ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

MAR 30 2015

S.C. Supreme Court

Certiorari to Orangeburg County

Maite Murphy, Circuit Court Judge

JEFFREY N. GRIMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002025

JOHNSON PETITION FOR WRIT OF CERTIORARI

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether trial counsel was ineffective for leading Petitioner to plead guilty to the lesser-included offense of ABHAN, where Petitioner detrimentally relied on representations by defense counsel that there would be a ten-year cap on sentencing, but there was no recommended or negotiated sentence stated on the record by the solicitor, and Petitioner was sentenced to eighteen years' imprisonment?

STATEMENT OF THE FACTS

On September 10, 2012, an Orangeburg County Grand Jury indicted Petitioner for attempted murder. App. 100 – 101. On November 15, 2012, Petitioner pled guilty to the lesser-included offense of assault and battery of a high and aggravated nature before the Honorable Howard King. App. 4 – 22. Judge King sentenced Petitioner to eighteen years imprisonment. App. 21. Mark Wise represented Petitioner. Harrison Bell represented the State. App. 1

Petitioner appealed his guilty plea and sentence.

On January 13, 2013, the Court of Appeals dismissed Petitioner's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on February 5, 2013. App. 35.

On March 25, 2013, Petitioner filed a PCR application. App. 24. Respondent filed a return on September 5, 2013 requesting an evidentiary hearing. App. 39. On May 27, 2014, a PCR hearing was held before the Honorable Maite Murphy. App. 41 – 89. Jonathan D. Waller represented Petitioner. Megan E. Harrigan represented the State. App. 41.

On August 18, Judge Murphy issued and order of dismissal. App. 91 – 97. Petitioner appealed the judge's order. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel was ineffective for leading Petitioner to plead guilty to the lesser-included offense of ABHAN, where Petitioner detrimentally relied on representations by defense counsel that there would be a ten-year cap on sentencing, but there was no recommended or negotiated sentence stated on the record by the solicitor, and Petitioner was sentenced to eighteen years' imprisonment.

Guilty Plea

According to the solicitor, on June 2, 2012, Petitioner and the victim, Shirley Love, were at Love's residence. App. 9, lines 21 – 25. Petitioner and Love had an argument about Petitioner's drinking. App. 10, lines 2 – 7. After the argument, Love went to a neighbor's house "to let things cool off." App. 10, lines 8 – 9. When Love returned home, she went into her bedroom. App. 10, lines 9 – 11. Petitioner was in the living room. App. 10, line 10.

The next morning, as Love was showering, Petitioner went into the bathroom and shot her five times. App. 10, lines 12 – 18. Petitioner left the house and Love ran outside for help. App. 10, lines 21 – 22. Love's daughter had already gone to a neighbor's house to tell what happened. App. 10, lines 21 – 23. As the neighbor was helping Love into her car to drive to the emergency room, the police responded to the scene. App. 11, lines 2 – 6.

This was Petitioner's first General Sessions charge. App. 12, lines 3 – 6.

PCR Hearing

Petitioner testified during the PCR hearing. App. 45. Petitioner explained that he would like to plead "to a lesser charge with a cap on the sentencing." App. 47, lines 22 – 23. He stated that "[his] understanding was that [he] was going to plead to the charge of Assault and Battery of a High and Aggravated nature with a 10 year cap" and that he and counsel "talked about that extensively." App. 49, lines 17 – 20. Petitioner further explained that he and counsel talked about

the ten-year cap "on every visit" that counsel made to the jail to meet with him. App. 51, lines 16 – 18. Petitioner stated that if he had known the solicitor would not agree to a ten-year sentence, he would have gone to trial. App. 51, lines 2 – 3.

Defense counsel also testified at the hearing. App. 77. Counsel remembered having a discussion with Petitioner about trying to get a negotiated sentence or a cap on his charge. App. 80, lines 19 – 25. Counsel explained that he tried to get a ten-year cap for Petitioner, but the solicitor would not reduce the charge any further or promise ten years. App. 83, lines 21 – 24. Counsel stated that he "would never have told [Petitioner] that that's what he could expect." App. 82, lines 2 – 3.

Order of Dismissal

The PCR judge dismissed Petitioner's claim. She stated that Petitioner's assertions that there was a negotiated ten-year offer from the State was not supported by "the guilty plea transcript, sentencing sheet, and testimony from Counsel." App. 96. The judge further stated that "there is no reasonable probability that he would have insisted on going to trial absent Counsel's advice." App. 96.

Discussion

Trial counsel was ineffective by leading Petitioner to plead guilty to the lesser-included offense of ABHAN. Petitioner detrimentally relied on representations by defense counsel that there would be a ten-year cap on sentencing. However, there was no recommended or negotiated sentence stated on the record by the solicitor, and Petitioner was sentenced to eighteen years' imprisonment.

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984).

When a defendant challenges a conviction on the ground that counsel was ineffective, the question becomes, "'whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result,'" Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686; see Ard v Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Pursuant to Strickland v. Washington, a court will conduct a two-prong test when determining whether trial counsel's assistance was ineffective. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel's performance was deficient. Strickland, 466 U.S. at 687. In analyzing this prong, a court will use an objective standard of reasonableness. Id. Under this prong, "'[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (quoting Strickland, 466 U.S. at 688).

Second, the applicant must show that counsel's "deficient performance prejudiced the defendant to the extent that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. at 688).

The United States Supreme Court has held that "[g]uilty pleas are no more foolproof than full trials to the court or jury." Brady v. United States, 397 U.S. 742, 758 (1970). Accordingly, the Court "take[s] great precautions against unsound results." Id. An "unsound result" occurs when a criminal defendant does not knowingly, voluntarily, or intelligently plead guilty. Boykin v. Alabama, 395 U.S. 238 (1969). Therefore, in the context of a guilty plea, whether counsel was "deficient" turns on whether the guilty plea was entered voluntarily, knowingly, and intelligently. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). See Hill v. Lockhart, 474 U.S. 52,

56 (1985) ("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.'" (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

To show that the defendant was prejudiced by counsel's deficient performance during the guilty plea process, he must show that "but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Hill, 474 U.S. 52 at 59. When a court is evaluating 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).

Here, Petitioner stated clearly that he understood the terms of the guilty plea to be that he would plead to assault and battery of a high and aggravated nature with a ten-year cap on sentencing. He adamantly explained that he and defense counsel discussed these terms during "every visit" counsel made to Petitioner. According to Petitioner, the State's agreement to the ten-year cap is why he pled guilty.

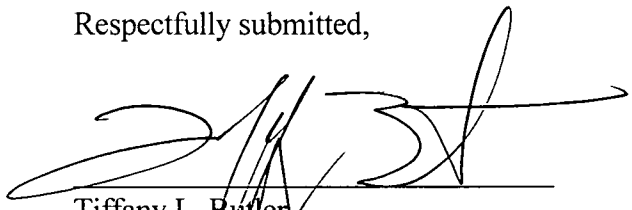
Petitioner's understanding of his guilty plea was based on counsel's representations. Counsel's communication of the terms of Petitioner's guilty plea resulted in Petitioner's detrimental reliance and, consequently, his decision to plead guilty. See Rule 1.4(b), SCRPC, Rule 407, SCACR (Counsel "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions" regarding the client's case.).

Had Petitioner known there would be no cap on sentencing, but rather, an open plea without a recommendation or negotiation of sentencing, he would have elected to go to trial. But for counsel's ineffective communication, Petitioner would not have pled guilty to the charge of assault and battery of a high and aggravated nature.

CONCLUSION

For the reasons argued, Petitioner Jeffrey Grimes respectfully requests this Court to grant his petition for writ of certiorari.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO ORANGEBURG COUNTY
MAITE MURPHY, CIRCUIT COURT JUDGE

JEFFREY N. GRIMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002025

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeffrey N. Grimes states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on May 27, 2014. In her opinion seeking certiorari from the order of dismissal is without merit.

3. She 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 her as counsel for Jeffrey N. Grimes.

Respectfully submitted,

Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

This 30th day of March, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Maite Murphy, Circuit Court Judge

JEFFREY N. GRIMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002025

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 J. Clayton Mitchell, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a true copy of the Johnson petition for writ of certiorari has been served on Jeffrey N. Grimes, #353213, at Lieber Correctional Institution, this 30th day of March, 2015. A copy of the appendix was served on Jeffrey N. Grimes at Lieber Correctional Institution on January 9, 2015.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day of March, 2015.

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