

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
L. Casey Manning, Circuit Court Judge

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MAY 19 2015

S.C. Supreme Court

STUART STANTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001945

JOHNSON PETITION FOR WRIT OF CERTIORARI

TIFFANY L. BUTLER
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ISSUE PRESENTED

Did the PCR judge err by finding defense counsel provided competent representation where Petitioner pled guilty based on representations by counsel that he would receive a negotiated fifteen-year sentence and the CDV and shoplifting charges would be dismissed, since the plea judge sentenced Petitioner to consecutive sentences of fifteen and ten years for second degree burglary and shoplifting, which prejudiced Petitioner?

STATEMENT OF THE FACTS

On January 18, 2012, the Richland County Grand Jury indicted Petitioner for shoplifting, third or subsequent offense. App. 85. On July 18, 2012, Petitioner was indicted for first degree burglary by the Richland County Grand Jury. App. 87. On June 10, 2013, Petitioner pled guilty to second degree burglary and shoplifting, third or subsequent offense, before the Honorable Doyet A. Early, III. App. 1. Jack Duncan represented Petitioner. Richard Cathcart represented the State. App. 1.

Judge Early sentenced Petitioner to fifteen years for the first degree burglary and ten years for the shoplifting. App. 24. The sentences were to run consecutively. App. 24. Petitioner did not appeal his guilty plea or sentences.

On October 4, 2013, Petitioner filed a PCR application. App. 27 – 31. Respondent filed its return on February 26, 2014 requesting an evidentiary hearing. App. 31 – 35. On July 14, 2014, a PCR hearing was held before the Honorable L. Casey Manning. App. 37. Anna R. Good represented Petitioner. Croom Hunter represented the State. App. 37.

On August 13, 2014, Judge Manning issued an order of dismissal. App. 74. Petitioner appealed the judge's order. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred by finding defense counsel provided competent representation where Petitioner pled guilty based on representations by counsel that he would receive a negotiated fifteen-year sentence and the CDV and shoplifting charges would be dismissed, since the plea judge sentenced Petitioner to consecutive sentences of fifteen and ten years for second degree burglary and shoplifting, which prejudiced Petitioner.

Guilty Plea

On June 10, 2013, Petitioner pled guilty to second degree burglary and shoplifting, third or subsequent offense. According to the State, on January 14, 2012, Petitioner was romantically involved with Crystal Johnson, the victim. App. 17, lines 17 – 20. Johnson lived with Patrick Clyvinski at his apartment in Richland County. App. 17, lines 13 – 14.

On that night, Patricia Longwood, who lived on the second floor of the apartment complex where Johnson and Clyvinski lived, heard something outside of her apartment. App. 18, lines 3 – 5. Longwood looked out of her window and saw Petitioner yelling on the phone that “if she doesn’t let him in, he is going to be going to jail.” App. 18, lines 6 – 9. Petitioner allegedly broke a window and crawled inside of Clyvinski’s apartment. App. 18, line 10. Longwood called 9-1-1 and claimed to hear Johnson screaming for help. App. 18, lines 11 – 12.

Clyvinski woke up during the commotion and helped Petitioner out of the house. App. 18, lines 14 – 15. As Petitioner tried to leave the residence, the police arrived and observed blood on his hands. App. 18, line 17. Petitioner ran away from officers, but was tased and arrested. App. 18, lines 18 – 22.

According to EMS and police officers, Johnson sustained heavy bruising on her face from being punched and kicked by Petitioner. App. 19, lines 5 – 8. Johnson requested that the State

dismiss the charges against Petitioner, however, the solicitor denied her request. App. 19, lines 9 – 15.

Petitioner's shoplifting charge occurred on August 19, 2011 at the Piggly Wiggly on Garner's Ferry Road in Richland County. App. 13, lines 11 – 12. According to the State, Petitioner walked into the store "wearing a green shirt, khaki shorts." App. 13, line 13. While in the store, Petitioner grabbed a large number of steaks and other meats and ran out the store. Petitioner "jumped into a white car." App. 13, lines 14 – 17.

Officers were able to trace the car to an address in Richland County, where they found Petitioner. Petitioner matched the description given to police. App. 13, lines 18 – 22. Police also observed, in plain sight, steaks that were stolen from the store.

PCR Hearing

Petitioner testified during the PCR hearing. The State had offered Petitioner a fifteen-year negotiated sentence and agreed to dismiss CDV and shoplifting charges in exchange for pleading guilty to first degree burglary. App. 41, lines 12 – 22. However, Petitioner rejected the plea offer due to counsel's belief that they could win at trial. App. 42, lines 10 – 18.

Petitioner explained that the State served him with papers noticing him that it would pursue life without parole if he was found guilty at trial. App. 42, lines 20 – 22. On the day of trial, counsel told Petitioner that "he went in (sic) judge's chambers and got the charge dropped to second degree burglary, which was 15 years, not 85 percent." App. 45, lines 7 – 10. Petitioner contended that he "firmly believed" the plea offer defense counsel relayed to him was negotiated because the last offer was negotiated and counsel had met with the trial judge. App. 45, lines 16 – 18. In fact, Petitioner recalled thanking counsel for working out the plea deal. App. 45, lines 20 – 21.

After being sentenced to consecutive sentences of fifteen and ten years, Petitioner asked the plea judge if he could “withdraw [his] plea and go to a jury trial because [his] lawyer told [him] 15 years.” App. 48, lines 1 – 3. Petitioner explained that if he had known he would have received consecutive sentences totaling twenty-five years, he would not have pled guilty. Instead, Petitioner would have proceeded to trial. App. 50, line 25 – App. 51, line 18. The judge denied Petitioner’s motion to withdraw his guilty plea. Counsel remained silent on the motion to withdraw. App. 24 – 25.

At the PCR hearing, defense counsel recalled that he was prepared to go to trial if Petitioner wanted to go to trial. App. 64, lines 23 – 25. Counsel denied promising Petitioner that he would receive a certain sentence. App. 64, lines 17 – 19. However, counsel agreed that he met with the judge in chambers and discussed a plea deal. App. 66, lines 14 – 17.

Defense counsel stated the judge told the solicitor that “he needed to offer something better than burglary first.” App. 66, lines 19 – 21. However, counsel denied telling Petitioner the plea was negotiated. Counsel stated he told Petitioner “he had a chance at concurrent time.” App. 67, lines 24 – 25.

Order of Dismissal

The PCR judge dismissed Petitioner’s application. App. 83. The judge stated that Petitioner “failed to demonstrate Counsel’s performance was deficient in any way.” App. 79. The judge explained that defense counsel’s representation was well within the range of competence required in criminal cases and Petitioner presented “no evidence” which showed prejudice.” App. 79. The judge found that Petitioner’s guilty plea was knowingly and voluntarily entered. App. 81.

Discussion

The PCR judge erred by finding defense counsel provided competent representation. Petitioner only pled guilty based on counsel's representations that he would receive a negotiated fifteen-year sentence for pleading to burglary second, and the CDV and shoplifting charges would be dismissed. Instead, Petitioner pled guilty to burglary second and shoplifting and received consecutive sentences of fifteen and ten years – twenty-five years imprisonment, a significant difference.

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). In the context of a guilty plea, a court will conduct a two-prong test when determining whether defense counsel's assistance was ineffective. Hill v. Lockhart, 474 U.S. 52, 58 (1985) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel's performance was deficient. Hill, 474 U.S. at 58 – 59. 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); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). See Hill, 474 U.S. at 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))).

Second, the applicant must show that he was prejudiced by counsel's deficient performance during the guilty plea process. Hill, 474 U.S. at 59. Specifically, the applicant must show 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." Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927

(2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). 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); Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Here, defense counsel was ineffective. Counsel gave Petitioner the impression that a negotiated fifteen-year sentence had been arranged and that the CDV and shoplifting charges would be dismissed. Counsel told Petitioner that he had met with the judge and solicitor in the judge’s chambers. Counsel informed Petitioner that he would be pleading to second degree burglary, which carried a maximum sentence of fifteen years. Petitioner pled guilty **only** because he thought he would receive a fifteen-year sentence.

In fact, Petitioner requested to withdraw his plea on the record, after he was sentenced to twenty-five years. App. 25, lines 3 – 4. Petitioner asserted:

“Your, Honor, I was told it would run concurrent, Your Honor.”

App. 24, lines 12 – 13.

“He told me 15 years, Your Honor.”

App. 25, line 21.

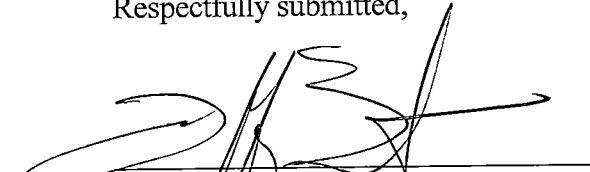
Petitioner’s understanding of his guilty plea was based on counsel’s representations. Counsel’s communication of the terms of Petitioner’s guilty plea resulted in Petitioner’s detrimental reliance and, consequently, his decision to plead guilty. See Rule 1.4(b), SCRPC, Rule 407, SCACR (Counsel “shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions” regarding the client’s case.); see also Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (“[A] defendant has the right to effective assistance of counsel during the plea bargaining process.”).

If Petitioner had known he would receive a consecutive sentence totaling twenty-five years in prison, he would not have pled guilty. Instead, Petitioner would have picked a jury and proceeded to trial.

CONCLUSION

For the reasons argued above, Petitioner Stuart Stanton respectfully requests this Court to grant his petition for writ of certiorari.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of May, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
L. CASEY MANNING, CIRCUIT COURT JUDGE

STUART STANTON,

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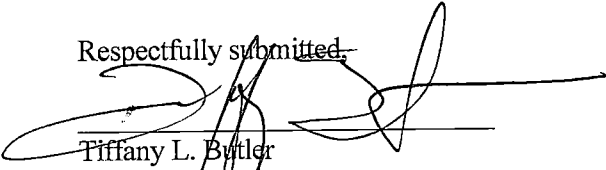
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Stuart Stanton 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 July 14, 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 Stuart Stanton.

~~Respectfully submitted,~~



Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of May, 2015

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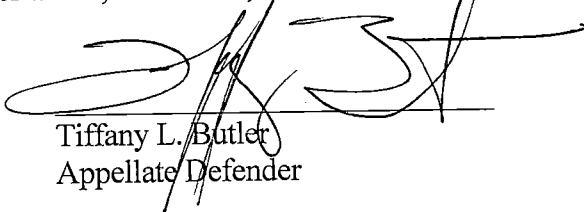
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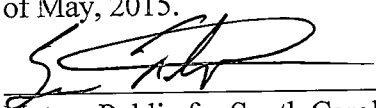
CERTIFICATE OF SERVICE

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 the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Stuart Stanton, #304298, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of May, 2015.


Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of May, 2015.



Notary Public for South Carolina

(L.S.)

My Commission Expires: October 30, 2022.