

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2014-000025

Yesenia Cortez Ramirez, Petitioner,

v.

State of South Carolina, Respondent.

**BRIEF OF
RESPONDENT**

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Attorney General

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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Did the PCR Court properly hold that Petitioner's guilty plea was not involuntary when Petitioner failed to establish any deficiency on Counsel's behalf and probative evidence exists to support the ruling?

STATEMENT OF THE CASE

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Petitioner was indicted at the May 2010 term of the Spartanburg County Grand Jury for two counts of accessory before the fact to murder and accessory before the fact to burglary – 1st degree (10-GS-42-3161, count 1, count 2, & count 3, respectively). Petitioner was represented by N. Douglas Brannon, Esquire and Chris Kennedy, Esquire. On September 16, 2011, the Petitioner pled guilty as indicted to the charge of accessory before the fact to burglary – 1st degree, but waived presentment of and pled to two counts of accessory after the fact to murder. Petitioner was sentenced by the Honorable J. Mark Hayes II for a period of fifty years for accessory before the fact to burglary – 1st degree, and fifteen years for each count of accessory after the fact to murder to be served concurrently. The Petitioner did not appeal her conviction or sentence.

The Petitioner subsequently filed a PCR application on February 3, 2012. The Respondent made its Return on or about October 9, 2012. An evidentiary hearing into the matter was convened on June 28, 2013, at the Spartanburg County Courthouse. The Petitioner was present at the hearing and was represented by Staci M. Rollins, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. Following the hearing, The Honorable R. Lawton McIntosh denied the PCR application by written Order dated September 25, 2013.

A timely Notice of Appeal was filed on Petitioner's behalf and a Petition for Writ of Certiorari and Return to the Petition for Writ of Certiorari were submitted. This Court granted certiorari and Petitioner filed a Brief of Petitioner. This Brief of Respondent follows.

STANDARD OF REVIEW

The proper standard of review of a post conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

I. The PCR Court properly held that Petitioner’s guilty plea was not involuntary when Petitioner failed to establish any deficiency on Counsel’s behalf and probative evidence exists to support the ruling.

Petitioner pled guilty to one count of accessory before the fact to burglary – 1st degree, and two counts of accessory before the fact to murder. (App. p. 3). Following her plea, Petitioner was sentenced to serve a total of fifty years. (App. p. 26). Petitioner alleges that her guilty plea was not knowingly, intelligently, or voluntarily made. (PWC p. 4).

The Petitioner alleges that she did not plead guilty freely and voluntarily. 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, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, 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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Petitioner testified that she never received an explanation about the paperwork involved with her case. (App. p. 68). She further testified that she did not understand anything at the plea hearing. (App. p. 71). However, the PCR court found that Petitioner's testimony lacked credibility. (App. p. 106). Furthermore, the court found that the record reflected that Petitioner was able to respond appropriately to what was asked of her in the plea hearing and indicated a full understanding of the charges against her, the plea process and what she was pleading to. (App. p. 98-99)¹.

Counsel testified in the PCR hearing that he met with Petitioner seven times prior to the guilty plea, and that an interpreter was present for each meeting. (App. p. 83; p. 86). Counsel testified that he believed there was a rapport that developed between Petitioner and the interpreter, and Petitioner felt comfortable asking for something to be rephrased or Counsel would ask Petitioner to slow down speaking. (App. p. 94, lines 4-15). He also testified that he was under the impression that Petitioner wanted to go to trial until she explained to him that she needed to plead guilty to avoid being cursed based on her involvement with someone's injury or death. (App. p. 87). Counsel testified that he not only explained to Petitioner the potential sentences she could receive, but also the questions the trial court would ask her and the constitutional rights she would give up by pleading guilty. (App. p. 88, lines 12-19; p. 89, lines 8-15; p. 90, lines 1-2). Counsel

¹ Respondent also notes that Petitioner's apparent ability to understand and answer questions posed by the State during cross-examination during the PCR hearing was suddenly markedly less than her ability to answer appropriately during her own attorney's questioning immediately preceding. (App. p. 78-81).

testified that he had a lengthy talk with Petitioner about the State's possible theory of "hand of one, hand of all," as well as potential time Petitioner may serve in prison and the gravity of the charges. (App. p. 86; p. 92). In fact, Counsel stated that when he first met Petitioner, she knew that two people had been brutally murdered and was under the impression that she had been charged with murder. (App. p. 93, lines 1-7). Furthermore, Counsel testified that he was confident, based on his prior experience with Petitioner during the year of representation, that Petitioner would let him know if she did not understand something, and that Petitioner made no indication that she did not understand something during the guilty plea hearing. (App. p. 94). As he made clear in the hearing, Petitioner spoke about the case a great deal, even with law enforcement several times, (App. p. 83, lines 9-12; p. 93).

As to the facts of the case and possible basis for the lengthy sentence, approximately seven co-defendants were charged to various degrees in the violent torture and murder of the two victims, Hugo and Teresa. (App. p. 8-10). The victims were both tortured using bolt cutters, hit over the head with the back of a toilet, and shot multiple times in their extremities until they were ultimately both shot and killed. (App. p. 10). Although it was never alleged that Petitioner was inside the location of the home where the victims were killed, the evidence which included Petitioner and co-defendant's statements, indicated that Petitioner was the person to bring the killers to South Carolina from Georgia, drop the killers off and pick them up from the victims' home after the victims were killed, and then receive payment of a Chevrolet Avalanche for "house cleaning" services. (App. p. 10).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea 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, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Counsel testified that he was fully prepared to go to trial until **Petitioner** insisted that she plead guilty. (App. p. 88). Counsel explained to Petitioner the plea process and her constitutional rights prior to pleading guilty, and testified that it was Petitioner's decision to plead guilty. (App. p. 90).

Additionally, during the plea colloquy, the court allowed Petitioner the opportunity to confer with Counsel if she did not understand something. (App. p. 4). In fact, Petitioner acknowledged during the plea that she had enough time to speak with Counsel regarding the charges and did NOT want a jury trial. (App. p. 6, lines 2-11; p. 7). The court went on to make sure Petitioner understood the charges against her and the possible sentences for each charge. (App. p. 15). Petitioner responded appropriately to the court's questions throughout the hearing and gave no indication that she was unable to understand.

"All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." Rollison v. State, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001). There was no evidence provided to support Petitioner's claims that she was unaware of the elements of the

charges, potential sentences, or constitutional rights she waived by pleading guilty. The record of the plea proceeding directly refutes those claims.

Respondent submits that the Petitioner failed to meet her required burden of proof and probative evidence exists to support the court's denial of her post-conviction relief application.

CONCLUSION

For the reasons stated above, this Court should affirm the decision of the lower court.

Respectfully submitted,

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By 
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Certiorari to Spartanburg County
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The Honorable R. Lawton McIntosh, Circuit Court Judge
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YESENIA CORTEZ RAMIREZ,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Brief of Respondent** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Lara M. Caudy, Esquire
SC Commission of Indigent Defense
Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 10th day of April, 2015



ASHLEY HAWORTH
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

April 10, 2015

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APR 10 2015

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

S.G. Supreme Court

RE: Yesenia Cortez Ramirez v. State of South Carolina
Lower Court Case No: 2012-CP-42-0675
Appellate Case No.: 2014-000025

Dear Mr. Shearouse:

Enclosed for filing are the original and thirteen (13) copies of the **Brief of Respondent** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Suzanne H. White
Assistant Deputy Attorney General
SC Bar No. 78225

SHW/ah
Enclosures

cc: Lara M. Caudy, Esquire (2 copies)
Trisha Allen, Victim Services (1 copy)