ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
MAR 31 2015
S.C. Supreme Court

Certiorari to Richland County

Robert E. Hood, Circuit Court Judge

CURTIS SCHOCLET,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002124

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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

ISSUE PRESENTED

Whether the evidence in the record supports the conclusion that counsel was not constitutionally deficient where she led Petitioner to a guilty plea without explaining to him the elements of the charge against him.

STATEMENT OF THE CASE

On January 20, 2011, the Richland County Grand Jury indicted Petitioner Curtis Schoclet for armed robbery and two counts of kidnapping. App. 240-242. On February 11, 2013, Petitioner proceeded to trial before The Honorable Diane S. Goodstein and a jury. Courtney Gibbes and Mark Sawyer represented Petitioner, and Dolly J. Garfield and Margaret Bodman represented the State. App. 1. On February 12, 2013, after pretrial motions, Petitioner initiated a plea hearing before Judge Goodstein. App. 137, line 12—App. 138, line 22. The State alleged that early in the morning on July 26, 2010, Petitioner robbed a credit union on Two Notch Road while presenting what appeared to tellers to be a handgun. App. 157, line 12—App. 159, line 24. Petitioner pled guilty as charged pursuant to a negotiated plea deal for a sentence of twenty-five to thirty years' incarceration. App. 151, lines 9-18; App. 162, lines 11-13. Judge Goodstein sentenced Petitioner to concurrent sentences of twenty-five years for each charge. App. 177, lines 7-15.

On June 24, 2013, Petitioner filed an application for post-conviction relief (PCR) claiming ineffective assistance of counsel. App. 180-185. The State filed a return on February 24, 2014. App. 186-190. On September 2, 2014, Petitioner appeared at an evidentiary hearing before The Honorable Robert E. Hood. Anna Good represented Petitioner and Croom Hunter represented the State. App. 191. Petitioner testified that he and plea counsel never discussed the elements of the kidnapping charge. Petitioner wanted to proceed to trial, but plea counsel would not entertain the idea. When asked whether she "discuss[ed] anything regarding strategy of how [Petitioner was] going to defend against the armed robbery and kidnapping charges," Petitioner replied no. App. 196, line 21—App. 197, line 25. Petitioner also testified that during the course of trial, plea counsel was attempting to negotiate a plea deal with the State. At one point she informed Petitioner the State was not cooperating, and Petitioner said, "Let's go to trial." However, plea counsel was still

resistant: "She told me—she was basically saying that she didn't want to see me get life without parole because I was going to lose the trial." App. 199, line 23—App. 200, line 13.

On September 22, 2014, the PCR court issued an order of dismissal concluding Petitioner failed to establish ineffective assistance of counsel. App. 229-239. Specifically, the order stated Petitioner failed to show that his plea was not knowing and voluntary. App. 237.

ARGUMENT

The evidence in the record does not support the PCR court's finding that Petitioner knowingly and voluntarily pled guilty because plea counsel did not review with him the elements of the kidnapping charges.

The evidence in the record does not support the PCR court's finding that Petitioner knowingly and voluntarily pled guilty because plea counsel did not review with him the elements of the kidnapping charges. 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 two-part test adopted in *Strickland* "applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart,* 474 U.S. 52, 58 (1985); *see generally Brady v. United States*, 397 U.S. 742, 758 (1970) ("Guilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.").

Specifically, 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," a defendant sufficiently undermines the required

voluntary and intelligent character of a plea. *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009); *accord State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (holding record must reflect that defendant freely and intelligently waived constitutional trial rights and had full understanding of the consequences of the plea); *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) (holding the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea"). It follows that incorrect or omitted advice may 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 Constitution required that Petitioner be advised about his case in such a manner that he could make a fully informed decision as to whether to plead guilty. Thus, Petitioner needed full knowledge of the material evidence and the elements of the charges in his case in order to knowingly evaluate his options and decide whether to accept the plea bargain in accord with his own principals and interests. However, the evidence in the record shows counsel denied him this information. Petitioner testified that he and plea counsel never discussed the elements of the kidnapping charge. Similarly, she never discussed with him any strategy to defend against the robbery and kidnapping charges. Plainly, she did not discuss the kidnapping elements

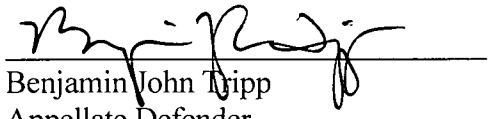
with him because she did not want to take the case to trial and did not want to encourage Petitioner to seriously consider it.

Counsel might have made a studied evaluation of the risks and consequences of going to trial, and this function was necessary to adequate representation. However, it was not sufficient. By withholding advisement and impressed upon Petitioner that pleading was the only option, Petitioner in effect adopted his counsel's values and interests and was denied the opportunity to pursue his own—the principle of fighting on the merits of his case. While counsel may have had honorable intentions, the decision of whether to plead or fight for his case at trial was not hers to make. Thus, the record contains no probative evidence to support the PCR court's finding that plea counsel sufficiently advised Petitioner to allow him to make his own decision of whether to plead guilty.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 31st day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

CURTIS SCHOCLET,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002124

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Curtis Schoclet states:

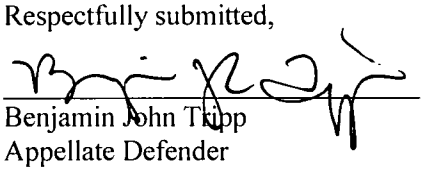
1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on September 2, 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 Curtis Schoclet.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 31st day of March, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Robert E. Hood, Circuit Court Judge

CURTIS SCHOCLET,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002124

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 Clay Mitchell, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Curtis Schoclet, #354333, at Lee Correctional Institution, this 31st day of March, 2015.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 31st day
of March, 2015.

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