

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Kristi Lea Harrington, Circuit Court Judge

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AUG - 3 2015

S.C. Supreme Court

SHANNON T. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000016

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

INDEX

INDEX.....1

ISSUE PRESENTED2

STATEMENT OF THE FACTS.....3

ARGUMENT4

CONCLUSION8

PETITION TO BE RELIEVED AS COUNSEL.....9

ISSUE PRESENTED

Did the trial judge err by finding plea counsel provided effective representation where counsel told Petitioner that he would be acquitted of first degree burglary if he went to trial, Petitioner rejected the State's original plea offer of fifteen years in exchange for a guilty plea to second degree burglary because counsel advised him he would prevail at trial, and Petitioner then had to plead guilty to first degree burglary on the day of trial because the State withdrew its initial favorable offer?

STATEMENT OF THE FACTS

On May 24, 2012, the Horry County Grand Jury indicted Petitioner for first degree burglary. App. 65. On September 12, 2012, Petitioner pled guilty before the Honorable W. Jeffrey Young. App. 1. James C. Galmore represented Petitioner. J. Stephen Grooms represented the State. App. 1.

Judge Young sentenced Petitioner to fifteen years' imprisonment. App. 16. Petitioner did not appeal his guilty plea or sentence. App. 26.

On April 17, 2013, Petitioner filed a PCR application. App. 18. On September 20, 2013, Respondent filed its return requesting an evidentiary hearing. App. 30. A PCR hearing was held on August 26, 2014, before the Honorable Kristi L. Harrington. App. 31. Daniel A. Selwa, II. represented Petitioner. Joshua Thomas represented the State. App. 32.

On October 7, 2014, Judge Harrington issued an order of dismissal. App. 59. Petitioner appealed the judge's order. This petition for writ of certiorari follows.

ARGUMENT

The trial judge erred by finding plea counsel provided effective representation where counsel told Petitioner that he would be acquitted of first degree burglary if he went to trial, Petitioner rejected the State's original plea offer of fifteen years in exchange for a guilty plea to second degree burglary because counsel advised him he would prevail at trial, and Petitioner then had to plead guilty to first degree burglary on the day of trial because the State withdrew its initial favorable offer.

Guilty Plea

According to the State, Petitioner and his co-defendant, Darius Jamal Gore, forcibly entered the residence at 2982 Highway 545 in Conway, South Carolina, on August 28, 2011. App. 7, lines 14 – 18. Once inside the home, they stole “numerous property items several of those being guns.” App. 7, lines 18 – 24. Law enforcement recovered jewelry, a play station, and several guns from other residences which were burglarized. App. 14, lines 9 – 20.

PCR Hearing

Petitioner testified during the PCR hearing. Petitioner stated that he told defense counsel that he would be willing to plead to “fifteen non violent.” App. 39, lines 20 – 22. Petitioner explained that the State extended the offer he wanted in exchange for his guilty plea. However, counsel told Petitioner that they could win at trial and could “take it on through.” App. 39, lines 22 – 25.

On the day of trial, counsel told Petitioner that they could not win. App. 40, lines 1 – 4. The State had already withdrawn the previous offer. Petitioner then pled guilty to first degree burglary, which is a violent offense. App. 40, lines 5 – 8. The only reason he rejected the plea offer

of fifteen years “with a non-violent classification,” was because of counsel’s advice that they could prevail at trial. App. 40, lines 5 – 25.

Defense counsel testified during the PCR hearing. Counsel explained that the State offered Petitioner a negotiated sentence of fifteen years in exchange for pleading guilty to second degree burglary. App. 47, lines 20 – 21. Counsel wrote letters to Petitioner explaining that first degree burglary is a no parole offense, for which he would have to serve at eighty-five percent before he would be eligible for parole – twelve years and nine months. App. 48, lines 6 – 17. Further, if Petitioner accepted the State’s offer of fifteen years in exchange for pleading to second degree burglary, he would only serve seven and a half years. App. 48, lines 17 – 24.

Defense counsel contended that he told Petitioner that Petitioner made a mistake in rejecting the State’s plea offer. App. 49, lines 7 – 15. Counsel stated that he told Petitioner that he could not win at trial and “most appeals are unsuccessful.” App. 50, lines 16 – 20.

Order of Dismissal

The PCR judge denied Petitioner’s application. The judge found that Petitioner “failed to meet his burden of proving trial counsel ineffective” and his allegation that counsel advised him to reject the initial plea offer is “without merit.” App. 62. The judge also found that counsel properly advised Petitioner throughout the process and that Petitioner “failed to demonstrate his plea was the result of faulty advice of plea counsel.” App. 63.

Discussion

The trial judge erred by finding plea counsel provided effective representation where counsel told Petitioner he would be acquitted of first degree burglary at trial. Petitioner rejected the State’s original plea offer of fifteen years in exchange for a guilty plea to second degree burglary

because counsel advised him he would prevail at trial. On the day of trial, Petitioner pled guilty to first degree burglary because the State had withdrawn its initial favorable offer.

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).

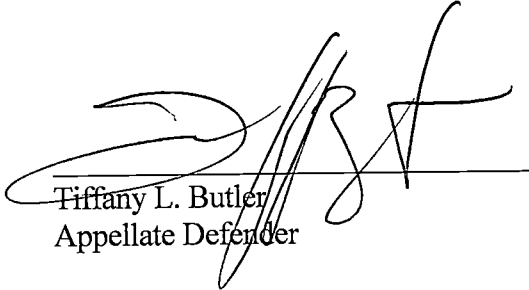
Here, defense counsel was ineffective. Defense counsel communicated to Petitioner that he could win at trial. Because of this communication from counsel, Petitioner chose not to accept the initial plea offer of second degree burglary from the state, which would have resulted in a significantly shorter prison sentence. Further, counsel surprised Petitioner on the day of trial by telling him for the first time that he could not win. At that point, the State had already withdrawn the initial plea offer. Therefore, Petitioner was forced to plead guilty to first degree burglary, for which he was indicted.

Had counsel not given Petitioner inadequate advice to reject the State's initial plea offer, Petitioner would have accepted that offer. Instead, Petitioner was forced to plead guilty on the day of trial, after counsel informed him that he would not win. Petitioner would be serving considerably less time for the lesser charge of second degree burglary – not the “no parole” offense of first degree burglary.

CONCLUSION

For the reasons argued above, Petitioner Shannon Parker respectfully requests this Court to grant his petition for writ of certiorari with the ultimate relief of a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Butler', is written over a horizontal line. The signature is stylized and cursive.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of August, 2015.

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CERTIORARI TO Horry COUNTY
KRISTI LEA HARRINGTON, CIRCUIT COURT JUDGE

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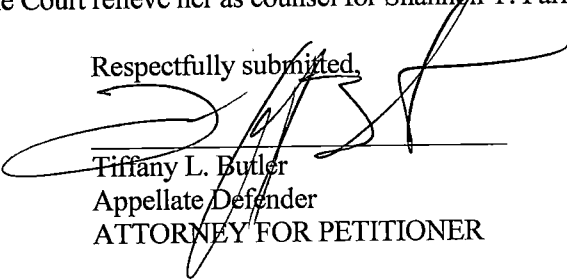
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shannon T. Parker 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 August 26, 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 Shannon T. Parker.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of August, 2015

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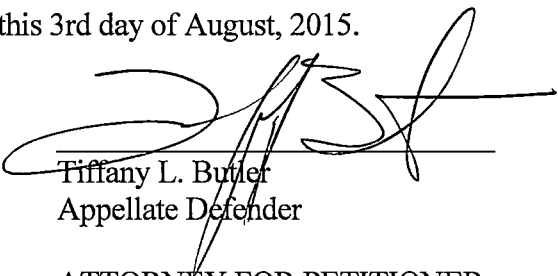
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CERTIFICATE OF SERVICE

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 Joshua L. Thomas, Esquire and Shannon T. Parker, #352462, at Broad River Correctional Institution this 3rd day of August, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3rd day
of August, 2015.

Maria Mercedes (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.