

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Edward W. Miller, Circuit Court Judge

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S.C. Supreme Court

HUMBERTO ALONSO GARCIA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001083

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court make a legal error in dismissing Petitioner's claim of ineffective assistance of plea counsel by analyzing whether plea counsel could have secured a lesser sentence rather than whether his inadequate advice made Petitioner's plea unknowing and involuntary?

STATEMENT

On September 24, 2013, the Greenville County Grand Jury indicted Petitioner Humberto Alonso Garcia on two counts of trafficking cocaine more than twenty-eight grams. App. 75—App. 78; App. 4, lines 15-24. On March 12, 2014, Petitioner appeared at a plea hearing before The Honorable Lee S. Alford and a jury. Robert E. Ianaurio represented Petitioner and Joyce L. Monts represented the State. App. 1. The State alleged that on March 7, 2012, law enforcement officers approached Petitioner in public with his vehicle and asked for permission to search it. Petitioner consented, and inside the officers found a quantity of crack cocaine. The officers then searched Petitioner’s home pursuant to a warrant and found crack cocaine there as well. App. 11, line 21—App. 14, line 17. Petitioner pled guilty as charged. App. 7, lines 12-15. Judge Alford sentenced Petitioner to concurrent sentences of twelve years’ incarceration for each of the charges. App. 18, lines 9-24.

On August 4, 2014, Petitioner filed an application for post-conviction relief (PCR) claiming ineffective assistance of counsel. App. 22—App. 29. The State filed a return on November 22, 2014. App. 30—App. 33. On April 22, 2015, Petitioner appeared at an evidentiary hearing before The Honorable Edward W. Miller. R. Mills Ariail represented Petitioner and Karen C. Ratigan represented the State. App. 34.

Petitioner testified that plea counsel was defective in failing to secure a shorter sentence for his charges. App. 44, lines 14-22. Plea counsel testified that he and Petitioner planned to proceed to trial until the morning trial was scheduled. At that time, plea counsel made a deal with the solicitor and then convinced Petitioner to plead guilty. App. 47, line 21—App. 48, line 4. Plea counsel testified that the deal involved a recommended sentence of twelve years and that it was part of a “last-minute discussion in chambers trying to get [the case] worked out.” App. 49, lines 6-9.

On May 6, 2015, the PCR judge issued his order dismissing Petitioner's application. App. 69–App. 74. Specifically, the order stated Petitioner did not prove ineffective assistance because no evidence showed additional work by plea counsel would have resulted in a lesser sentence. App. 72.

ARGUMENT

The evidence in the record does not support a finding that Petitioner knowingly and voluntarily pled guilty, and the PCR court erred in deciding Petitioner's PCR claim on a different basis.

The evidence in the record does not support a finding that Petitioner knowingly and voluntarily pled guilty, and the PCR court erred in deciding Petitioner's PCR claim on a different basis. 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).

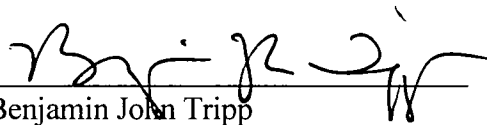
In this case, the evidence in the record does not support a finding that Petitioner knowingly and voluntarily pled guilty. Petitioner’s testimony at the PCR hearing showed that he expected a shorter sentence and was not aware that his sentence could be as long as it was. Plea counsel’s testimony bolstered the inference that he did not adequately advise Petitioner about the sentencing consequences of the plea. He testified that he and Petitioner planned to proceed with trial until the morning trial was scheduled, at which time he made a hurried, last-minute effort to lead Petitioner to a plea, ostensibly without time to fully advise him.

The PCR court erred in deciding Petitioner’s PCR claim on a different basis—namely, that no evidence showed additional work by plea counsel would have resulted in a lesser sentence. As explained above, this conclusion was inapposite to an analysis of whether Petitioner’s plea was knowing and voluntary as required by the Sixth Amendment. Accordingly, the PCR court erred in dismissing Petitioner’s application.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Humberto Alonso Garcia petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of September, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
EDWARD W. MILLER, CIRCUIT COURT JUDGE

HUMBERTO ALONSO GARCIA,

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STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2015-001083

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Humberto Alonso Garcia states:

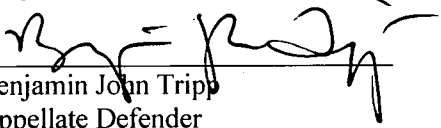
1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on April 22, 2015. 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 Humberto Alonso Garcia.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 3rd day of September, 2015

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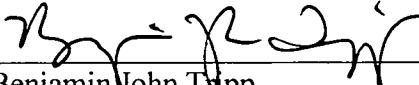
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APPELLATE CASE NO. 2015-001083


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 Karen Ratigan, Esquire and Humberto Alonso Garcia, #359253, at Ridgeland Correctional Institution this 3rd day of September, 2015.


Benjamin John Tepp
Appellate Defender

ATTORNEY FOR PETITIONER

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



Notary Public for South Carolina (L.S.)

My Commission Expires: May 12, 2025.