 7:1-5), that burglary was a non-paroleable offense and he should expect to serve his sentence day for day (App. 7:18-22, 8:5-7), that burglary was a violent and most serious offense for purposes of the two-strikes/three-strikes law (App. 7:6-16), and that he had a right to remain silent, a right to a jury trial, and a right to confront the witnesses against him (App. 8:16-9:6). After the Petitioner was advised of his rights by the Court, he told the Court he wished to plead guilty and was actually guilty of the offense he was pleading to (App. 9:7-10, 11:17-21).

It is clear from the record that the Petitioner entered into his guilty plea with a full understanding of the charge he was facing and the consequences of the plea. The plea court's thorough colloquy with the Petitioner and counsel's assurances to the Court regarding his advice to the Petitioner is sufficient evidence to support the lower court's finding that the Petitioner's guilty plea was entered freely and voluntarily. This Court should affirm the lower court's finding.

The Respondent submits further counsel's representation of the Petitioner in no way affected the voluntariness of the Petitioner's guilty plea. The Petitioner claims counsel met with the Petitioner for the first time during his guilty and that this alleged one-time meeting rendered the Petitioner's guilty plea involuntary. The Respondent submits the number of times counsel met with the Petitioner did not render Petitioner's guilty plea involuntary. Brevity in the time spent in consultation with the Petitioner alone is not sufficient to establish counsel was ineffective. See Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980); Campbell v. Polk, 447 F.3d 270, 279 n.2 (4th Cir. 2006) (stating no constitutional minimum number of meetings is required to satisfy competency); U.S. v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte).

Contrary to the Petitioner's assertions, the record reflects counsel met with the Petitioner at least twice prior to his guilty plea. Counsel provided credible testimony¹ at the evidentiary hearing that his notes reflect discussing the case with the Petitioner at the bond hearing where he was appointed to represent the Petitioner and that he was present with the Petitioner during the Petitioner's preliminary hearing. (App. 60:12-19, 62:3-10, 62:23-63:20). The Petitioner has failed to show any misapprehension of facts or failures to investigate based on the amount of time counsel spent consulting with the Petitioner. The Petitioner has also failed to show what additional consultation with counsel would have produced.

This Court should find most persuasive counsel's assurances to the plea court that while he had not spoken with the Petitioner extensively, he had sufficient time to speak with him and

¹ "This Court gives great deference to a PCR judge's findings where matters of credibility are involved." Drayton v. Evatt, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993).

felt the Petitioner understood what he was doing that day². (App. 14:11-16). The Petitioner's statement to the Court during his guilty plea that he did not need any additional time with counsel further indicates that the time counsel spent consulting with the Petitioner was sufficient and did not render Petitioner's guilty plea involuntary. (App. 10:6-20). The Respondent also notes that the Petitioner was no rookie to the criminal justice system and it is likely his pleading guilty to two previous burglary convictions enhanced his understanding of this third and subsequent burglary charge and the guilty plea process. (App. 69:14-24). The Petitioner has failed to carry his burden of proving the time spent consulting with counsel affected the voluntariness of his guilty plea.

The Petitioner claims counsel's failure to review discovery materials with the Petitioner prior to his guilty plea rendered his guilty plea involuntary. The Respondent submits this claim is without merit. The record reflects the Petitioner was made aware of the State's evidence against him at least twice prior to his guilty plea. The record reflects counsel provided credible testimony that he spoke with the Petitioner about the evidence against him when they first met at the Petitioner's bond hearing. (App. 64:13-65:4). Counsel testified further that the Petitioner was also given an opportunity to learn the specific nature the State's evidence and the allegations against him during his preliminary hearing. (App. 62:3-10, 62:23-63:20).

The Respondent submits the Petitioner has failed to show what a more extensive review of the discovery materials would have yielded or how it would have affected his decision to plead guilty. This Court should find persuasive counsel's testimony that the State set out their case clearly at the Petitioner's preliminary hearing and that the Petitioner's discovery materials contained no additional information that was shockingly different from that presented by the

² The Respondent notes the record is void of any expression of concern by the plea judge regarding the time spent by counsel with the Petitioner prior to his guilty plea.

State at the preliminary hearing. (App. 62:23-63:20, 68:3-12). The Respondent also notes that it is unlikely the Petitioner learned of the State's evidence against him for the first time at his guilty plea as he claims since the record reflects the Petitioner made no objection to the State's recitation of the facts during his guilty plea. (App. 11:23-12:19). The Petitioner has failed to carry his burden of proving counsel's failure to review the discovery materials with the Petitioner prior to his guilty plea affected the voluntariness of his plea.

The Petitioner also claims that counsel's failure to discuss possible defenses with the Petitioner prior to guilty plea rendered the Petitioner's guilty plea involuntary. The Respondent submits this claim is wholly without merit. This assertion by the Petitioner completely disregards counsel's colloquy with the Court during the Petitioner's guilty plea. The record clearly reflects trial counsel had an extensive conversation with the Petitioner regarding potential defenses including the hand of one and mere presence. During the mitigation portion of the Petitioner's guilty plea, counsel told the Court that he had discussed the hand of one and a mere presence defense with the Petitioner, explained that the State would have the burden of proving he was not merely present, explained that the Petitioner could have a trial on mere presence if he wanted to, and that the Petitioner indicated he wanted to go forward with the guilty plea. (App. 14:10-15:25). Based on counsel's representation to the Court during the Petitioner's plea, it is clear that counsel discussed possible defenses and mere presence with the Petitioner prior to his guilty plea. This claim is without merit.

In order for the Petitioner to succeed on his involuntary guilty plea claim, he has to show that there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The Respondent submits the Petitioner has failed to show that any of counsel's

alleged deficiencies affected his decision to plead guilty. The Petitioner represented to the Court during his guilty plea that he was satisfied with counsel's representation. (App. 10:6-20). The guilty plea record is void of any indication that the Petitioner's guilty was based on counsel's alleged "poor representation". Instead, the record reflects Petitioner's decision to plead guilty was based primarily on the fact that he was facing a possible life sentence if convicted at trial. (App. 39:21-24, 58:7-9, 59:5-13).

It is also clear from the record the Petitioner's decision to plead guilty was more a reflection of the Petitioner's desire to resolve an outstanding criminal matter by accepting a beneficial plea offer that would run concurrent to a lengthy sentence he was already serving. See Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011) ("The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant"). The Respondent submits counsel provided effective assistance and the Petitioner's assertion that counsel "didn't take the Petitioner's case seriously" is wholly unsupported by the record. The Petitioner has failed to show that but for counsel's performance he would not have pled guilty. The Respondent submits there is probative evidence to support the lower court's finding. Therefore, this Court should deny the Petition for Writ of Certiorari and dismiss this appeal.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

BY: 

Ashleigh R. Wilson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

March 25, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Colleton
The Honorable James R. Barber, III, Circuit Court Judge

Appellate Case No. 2014-000915
Lower Court Case No. 2012-CP-15-0917

MICHAEL T. SANDERS, Petitioner,

v.

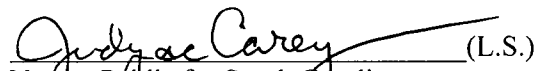
STATE OF SOUTH CAROLINA, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari to The SC Supreme Court has been mailed to the opposing counsel Lara M. Caudy, this 25th day of March 2015.


Anne R. Henley
Legal Assistant

SWORN to before me this
25th day of March, 2015.

 (L.S.)
Notary Public for South Carolina.
My Commission Expires: 5/14/2024