

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

OCT 16 2015

Certiorari to Spartanburg County
Deadra L. Jefferson, Circuit Court Judge

S.C. Supreme Court

CHARLES J. WOODRUFF,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000809

PETITION FOR WRIT OF CERTIORARI

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

INDEX

INDEX..... 1

ISSUE PRESENTED 2

STATEMENT OF THE FACTS..... 3

ARGUMENT 7

CONCLUSION 10

ISSUE PRESENTED

Did the PCR judge err by finding defense counsel provided effective representation where counsel failed to object and withdraw Petitioner's guilty plea when the solicitor made a sentencing recommendation of fifteen to twenty years' imprisonment since the solicitor agreed to make no recommendation on sentencing, Petitioner had rejected a previous plea offer of twelve years, counsel requested the minimum sentence of five years, and Petitioner was sentenced to fifteen years' imprisonment?

STATEMENT OF THE FACTS

In December 2012, a Spartanburg County Grand Jury indicted Petitioner for distribution of cocaine base, third offense. App. 139. On February 12, 2013, Petitioner pled guilty to the lesser-included offense of distribution of cocaine base, second offense, before the Honorable Benjamin H. Culbertson. App. 1. James Cheek represented Petitioner. Scott Spivey represented the State. App. 1.

In addition to the distribution of cocaine base charge, Petitioner pled guilty to three counts of distribution of cocaine base, second offense, one count of distribution of crack cocaine within a half mile of a school, and one count of trafficking in ten to twenty-eight grams of cocaine base, second offense. App. 3 – 4; App. 111 – 112. Petitioner also pled guilty under North Carolina v. Alford, 400 U.S. 25 (1970), to possession of a weapon during commission of a violent crime, possession with intent to distribute crack cocaine within a half mile of a school, and possession of marijuana. App. 3 – 4; App. 111 – 112.

At the guilty plea, the solicitor informed the judge that there was **no recommendation** by the State. App. 4, line 20. He then explained to the judge that the State reduced all of Petitioner's charges by "one level with the exception of a few charges." App. 5. The solicitor stated that Petitioner was getting a benefit "in the sense that he would be facing 25 years under the trafficking crack cocaine charge," which was originally indicted as a third offense. App. 5. In addition to reducing the drug charges, the State dismissed a possession with intent to distribute marijuana within a half mile of a school charge. App. 6, ll. 2 – 8.

After mitigation by defense counsel, Petitioner spoke on his own behalf. App. 33 – 34. The solicitor then informed the court of Petitioner's prior criminal record and added that "the State [did]

have something more to add for sentencing at the appropriate time.” App. 34, ll. 20 – 21. The solicitor explained to the judge:

“[W]e did negotiate with the defense attorneys to come up with a range where he could look at five to thirty sentence (sic) with the understanding they could come in and ask for five and **we on behalf of the State and the police** may ask for something else. Having said that we told them essentially what we were going to ask for and that would be in the 15 to 20 range.”

App. 35, ll. 14 – 21 (emphasis added).

The judge responded:

“But you all said you were **not making any recommendation**; is that correct”

App. 35, ll. 24 – 25 (emphasis added).

The solicitor answered:

“Your Honor, we made a recommendation as to the sentencing range with the understanding that we could come in and ask for a specific number of years.”

App. 36, ll. 1 – 4.

Defense counsel Cheek did not object or move to withdraw Petitioner’s plea. App. 36, ll. 9 – 19. The judge sentenced Petitioner to a fifteen-year concurrent sentence. App. 37. Petitioner did not appeal his guilty plea or sentence.

On April 8, 2013, Petitioner filed a PCR application. App. 40. On March 14, 2014, Respondent filed its return requesting an evidentiary hearing. App. 47. On January 14, 2015, an evidentiary hearing was held before the Honorable Deadra L. Jefferson. App. 53. Leah B. Moody represented Petitioner. Suzanne White represented the State. App. 53.

Petitioner testified during the PCR hearing. Petitioner explained that he was initially represented by Beverly Jones. App. 58 – 59. The State made Petitioner a plea offer of twelve years. Defense counsel Jones communicated the State’s offer to Petitioner. However, Petitioner rejected the plea offer. App. 61 – 62. Petitioner stated that Jones told him that if he went into court to plead without a recommendation, the judge could sentence him to less than twelve years.¹ App. 62, ll. 1 – App. 63, ll. 1.

Petitioner was represented by James Cheek on the day of his guilty plea. On the day of the plea, the twelve-year offer was no longer available. Petitioner understood that he was facing a minimum of five years and a maximum of thirty years imprisonment. Petitioner **also understood** that the State **would not make any recommendation** to the plea judge. App. 64, ll. 9 – 17.

At the guilty plea, Petitioner and counsel Cheek both spoke on Petitioner’s behalf. Right before the judge sentenced Petitioner, Petitioner remembered “the solicitor[] jumped up . . . and made a recommendation of 15 to 20 years.” App. 65, ll. 18 – 23. Prior to the plea, the solicitor informed counsel Cheek that the State would not make any recommendation, but the narcotics officer would ask for a fifteen to twenty-year sentence. App. 66, ll. 20 – 24. Petitioner discussed the narcotics officer’s request with defense counsel Cheek. Counsel assured Petitioner that the plea judge usually does not follow what the officers ask for at sentencing. App. 67, ll. 15 – 19. Petitioner had no idea that the solicitor would “say anything.” App. 66, ll. 15 – 19. Petitioner was surprised at the solicitor’s recommendation and thought that counsel should have objected. App. 69, ll. 1 – 7. If Petitioner had known that the solicitor would recommend a fifteen to twenty-year

¹ Petitioner testified that he filed a PCR application against defense counsel James Cheek instead of Beverly Jones because Cheek went into the courtroom with him on the day of the plea. App. 59, ll. 9 – 13.

prison sentence, he would have accepted the twelve year plea offer which was previously extended to him. App. 67, ll. 19 – 22.

Defense counsel admitted during the PCR hearing that the solicitor was supposed to “**remain silent on the sentencing** as far as their recommendation is concerned, and that the narcotics agents would appear asking for the 15 to 20.” App. 90, ll. 3 – 6 (emphasis added).

After the testimony concluded, Judge Jefferson found that Petitioner failed to meet his burden of proof. App. 102. The judge also found that counsel Cheek was a zealous advocate for Petitioner. App. 105.

Order of Dismissal

On April 1, 2015, Judge Jefferson issued an order of dismissal. App. 110. The judge wrote that Petitioner’s contention that counsel was ineffective for representing that Petitioner “would be pleading straight up when in fact the Solicitor made a recommendation as to sentencing [was] without merit.” App. 124. The judge found that Petitioner failed to show that defense counsel was deficient and “need not address whether [Petitioner] was prejudiced by Counsel’s representation.” App. 135.

Petitioner appealed Judge Jefferson’s order of dismissal. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred by finding defense counsel provided effective representation where counsel failed to object and withdraw Petitioner's guilty plea when the solicitor made a sentencing recommendation of fifteen to twenty years' imprisonment since the solicitor agreed to make no recommendation on sentencing, Petitioner had rejected a previous plea offer of twelve years, counsel requested the minimum sentence of five years, and Petitioner was sentenced to fifteen years' imprisonment.

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).

However, “the Sixth Amendment right to ineffective assistance of counsel in a criminal proceeding applies not only to a defendant’s decision to plead guilty but also to the decision to reject an offered plea bargain.” Judge v. State, 321 S.C. 554, 558, 471 S.E.2d 146, 148 (1996) overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). 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 Cheek was ineffective for failing to object and withdraw Petitioner’s guilty plea when the solicitor made a sentencing recommendation to the judge. Both counsel and Petitioner had discussed the solicitor’s **agreement** to remain silent at sentencing. Counsel was aware that Petitioner understood that there would be no recommendation so that counsel could ask for the minimum sentence of five years. In fact, at the very beginning of the guilty plea, the solicitor informed the plea judge that there was **no recommendation** from the State. Only after Petitioner spoke on his own behalf and counsel mitigated did the solicitor “have something more to add for sentencing.” App. 34, ll. 20 – 21. The solicitor stated that the sentencing request was “on behalf of the State and the police.” App. 35. The judge **was not made aware that only** the narcotics officers wanted a fifteen to twenty-year prison sentence.

Because counsel was aware that Petitioner wanted the minimum sentence of five years and had rejected the previous plea offer of twelve years, counsel should have objected to the solicitor’s last minute sentencing request which violated the plea agreement. See Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (finding plea counsel ineffective for failing to withdraw Petitioner’s guilty

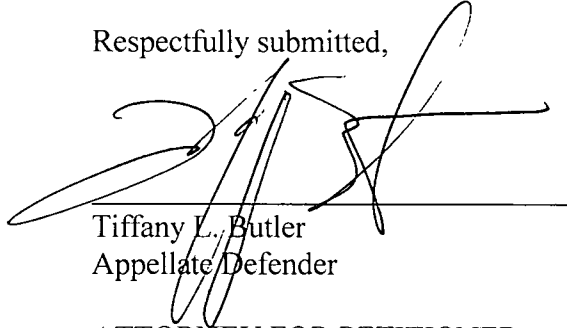
plea where the State opposed a probationary sentence during the guilty plea which violated the plea agreement that the State would neither recommend nor oppose a probationary sentence in exchange for Petitioner's guilty plea).

Had counsel objected to the State's recommendation and withdrew Petitioner's guilty plea, there is a reasonable probability that Petitioner would not have been sentenced to fifteen years and would have gone to trial.

CONCLUSION

For the reasons argued above, Petitioner Charles Woodruff respectfully requests this Court to grant his petitioner for writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tiffany L. Butler', is written over a horizontal line. The signature is stylized and cursive.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of October, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

CHARLES J. WOODRUFF,

PETITIONER,

V.

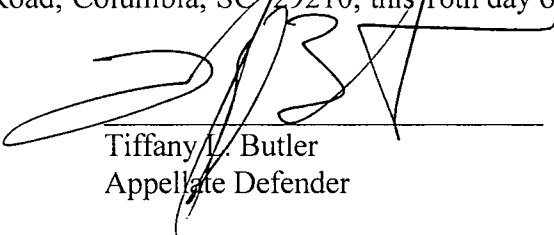
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000809

CERTIFICATE OF SERVICE

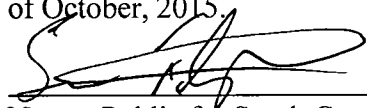
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Charles Woodruff #296287, Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 16th day of October, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of October, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.