

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Charleston County

Deadra L. Jefferson, Circuit Court Judge

---

**RECEIVED**

APR 15 2015

**S.C. Supreme Court**

REGINALD MURRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-002318

---

JOHNSON PETITION FOR WRIT OF CERTIORARI

---

JOHN H. STROM  
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

INDEX.....	1
ISSUE PRESENTED .....	2
STATEMENT .....	3
ARGUMENT .....	8
CONCLUSION .....	12
PETITION TO BE RELIEVED AS COUNSEL.....	13

**ISSUE PRESENTED**

Whether Petitioner's Sixth Amendment rights were violated when plea counsel failed to advise Petitioner that, as a consequence of pleading guilty to possession of a weapon during the commission of a violent crime, Petitioner would serve a "day for day" sentence requiring that he be incarcerated for the entire length of the sentence and, thus, ineligible for any form of early release?

## STATEMENT

### **Procedural History**

The North Charleston Police Department conducted a search of Petitioner's garbage. App. 40, ll. 17-22. Law enforcement then secured a search warrant for Petitioner's home. App. 7, ll. 22-25. While executing the search warrant, law enforcement discovered forty eight and two tenths grams of cocaine, a thirty eight caliber handgun, a digital scale, and eighteen hundred seventy four dollars in cash. App. 8, ll. 2-23.

Petitioner was present in the home during the search and was arrested. Petitioner was interrogated by law enforcement following his arrest and admitted that the firearm, drugs, and money were his after law enforcement threatened to arrest his wife and children. *Id.*; App. 48, ll. 16 – App. 49, ll. 20.

### **Indictment and Substitution of Counsel**

On August 7, 2012, Petitioner was indicted by the Charleston County Grand Jury for possession of a firearm during the commission of a violent crime, possession with intent to distribute in proximity to a school zone, and trafficking in cocaine. App. 82 – App. 90.

Petitioner initially retained Robert Howe to represent him. App. 37, ll. 2-13. Howe began plea negotiations, but Petitioner fired Howe prior to reaching an agreement. *Id.* Andrew Grimes was appointed to represent Petitioner. *Id.*

### **Guilty Plea Hearing**

On April 3, 2013, a plea hearing was held before the Honorable R. Markley Dennis Jr. App. 1. In exchange for pleading guilty to all three indictments, the State reduced the trafficking charge to the lesser amount of trafficking between ten and twenty eight grams and agreed to treat it as a first offense. App. 3, ll. 12 – App. 4, ll. 4. Before accepting Petitioner's guilty plea for the weapons

possession charge, the court asked Petitioner if Grimes had explained to him what “day-for-day” meant. App. 2, ll. 18 – App. 3, ll. 11. Petitioner replied that Grimes had. However, the court never asked Petitioner for a definition to confirm that Petitioner’s understanding was correct. *Id.*

Judge Dennis accepted Petitioner’s guilty plea. App. 10, ll. 16-17. In advocating for a lesser sentence, Grimes specifically noted that Petitioner was looking at “five years mandatory” and that this sentence would be the longest Petitioner had ever served. App. 11, ll. 4-25. Grimes highlighted Petitioner’s four and half years of military service, which included a deployment to Saudi Arabia, and Petitioner’s job history which included employment at Bosch and Boeing. *Id.*

Grimes further informed the court that Petitioner had six daughters and two sons, all of whom he provided for, and that Petitioner had the support of his family. App. 12, ll. 2-15. Petitioner apologized to the court and took ownership of his mistakes noting, “after my [prior conviction] I got married, turned my life around . . . the one thing I didn’t do was . . . I continued to associate with the same people. That’s basically why I am standing here today.” App. 12, ll. 18 – App. 13, ll. 5. Petitioner’s brother also spoke at the hearing and urge the judge to allow Petitioner to return to his family as soon as possible. App. 13, ll. 10 – App. 14, ll. 2.

During the hearing, Petitioner questioned the plea court when Judge Dennis misstated the sentencing range for the trafficking charge, initially believing that Petitioner faced the chance for significantly longer prison terms. App. 3, ll. 12 – App. 5, ll. 14. Judge Dennis corrected himself and then sentenced Petitioner to three concurrent terms of five years imprisonment. App. 14, ll. 14 – App. 15, ll. 12.

## **PCR Application**

On July 23, 2013, Petitioner filed an application for post-conviction relief (PCR) alleging that Grimes was ineffective for failing to advise “[Petitioner that his sentence would be served ‘day for day’”. App. 17 – App. 24. On February 6, 2014, the State filed a return. App. 25 – App. 30.

## **PCR Evidentiary Hearing**

On June 16, 2014, an evidentiary hearing was held before the Honorable Deadra Jefferson. App. 31. Petitioner was represented by Rodney Davis and the State was represented by Assistant Attorney General Ashleigh Wilson. Both Petitioner and Grimes testified at the hearing.

### Testimony of Petitioner

Petitioner testified that he agreed to the State’s negotiated plea deal, which reduced the quantity of drug trafficked and treated the trafficking as a first offense, in exchange for also pleading guilty to the weapons charge. App. 38, ll. 3 – App. 40, ll. 6. Petitioner stated that he agreed to plead guilty because he did not know that “the five year [sentence for possession of weapon] meant day-for-day incarceration.” App. 38, ll. 20-22.

Petitioner stated that he believed he was pleading to non-violent charges and that he would be eligible for parole. *Id.* at ll. 22-25. Petitioner further testified that “If I knew that I would have been doing the five years day for day [incarcerated], I wouldn’t have accepted that five-year sentence.” App. 38, ll. 25 – App. 39, ll. 1. Petitioner also said that neither Grimes nor Howe, his first attorney, explained that pleading guilty to the weapons possession charge would require Petitioner to serve the entire sentence in incarceration. App. 39, ll. 2-7.

When asked what he believed “day-for-day” meant, Petitioner testified that he believed that he would be incarcerated less than five years, but that “day-for-day” meant that he would remain on probation or parole for the full five years. *Id.*

PCR counsel also asked Petitioner about the results of the search warrant and his statement to police following arrest. App. 40, ll. 11 – App. 41, ll. 4. Petitioner stated that at their first meeting Grimes discussed with him the possibility of suppressing the evidence and his statement. *Id.* Petitioner stated that Grimes advised him that the chances of suppression were not good and that Petitioner should accept the plea. App. 41, ll. 1-9.

On cross-examination, Petitioner admitted that he recalled the plea judge asking him if he understood what “day-for-day” meant. App. 44, ll. 3-12. On re-direct, Petitioner again clarified that when he agreed to plead guilty he did not understand that “day-for-day” meant he would be incarcerated for every day of sentence. App. 45, ll. 18-23.

#### Testimony of Andrew Grimes

Grimes testified that he was appointed after Howe was fired. App. 47, ll. 4-21. Grimes claimed that he consulted with Petitioner about challenging the search warrant, but advised him that the warrant would likely be upheld. App. 48, ll. 9-19. Grimes stated that there was a possible argument for suppressing Petitioner’s statement because of threats by law enforcement to arrest his wife and children or to put his children in DSS. App. 48, ll. 9-19; App. 4, ll. 2-11. Nevertheless, Grimes did not believe Petitioner had a strong case for challenging the search warrant or suppressing the evidence found at Petitioner’s home. *Id.*

Grimes said that he discussed sentencing ranges with Petitioner and that Howe had already received what Grimes believed to be a good plea offer from the State. App. 49, ll. 8-22. Grimes testified that he was quite sure he told Petitioner that the weapon possession charge was a five year minimum sentence which had to be served “day-for-day.” App. 50, ll. 9-12. Grimes further testified that he tried unsuccessfully to negotiate to dismiss the weapons possession charge to avoid a “day for day” sentence. *Id.* Grimes speculated he probably used the mandatory incarceration as

leverage to reduce the trafficking charge and to argue before the judge for the minimum sentence. App. 51, ll. 4-7.

After Grimes left the stand, Petitioner was recalled to the stand and for a third time reiterated that he understood “day-for-day” to mean that he could be released early from incarceration, but that he would serve the remaining portion of the five year sentence on probation or parole. App. 55, ll. 15-19.

### **Order of Dismissal**

The PCR court denied Petitioner’s application in an oral ruling after the close of argument. App. 59, ll. 5 – App. 65, ll. 10. The court determined that Grimes was not ineffective and that Petitioner did not enter into an involuntary guilty plea. App. 59, ll. 13-22. The PCR court also determined “[Petitioner] remember[ed] basically things in the light that [Petitioner] would like to remember them in.” App. 59, ll. 18-19.

The PCR court noted that Petitioner had asked the plea judge for clarification when the judge overstated the sentencing range for the trafficking charge. App. 60, ll. 14-20. The PCR court stated that Petitioner would have made the court aware of any other misunderstandings about the mandatory sentence on the weapons possession charge. *Id.*

The court further concluded that Petitioner was not prejudiced as there would have been no appreciable difference between the negotiated sentence and the sentence Petitioner would have received had he gone to trial. App. 64, ll. 4-24. The court also believed there was no evidence that Petitioner would have proceeded to trial had he been advised about the mandatory five year sentence. App. 64, ll. 18 – App. 65, ll. 10.

On September 18, 2014, a written Order of Dismissal was issued. App. 68 – App. 81. This petition for writ of certiorari follows.

## ARGUMENT

**Petitioner's Sixth Amendment rights were violated when plea counsel failed to advise Petitioner that, as a consequence of pleading guilty to possession of a weapon during the commission of a violent crime, Petitioner would serve a "day for day" sentence requiring that he be incarcerated for the entire length of the sentence and, thus, ineligible for any form of early release.**

Petitioner entered into an unknowing and involuntary guilty plea because plea counsel failed to advise Petitioner that by pleading guilty to possession of a weapon during the commission of a violent crime mandated that Petitioner be incarcerated for the entire sentence; absent this misadvice, Petitioner testified that he would not have pled guilty and would have insisted on going to trial. App. 59, ll. 5 – App. 65, ll. 10; *see Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) ineffective assistance of counsel standard to guilty plea challenges).

### **Ineffective Assistance of Counsel**

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland*, 466 U.S. at 686. "Where allegations of ineffective assistance of counsel are made, 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). As such, courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 466 U.S. at 668).

The applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. *Strickland*, 466 U.S. at 687–88. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing

professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results.” *Brady v. United States*, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin v. Alabama*, 395 U.S. 238 (1969) (a defendant’s decision to plead guilty must be knowingly and voluntarily made); *see also State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (plea record must reflect that defendant freely and intelligently waived his constitutional rights with a full understanding of the consequences).

Moreover, the South Carolina Supreme Court has held that the difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.” *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). However, “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.” *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

### **Involuntary Guilty Plea**

Petitioner entered into an unknowing and involuntary guilty plea because plea counsel failed to advise Petitioner that, as a consequence of pleading guilty to possession of a weapon during the commission of a violent crime, Petitioner would serve a “day for day” sentence

requiring that he be incarcerated for the entire length of the sentence and, thus, ineligible for any form of early release. App. 59, ll. 5 – App. 65, ll. 10; *See Hill*, 474 U.S. at 57-59.

Petitioner testified at the evidentiary hearing that plea counsel never explained that possession of weapon during the commission of violent felony would require Petitioner to be incarcerated for the entire five years of the negotiated sentence. App. 39, ll. 8-13. Petitioner repeatedly explained at the evidentiary hearing he believe the term “day-for-day” meant that there would be no early termination of his sentence, but that he would still be eligible for probation or parole. App. 44, ll. 3-12; App. 45, ll. 18-23; App. 61, ll. 1-23.

Petitioner testified that he entered into the guilty plea only because he believed that he would be released after being incarcerated for two or three years to serve the remainder of his sentence on probation or parole. App. 38, ll. 25 – App. 39, ll. 1. There is no evidence in the record of the plea hearing or of the PCR hearing that Petitioner understood that a “day-for-day” sentence meant that he would be incarcerated for the next five years. In fact, the plea court never asked Petitioner to define what he believed “day-for-day” meant. App. 2, ll. 18 – App. 3, ll. 11.

Therefore, plea counsel’s failure to insure that Petitioner understood that pleading guilty to possession of a weapon during the commission of a violent crime would require that Petitioner be incarcerated for the entire five year sentence constituted deficient performance falling below prevailing professional norms and resulted in Petitioner entering into an unknowing and involuntary guilty plea. App. 26 – App. 27; *See Hill*, 474 U.S. at 57-59.

## **Prejudice**

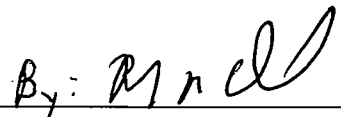
As to prejudice, the PCR court erred in concluding that there was “no evidence in this record that [electing to go to trial] would have been [Petitioner’s] demeanor regarding this case.” App. 65, ll. 23 – App. 65, ll. 1; App. 73. Petitioner unambiguously stated that he would not have accepted the plea offer had he known that he would be incarcerated for five years. App. 39, ll. 8-13; *see Hill*, 474 U.S. at 57-59. Given that Petitioner’s options were to accept the plea deal or to stand trial, Petitioner’s testimony is direct evidence that he would have gone to trial had he been properly advised of the sentencing consequences. *See Hazel*, 275 S.C. at 392, 271 S.E.2d 602.

Accordingly, the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty when “there is a reasonable probability that, but for counsel’s errors, [Petitioner] would not have pled guilty and would have insisted on going to trial.” App. 59, ll. 5 – App. 65, ll. 10; App. 68 – App. 81; *see Hill*, 474 U.S. at 57-59; *see also Boykin*, 395 U.S. 238.

**CONCLUSION**

Based on the foregoing reason, Petitioner Reginald Murray respectfully requests that his petition for writ of certiorari be granted to allow a full briefing on the issues.

Respectfully submitted,

By:   
\_\_\_\_\_  
John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15<sup>th</sup> day of April, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

CERTIORARI TO CHARLESTON COUNTY  
DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

---

REGINALD MURRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-002318

---

PETITION TO BE RELIEVED AS COUNSEL

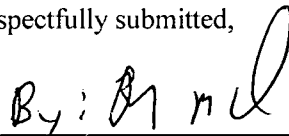
---

Counsel for Reginald Murray 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 June 16, 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 Reginald Murray.

Respectfully submitted,



---

John H. Strom  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 15<sup>th</sup> day of April, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

APR 15 2015

\_\_\_\_\_  
Certiorari to Charleston County  
Deadra L. Jefferson, Circuit Court Judge

S.C. Supreme Court

REGINALD MURRAY,

PETITIONER,

V.

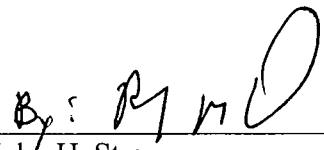
STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-002318


\_\_\_\_\_  
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 Ashleigh R Wilson, Esquire, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Reginald Murray, #354882, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC, 29936, on this 15<sup>th</sup> day of April, 2015.

By:   
\_\_\_\_\_  
John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 15<sup>th</sup> day  
of April, 2015.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.