

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 25 2015

S.C. Supreme Court

Certiorari to Spartanburg County
R. Keith Kelly, Circuit Court Judge

JUAN CARLOS VASQUEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000057

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the evidence in the record supports the PCR court's conclusion that Petitioner knowingly and voluntarily pled guilty merely because Petitioner participated in a routine guilty plea hearing when he could not understand English.

STATEMENT

On May 7, 2009, the Spartanburg County Grand Jury indicted Petitioner Juan Carlos Vazquez on two counts of accessory before the fact to murder; accessory before the fact to first degree burglary; trafficking in cocaine; and possession of marijuana with intent to distribute. App. 156-162. On July 12, 2010, Petitioner attended a plea hearing before The Honorable J. Derham Cole. Hunter Chase Harbin represented Petitioner and Barry Joe Barnette represented the State. App. 1.

Petitioner needed a specially approved Spanish-language interpreter to walk him through the hearing. App. 5, line 16—App. 6, line 22. The State alleged that January 24, 2009, Petitioner met in Greer with a man named Jose Reyes Arevalos and a female acquaintance of theirs from Atlanta. The female acquaintance brought five other men with her. All of the individuals except for Petitioner drove to the home of two local men with whom Petitioner and Arevalos had been involved in drug dealings. They broke into the home and killed the two men. During law enforcement's investigation of the killings, officers found quantities of marijuana and cocaine in a home belonging to another individual connected with the victims. When asked about the drugs, Petitioner gave a statement admitting they belonged to him. App. 24, line 11—App. 25, line 19. Petitioner pled guilty as charged. App. 10, line 13—App. 14, line 24. Judge Cole accepted the pleas and deferred sentencing. Tr. 34, lines 5-6.

On May 23, 2012, Petitioner appeared for sentencing before The Honorable J. Mark Hayes, II. Scott D. Robinson and Hunter Chase Harbin represented Petitioner, and Barry Joe Barnette again represented the State. App. 36. Petitioner again required an interpreter to communicate with the court. App. 37, lines 1-14. Judge Hayes sentenced Petitioner to concurrent sentences of incarceration for life for each of the murder and burglary charges; thirty years' incarceration for the

cocaine charge; and five years' incarceration for the marijuana charge. App. 66, line 22—App. 67, line 6.

On February 4, 2013, Petitioner filed an application for post-conviction relief (PCR) claiming ineffective assistance of counsel. App. 69-82. The State filed a return on march 19, 2014. App. 83-89. On November 3, 2014, Petitioner appeared at an evidentiary hearing before The Honorable R. Keith Kelly. Brandt Rucker represented Petitioner and Suzanne H. White represented the State. App. 90.

Petitioner testified through an interpreter that he and plea counsel had always had problems communicating because of a language barrier. At his guilty plea, he did not even know to which offenses he was pleading guilty. App. 93, lines 13-18; App. 100, lines 11-13. Indeed, plea counsel never adequately explained to him in the first place the charges he was facing, and Petitioner never understood the concept of “accessory.” App. 102, lines 7-20; App. 111, lines 13-20. To make matters worse, plea counsel never secured an interpreter through whom Petitioner believed he could honestly communicate. The two went through at least three different interpreters. One interpreter whom plea counsel arranged had drug charges, so Petitioner could not work with him. App. 102, line 14—App. 104, line 2. During another meeting, plea counsel actually asked police officers to act as interpreters during a meeting. App. 110, lines 4-7. Petitioner at one point pleaded with counsel to let him arrange and pay for an interpreter himself. Plea counsel never responded. App. 108, lines 6-11. As a result of the communication failures, Petitioner stated that he felt, of course, pressured into pleading guilty. App. 111, lines 21-23.

In response, plea counsel simply testified that he “was very comfortable” with their communication because Petitioner “did not, you know, question things.” App. 124, line 24—App. 125, line 1. Nevertheless, the PCR court issued an order dismissing Petitioner’s claim on November

26, 2014. The order stated that Petitioner made a solemn, judicial admission of guilt in the plea colloquy, and he “presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea.” App. 153.

ARGUMENT

EVIDENCE IN THE RECORD THAT PETITIONER DOES NOT UNDERSTAND ENGLISH PLAINLY SHOWS THAT ANY ADMISSION AT THE GUILTY PLEA COULD NOT RELIABLY INDICATE THAT HIS PLEA WAS KNOWING AND VOLUNTARY.

Evidence in the record that Petitioner does not understand English plainly shows that any admission at the guilty plea could not reliably indicate that his plea was knowing and voluntary. 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).

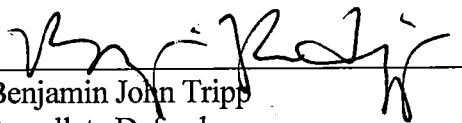
In this case, the PCR court held that Petitioner made a solemn, judicial admission of guilt, and he presented no evidence to countervail the conclusion that the plea was knowing and voluntary. However, the record is replete with such evidence. Petitioner cannot communicate through the English language. He needed specially approved Spanish-language interpreters in all of his court hearings, and he needed interpreters for basic communication with his attorney. Furthermore, the interpreters that plea counsel did procure were insufficient for Petitioner to fully understand his advisement. Petitioner had no faith in the honesty or competency of the interpreters insofar as one was facing drug charges and another was a police officer and agent of the prosecution. Based on the communication failure, Petitioner did not know what charges he was facing; what the substance of each charge was; or to which charges he was pleading guilty. Thus, the evidence shows not only that Petitioner found the plea court’s statements to him unintelligible,

but also that he never independently understood the plea proceedings based on communication with his attorney. His plea was therefore not knowing. Naturally, Petitioner felt pressured into complaisance with plea counsel and the plea court, and his plea was therefore also not voluntary. Overall, Petitioner's inability to understand the plea proceedings was a result of plea counsel's defective representation, and the PCR court's finding to the contrary was not supported.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Juan Carlos Vazquez's petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of June, 2015.

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IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
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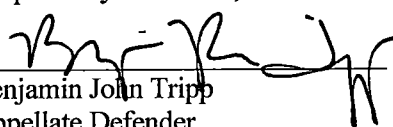
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Juan Carlos Vazquez 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 November 4, 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 Juan Carlos Vazquez.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 25th day of June, 2015

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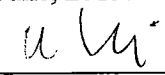
CERTIFICATE OF SERVICE

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 Suzanne H. White, Esquire and Juan Carlos Vazquez, #351021, at McCormick Correctional Institution this 25th day of June, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 25th day
of June, 2015.



Notary Public for South Carolina

(L.S.)

My Commission Expires: May 12, 2025.