

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

JAN 07 2016

SC SUPREME COURT

BRANDON GARREN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2015-000756

RETURN TO PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
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PETITIONER'S QUESTIONS PRESENTED

1.

Did the PCR judge err in finding respondent was entitled to a new trial because respondent failed to meet his burden of proving either that plea counsel was ineffective in not requesting a psychological evaluation or that he suffered any resulting prejudice?

2.

Did the PCR judge err in finding respondent was entitled to a new trial because respondent failed to meet his burden of proving his guilty plea was involuntary?

RESPONDENT'S COUNTER-QUESTIONS PRESENTED

1.

Whether Petitioner's first issue is preserved for appeal because it attempts to recast a factual finding into a separate legal issue and Petitioner filed no Rule 59(e) Motion to request clarification of the PCR judge's ruling?

2.

Whether any evidence supports the PCR judge's finding that Respondent's guilty plea was involuntary because respondent was under the influence of medication, he demonstrated he did not understand the effect of his plea, and plea counsel failed to have a psychological evaluation conducted?

STATEMENT OF THE CASE

Respondent agrees with Petitioner's statement of the case.

ARGUMENT

1.

Petitioner's first issue is not preserved for appeal because it attempts to recast a factual finding into a separate legal issue and Petitioner filed no Rule 59(e) Motion to request clarification of the PCR judge's ruling.

This case presents only one legal issue: whether respondent's guilty plea was involuntary. The PCR court ruled that respondent, Brandon Garren ("Garren") "did not understand the specifics of his guilty plea because of his mental incapacity and that he would not have pled guilty if he was not under the influence of medication at the time of his plea." App. 75. The State has attempted to create a red herring by taking a factual finding by the trial judge that bears on the issue of the voluntariness of Garren's plea—that plea counsel should have ordered a psychological evaluation—and making it into a legal conclusion. The PCR judge ordered a new trial—not a remand for resentencing. App. 75-76. A new trial is the remedy for an involuntary guilty plea. Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing); Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (remanding for specific performance of a plea agreement and resentencing or for a new trial).

If the State believed that a separate legal issue existed and the PCR judge's ruling on this point should have been clarified, it was required to file a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Rule 59(e), SCRCP. Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007). In Marlar, this Court ruled that the losing party in a PCR case has a duty to ask a PCR judge "to make specific findings of fact and conclusions of law" and if it does not do so, the issues raised that do not appear in the order are not preserved for appeal. Marlar at 410, 653

S.E.2d at 267. The State made no such motion and, therefore, its alleged “issue” is not preserved. Certiorari should be denied on this alleged ground.

2.

Ample evidence supports the PCR judge’s finding that Respondent’s guilty plea was involuntary because respondent was under the influence of medication, he demonstrated he did not understand the effect of his plea and plea counsel failed to have a psychological evaluation conducted.

This Court should deny certiorari because ample evidence supports the PCR judge’s ruling. Simply put, the standard of review decides this case and certiorari is not warranted. The proper standard of review of a PCR court’s order is whether “any evidence of probative value” exists to support the court’s findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). “This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law.” Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

“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.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). “Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process.” Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012).

“Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “Specifically, a defendant must be aware of the privilege against self incrimination, the right to a jury trial, and the

right to confront one's accusers." Id. A defendant must also "be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Id.

The PCR court ruled that Garren "was under the influence of medication which affected his ability to understand what he was doing on the day of his plea." App. 75. Evidence in the record supports the court's finding. Garren testified at the PCR hearing:

I don't know what kind of medication they was giving me in the county. But they have a way of giving medication that's—they have a bunch of little glasses on a tray. And they just give you medicine. I don't know if they give me the wrong medicine or what they done. But I had a reaction two different times to that medicine they give me.

App. 57, ll. 6 – 17. Garren unequivocally testified that he did not understand what he was doing on the day of the plea. App. 57, l. 25 – 58, l. 3. The State failed to shake Garren on cross-examination as he testified that he did not remember anything about the guilty plea itself or telling the judge that no one had made any promises to him. App. 62, ll. 1 – 10. The only thing Garren could remember was plea counsel "Mr. Eppes come in the hallway and told me he wasn't never going to represent me again." App. 62, ll. 8 – 12.

The State emphasized plea counsel's testimony at the PCR hearing that he believed Garren was competent; however, Judge Griffith credited plea counsel's concerns regarding Garren's mental and physical health. App. 66, ll. 7 – 22. The PCR judge found Garren "met his burden proving trial counsel should have requested that Applicant have a psychological evaluation before Applicant plead guilty. . . ." App. 74-75. While the State attempts to characterize this finding as based solely on the clear remorse expressed by plea counsel about the case, other parts of plea counsel's testimony support the PCR judge's findings. Plea counsel testified that Garren "had extensive

health problems that went to his mental health going back a decade or more. He had some kind of vitamin deficiency that really affects his ability to do everything.” App. 66, ll. 19 – 22.

Plea counsel’s testimony was not just from hindsight. His statements to the court at the plea colloquy indicate that counsel was aware of Garren’s health problems at the time. App. 31, ll. 12 – 24. Plea counsel told the plea judge that Garren “obviously has some mental problems.” App. 31, ll. 12 – 17. He further stated:

[Garren] also has a disease that the detention center could confirm where iron builds up in his blood. He literally has to have a pint of blood taken from him between every two weeks and every month. Since he’s gotten into the detention center and gotten off pills, he tells me he’s gained 46 pounds. He’s gained 46 pounds.

App. 31, ll. 18 – 24.

These statements at the plea corroborate Garren’s testimony at the PCR hearing that he was on medication at the jail and did not understand what happened the day of the plea. App. 57, l. 6 – 58, l. 11. Garren’s testimony, combined with plea counsel’s statements at the plea hearing, provide ample support for the PCR judge’s conclusion that medication affected Garren’s ability to understand the proceeding. App. 74-75.

“The PCR court’s findings on matters of credibility are given great deference by this Court.” Goins at 573, 726 S.E.2d at 3. The PCR judge credited Garren’s testimony regarding the influence of medication. He also credited plea counsel’s testimony that Garren had mental problems and he should have ordered a psychological evaluation. App. 74-75. The PCR judge found that Garren would not have pled guilty but for “his mental incapacity” and had he not been “under the influence of medication at the time of his plea.” App. 75. On appeal, this Court defers to these credibility findings, which establish an involuntary guilty plea and prejudice.

In Sanders v. United States, 373 U.S. 1, 5 (1963), the defendant alleged that his guilty plea was involuntary because of narcotics administered at the jail. During the guilty plea, the defendant asked the judge to send him to a specific prison “for addiction cure” and that he had “been using narcotics off and on for quite a while.” Id. at 4. The habeas judge denied relief without a hearing and the United States Supreme Court reversed. Id. at 19 – 23. The Court noted that “[w]hether or not petitioner was under the influence of narcotics would not necessarily have been apparent to the trial judge.” Id. at 20. “However regular the proceedings at which he signed a waiver of indictment, declined assistance of counsel, and pleaded guilty might appear from the transcript, it still might be the case that petitioner did not make an intelligent and understanding waiver of his constitutional rights.” Id. at 19-20.

Precisely for the point made in Sanders—that mental issues and intoxication are not easy to spot—the PCR judge correctly found that plea counsel should have ordered a psychological evaluation. Plea counsel admitted as much when he observed that Garren’s “affect is to this day so much different than my typical client that I have real concerns that I made a mistake.” App. 68, l. 13 – 69, l. 2. A medical professional could have evaluated the effect of Garren’s medication. The PCR judge also had an opportunity to observe Garren at the hearing. The PCR judge’s ability to observe Garren and his crediting of plea counsel’s testimony on this point are entitled to deference.

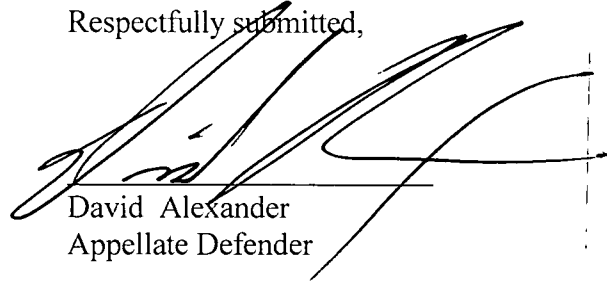
Much like the Government in Sanders, the State points to the plea hearing as evidence that Garren’s plea was voluntary. The Sanders Court rejected this argument. In this case, the PCR court also rejected this argument in crediting Garren’s testimony about the circumstances of his plea. Just like in Sanders, there was evidence at the plea hearing that Garren was medicated. Much like the defendant in Sanders requested an “addiction cure,” in this case plea counsel told the court at the plea about Garren’s rare blood disease that had been confirmed by the jail. That evidence

corroborates Garren's testimony. The PCR judge's ruling is supported by ample evidence and this Court should deny certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and extends to the right of the line.

David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 7th day of January, 2016

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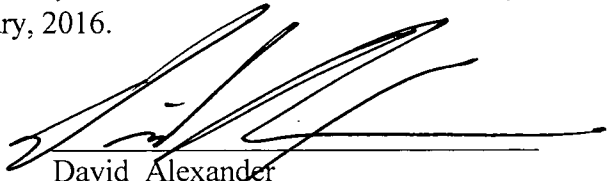
STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2015-000756

CERTIFICATE OF SERVICE

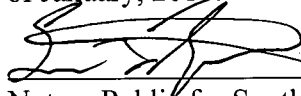
I certify that a true copy of the return to petition for writ of certiorari in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Brandon Garren, #354160, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 7th day of January, 2016.



David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 7th day
of January, 2016.



(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.