STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

R. Knox McMahon, Circuit Court Judge

JOSEPH J. MAGNI,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002362

JOHNSON PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made when plea counsel improperly pressured Petitioner into pleading guilty because he thought it was in Petitioner's best interests despite Petitioner's unambiguous desire to proceed to trial and where counsel admitted he was irritated with Petitioner, harsh on him, and told him "you need to plead guilty to this?"

STATEMENT

An Aiken County Grand Jury indicted Petitioner at the June 2010 term of General Sessions for four counts of second degree criminal sexual conduct with a minor (CSCM) and four counts of lewd act upon a child. App. 247-262. On April 19, 2011, Petitioner pled guilty to all eight indictments before the Honorable Doyet A. Early, III.[1] App. 1. Assistant Solicitors Brenda Brisbin, Yvonne Rushton, and Margaret Bodman represented the state, and Joshua Kendrick and J. Marcus Whitlark represented Petitioner. App. 1. Petitioner was sentenced by Judge Early to twelve years imprisonment on each count to be served concurrently. App. 104, ll. 10-20. He did not appeal.

On July 5, 2011, Petitioner filed an application for post-conviction relief (PCR). App. 106-113. The state filed a return to this application dated September 21, 2011. App. 49-54. Petitioner filed an amended application on August 17, 2012 and, with the assistance of counsel, an Amendment to Prior Application for PCR on December 20, 2013. App. 119-129. The matter proceeded to an evidentiary hearing on August 1, 2014 before the Honorable R. Knox McMahon. App. 130. Assistant Attorney General Daniel Gourley represented the state, and Lance Boozer represented Petitioner. App. 130. By order dated October 3, 2014, Judge McMahon denied Petitioner relief. App. 222-246.

This petition for writ of certiorari follows.

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[1] Petitioner waived jurisdiction and also pled guilty to a related second degree CSCM charge that was pending in Richland County. App. 74, l. 24 – 75, l. 12.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel improperly pressured Petitioner into pleading guilty because he thought it was in Petitioner's best interests despite Petitioner's unambiguous desire to proceed to trial and where counsel admitted he was irritated with Petitioner, harsh on him, and told him "you need to plead guilty to this."

Guilty Plea

Petitioner's case was scheduled for trial on April 18, 2011. That afternoon, Judge Early heard numerous pretrial motions, including a defense motion to suppress DNA evidence allegedly found on Minor's dress on grounds that the results were unreliable because the dress remained in Minor's custody for thirteen months before being turned over to law enforcement. Plea counsel also objected based on an insufficient chain of custody because the whereabouts of the dress for thirteen months was unknown. App. 27, l. 2 – 31, l. 21. Judge Early deferred ruling on the motion until further in the trial stating he did not "know what [was] going to come up." App. 31, l. 18-21. Counsel also made several other motions in limine to exclude various pieces of evidence.

The following morning, Judge Early conducted voir dire and the parties selected a jury. See App. 37, l. 25 – 63, l. 12. However, before the jury was sworn, Petitioner pled guilty to all eight indictments pending in Aiken County and a related indictment from Richland County. App. 66, ll. 16-22. The only recommendation from the state was that the sentences for each offense be ran concurrently. App. 66, l. 23 – 67, l. 2.

After a routine plea colloquy where the court advised Petitioner of his constitutional rights, the sentencing range for each offense, and the consequences of pleading guilty, the solicitor told the court its version of the facts. See App. 67, l. 13 – 81, l. 1. The solicitor explained that Petitioner,

who was twenty-seven years old, was a history teacher at Leavelle McCampbell Middle School during the 2008-2009 school year and that fourteen year old Minor was his student. App. 81, ll. 17-21. In September of 2009, Minor's stepmother discovered hundreds of text messages and telephone calls exchanged between Minor and Petitioner. The stepmother confronted Minor and Minor allegedly admitted she and Petitioner had an ongoing sexual relationship. Minor claimed she and Petitioner first engaged in oral sex and digital penetration on May 16, 2009 at a local movie theater in Aiken County. They continued to engage in such activities mostly afterschool in Petitioner's classroom and the teachers' lounge until June 5, 2009 when Minor moved to Richland County to live with her father. App. 81, l. 22 – 82, l. 25. After Minor moved to Richland County, Petitioner allegedly drove to Minor's home in the middle of the night on multiple occasions. Minor would sneak out, meet Petitioner, and the two would park down the street from her home. Minor claimed she and Petitioner first engaged in penile-vaginal intercourse on June 25, 2009. These visits allegedly continued until August 15, 2009 when Minor's stepmother noticed Minor was missing from her bed in the middle of the night, became suspicious, and began checking her telephone records. App. 85, l. 8 – 87, l. 2.

About a year later when the case was about to be called for trial, Minor supposedly remembered a dress she had worn while with Petitioner and turned it over to law enforcement. The dress allegedly had a large stain on the front. Clippings from the dress were analyzed by the South Carolina Law Enforcement Division and DNA found on the dress allegedly matched Petitioner's DNA. App. 83, ll. 1-16.

Judge Early ultimately found Petitioner's decision to plead guilty was freely, voluntarily, and intelligently made. App. 81, ll. 2-7. He sentenced Petitioner, who had no prior record, to twelve years imprisonment on each count to be served concurrently. App. 104, ll. 10-20.

PCR Hearing

Petitioner testified at the PCR hearing that he was forced to plead guilty by his counsel, Josh Kendrick. He said counsel engaged in a "non-stop barrage" repeatedly telling him he "had to plead" guilty and that if he did not plead guilty he was going to go "to prison [for] a long time, a very long time." Petitioner also testified that counsel "yelled" at him in the courtroom to the point where he was "in a state of shock" and eventually gave in and agreed to plead guilty due to the pressure. App. 149, l. 17 – 153, l. 20. Moreover, Petitioner maintained he always wanted to go to trial and he told counsel he did not want to plead guilty, but Kendrick said he "had to go through with it [the guilty plea]." App. 150, ll. 8-11.

Plea counsel, Josh Kendrick, admitted he "was pretty irritated with him [Petitioner] as [they] got down to trial" because "no matter what happened, no matter how bad it got, it was just like he was blind to the evidence." App. 205, l. 24 – 206, l. 2. He testified he "was pretty ticked off" at Petitioner because he constantly "said God would take care of him" and Kendrick did not "think that [was] the case." App. 206, ll. 2-4. Kendrick remembered sitting in the courtroom before the jury was sworn and admitted he "was pretty, pretty harsh with him and I told him . . . you got to make a decision; you need to quit crying and you need to, I'm sure I did tell him, you need to plead guilty to this." App. 206, ll. 8-13.

Marcus Whitlark, Kendrick's co-counsel, testified that he "agree[d] with what Mr. Magni [Petitioner] said, he did not want to plead guilty. That was clear." App. 174, ll. 12-13. Whitlark also admitted Kendrick "is an emotional fellow when he's fired up" and that he witnessed several "heated discussions" between Petitioner and Kendrick about pleading guilty. App. 184, ll. 4-11.

Order of Dismissal

The PCR court found Petitioner's guilty plea was entered freely and voluntarily and that he failed to satisfy his burden of proving his guilty plea was involuntarily made. The court emphasized Petitioner's statements to the plea court that he had not been promised or threatened by anyone to plead guilty. The court also noted Petitioner was thoroughly advised of his constitutional rights and the consequences of pleading guilty by both the plea court and his attorneys. Therefore, the court denied Petitioner relief and dismissed his application. App. 243-245.

Discussion

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made because plea counsel improperly pressured Petitioner into pleading guilty despite Petitioner's unambiguous desire to proceed to trial. Petitioner testified he was "in a state of shock" after Counsel Kendrick "yelled" at him in the courtroom and told him he had to plead guilty. Moreover, Kendrick admitted he was harsh with Petitioner and told him he had to "quit crying" and plead guilty to the charges. Counsel Whitlark likewise admitted Kendrick had several "heated discussions" with Petitioner about pleading guilty and corroborated Petitioner's testimony that he did not want to plead guilty.

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). "The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (internal quotations marks and citations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984), to claims of the same against plea counsel). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the

consequences of his plea and the charges against him." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000)) (internal quotation marks omitted).

First, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. On the other hand, the prejudice requirement focuses on whether "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Id. at 59. "[T]he 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, 393 S.C. at 572-574, 713 S.E.2d at 615 (citing Roddy, 339 S.C. at 33, 528 S.E.2d at 420).

"The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled." Strickland, 466 U.S. at 685 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275-276 (1942)). Additionally, a guilty plea that was "entered by one fully aware of the direct consequences . . . must stand unless induced by . . . threats (or promises to discontinue improper harassment) . . . " Brady v. United States, 397 U.S. 742, 755 (1970) (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (reversed on other grounds, 356 U.S. 26 (1958)). Accordingly, counsel provides ineffective assistance in the adversarial system when he induces a defendant to plead guilty.

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel improperly pressured Petitioner into pleading guilty. Plea counsel Kendrick testified during the PCR hearing that he was "irritated" with Petitioner and "got mad at him" because "he was blind

to the evidence" and insisted "God would take care of him." Counsel further admitted he was "pretty harsh with him [Petitioner]" and told him "you got to make a decision; you need to quit crying and you need to . . . you need to plead guilty to this." App. 205, l. 18 – 206, l. 13. Petitioner likewise testified that Kendrick "forced" him to plead guilty. He said counsel engaged in a "non-stop barrage" repeatedly telling him that he had to plead guilty and that if he did not plead guilty he was going to go "to prison [for] a long time, a very long time." Petitioner also testified that counsel "yelled" at him in the courtroom to the point where he was "in a state of shock" and eventually acquiesced to plead guilty due to the pressure. App. 149, l. 17 – 153, l. 20. Counsel Whitlark corroborated Petitioner's testimony when he admitted during the hearing that Kendrick was an "emotional fellow" and had several "heated discussions" with Petitioner about pleading guilty. App. 184, ll. 4-11.

Additionally, there is a reasonable probability that but for plea counsel's undue pressure and improper influence, Petitioner would not have pled guilty and would have insisted on proceeding to trial. Petitioner testified that he would not have pled guilty had it not been for Counsel Kendrick's insistence that he do so. Whitlark confirmed that Petitioner did not want to plead guilty. App. 174, ll. 12-13. Thus, Petitioner was prejudiced by plea counsel's pressure. Lockhart, 474 U.S. at 59. It was *only* because of counsel's undue influence that Petitioner agreed to plead guilty.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 10th day of August, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO AIKEN COUNTY
R. KNOX MCMAHON, CIRCUIT COURT JUDGE

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph J. Magni 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 1, 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 Joseph J. Magni.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender
ATTORNEY FOR PETITIONER

This 10th day of August, 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 Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Joseph J. Magni, #345848, at Kershaw Correctional Institution, this 10th day of August, 2015.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day of August, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.