

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Williamsburg County
Steven H. John, Circuit Court Judge

JHERWASKI PRESSLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002286

JOHNSON PETITION FOR WRIT OF CERTIORARI

BENJAMIN JOHN TRIPP
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South Carolina Commission on Indigent Defense
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QUESTION PRESENTED

Did the PCR court err in ruling that plea counsel was not deficient merely because it found that Petitioner's plea was voluntary where both Petitioner and his mother testified that the State had previously offered a deal for a favorable YOA sentence and where nothing in the record showed plea counsel reasonably decided not to accept the offer?

STATEMENT

On May 3, 2012, the Williamsburg County Grand Jury indicted Petitioner Jherwaski Demario Pressley on one count each of armed robbery, criminal conspiracy, first degree assault and battery, and possession of a firearm during a violent crime and four counts of pointing or presenting a firearm. App. 96—App. 98. On September 15, 2014, Petitioner appeared at a plea hearing before The Honorable R. Ferrell Cothran, Jr. Steven McKenzie represented Petitioner and Tyler Brown represented the State. App. 1. The State alleged that on March 22, 2012, Petitioner and two codefendants robbed a Kingstree store, holding at gunpoint and striking a cashier while customers were inside. App. 8, line 9—App. 9, line 11. Pursuant to a plea deal, Petitioner pled guilty to armed robbery and first degree assault and battery in exchange for a recommended sentence of ten years' concurrent incarceration. App. 4, lines 5-11; App. 11, lines 2-4. The judge accepted the plea, App. 11, lines 5-9, and sentenced Petitioner as recommended by the State. App. 20, lines 11-16.

On December 16, 2014, Petitioner filed an application for post-conviction relief ("PCR") claiming ineffective assistance of counsel. App. 23—App. 29. The State filed a return on February 11, 2015. App. 30—App. 34. On July 15, 2015, Petitioner appeared at an evidentiary hearing before The Honorable Steven H. John. Lance Boozer represented Petitioner and Daniel Gourley represented the State. App. 35.

Petitioner testified about the plea negotiations in the case:

A: Well, we was offered something else on the table and when the time came for us to get sentenced, that wasn't an option.

Q: Okay. And you've also filed—and does that allegation tie into another one you have where you've got—you've claimed that there was a potential or promised a YOA sentence?

A: Yes, sir.

App. 42, lines 12-17. Petitioner's mother then appeared and testified that she was present at all of Petitioner's meetings with plea counsel, and plea counsel told them Petitioner would receive a lesser sentence under the Youthful Offender Act. App. 58, line 2—App. 60, line 12.

On July 23, 2015, the PCR court issued an order of dismissal ruling Petitioner failed to establish ineffective assistance of counsel. App. 86—App. 95. Specifically, the order stated that the credible testimony showed Petitioner was aware at the time of his plea that he would not receive a YOA sentence, and his plea was therefore involuntary. App. 91—App. 92.

ARGUMENT

The PCR court erred in ruling plea counsel was not deficient because the record shows plea counsel unreasonably failed to accept a plea offer for YOA sentencing, regardless of whether Petitioner's ultimate plea was voluntary.

The PCR court erred in ruling plea counsel was not deficient because the record shows plea counsel unreasonably failed to accept a plea offer for YOA sentencing, regardless of whether Petitioner's ultimate plea was voluntary. 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.").

To establish ineffective assistance of plea counsel, a defendant may show 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;" in this manner, the defendant sufficiently undermines the required voluntary and intelligent character of the 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”).

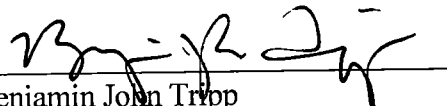
Alternatively, because the right to effective assistance of counsel extends to plea negotiations, *see Missouri v. Frye*, 132 S. Ct. 1399, 1408 (“This Court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.”), the defendant may establish ineffective assistance through a showing that an action by counsel during any plea negotiations was unreasonable, *Lounds v. State*, 380 S.C. 454, 463, 670 S.E.2d 646, 650 (2008) (“The validity of counsel’s strategy is reviewed under ‘an objective standard of reasonableness.’” (quoting *Ingle v. State*, 348 S.C 467, 470, 560 S.E.2d 401, 402 (2002))).

In this case, the PCR court erred in ruling plea counsel was not deficient because it ignored Petitioner’s argument for ineffectiveness under the second avenue described above. The order of dismissal focused only on whether Petitioner’s ultimate plea was voluntary based on his apparent awareness at the time of his ultimate plea that he would not receive a YOA sentence. However, Petitioner expressly testified at the PCR hearing that before the plea, the State offered a deal for a YOA sentence, which had expired at the time of the plea. Petitioner’s mother’s testimony that plea counsel told them Petitioner would receive a lesser YOA sentence corroborates his account. Therefore, plea counsel did not accept this deal on Petitioner’s behalf. Additionally, nothing in the record shows that a reasonable decision supported the failure. The YOA sentence would have been more favorable than any sentence resulting from Petitioner’s plea as an adult. The PCR court therefore could only conclude that plea counsel’s representation during the plea negotiations was defective and resulted in a deprivation of Petitioner’s right to effective assistance of counsel.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of March, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO WILLIAMSBURG COUNTY
STEVEN H. JOHN, CIRCUIT COURT JUDGE

JHERWASKI PRESSLEY,

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STATE OF SOUTH CAROLINA,

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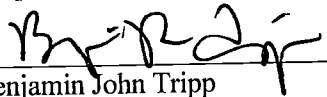
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jherwaski Pressley 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 July 15, 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 Jherwaski Pressley.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender
ATTORNEY FOR PETITIONER

This 4th day of March, 2016

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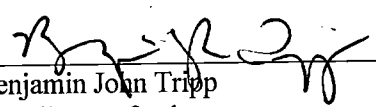
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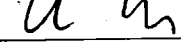
CERTIFICATE OF SERVICE

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 Daniel Gourley, Esquire and Jherwaski Pressley, #361485, at Walden Correctional Institution this 4th day of March, 2016.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day
of March, 2016.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.