ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Richland County

Robert E. Hood, Circuit Court Judge

VANDER DAVON MEETZE,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2015-001013

RETURN TO PETITION FOR WRIT OF CERTIORARI

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR RESPONDENT

INDEX

STATEMENT OF ISSUE ON CERTIORARI

The post-conviction relief court erred granting Meetze relief and remanding his case to the court of general sessions for a new trial based on its finding Meetze was actively misinformed he would be parole eligible, where counsel properly informed Meetze he would not be eligible for any type of early release until after serving at least eighty-five percent of his sentence and Meetze acknowledged his misinformation came from family, friends and the general community.

COUNTER-STATEMENT OF ISSUE OF CERTIORARI

There is evidence of probative value to support the PCR court's ruling that defense counsel erroneously advised respondent he would be eligible for parole if he pled guilty to voluntary manslaughter, and that is why respondent pled guilty, since those credibility findings in respondent's favor by the PCR court -- where there was disputed evidence -- are entitled to great deference by this Court on appeal

STATEMENT OF THE CASE

Respondent agrees to the state's **procedural** history of the case. The relevant substantive facts are discussed infra.

ARGUMENT

There is evidence of probative value to support the PCR court's ruling that defense counsel erroneously advised respondent he would be eligible for parole if he pled guilty to voluntary manslaughter, and that is why respondent pled guilty, since those credibility findings in respondent's favor by the PCR court -- where there was disputed evidence -- are entitled to great deference by this Court on appeal

Introduction

In the final analysis, this is a relatively straightforward case. The only issue was whether the post-conviction relief court believed defense counsel erroneously advised respondent that he would be eligible for parole if he pled guilty to voluntary manslaughter, or whether he believed defense counsel correctly told respondent he would have to serve at least eighty-five percent of his sentence if he pled guilty to voluntary manslaughter. It is clear that either way defense counsel chose to enter into the murky waters of release from prison advice. There was certainly evidence in this case – far beyond the "any evidence" standard of review supporting the PCR judge's finding that respondent was erroneously advised by defense counsel that he would be eligible for parole if he pled guilty to voluntary manslaughter, and that bad advice prompted respondent to plead guilty.

Relevant facts

The state submitted a proposed order to the PCR court with essentially the same facts but reaching a conclusion that "counsel did not provide any erroneous advice as to parole eligibility, but rather appropriately, correctly, and adequately advised him as to his parole..." App. 180-188 (app. 187). The PCR judge did not agree with that conclusion given the facts in this case, and his evaluation of the testimony and evidence. The PCR judge therefore issued an order granting relief

finding that the record showed that the trial court, and defense counsel misinformed respondent about parole eligibility. That was a correct finding as will be seen infra.

"Further Applicant stated that he relied on that misinformation and would not have pled guilty had he been informed otherwise. Applicant stated he had a general knowledge of what parole eligibility meant from his family and general community, **but that general knowledge is not applicable in this instance.** The trial court's active misinformation**, trial counsel's affirmation of that information, and applicant's statement that he would not have pled guilty if he had been correctly informed as to his lack of parole eligibility created an unknowing and involuntary plea.** These factors took away the applicant's opportunity to make a voluntary and intelligent choice as to alternative procedures." App. 197. (emphasis added).

In short, the PCR court found credible respondent's detailed testimony that defense counsel did affirm the misinformation as to parole eligibility that the trial judge and solicitor agreed on the record was accurate. That credibility determination by the PCR judge, who observed the demeanor of the witnesses as they testified, is entitled to great deference by this Court.

Motion to relieve counsel, for a continuance, and jury selection

The day before respondent entered his guilty plea, on April 24, 2012, the judge considered a motion to relieve Defense Counsel Roberson and to grant respondent a continuance. During this hearing respondent was respectful about defense counsel especially since it was apparent there was a prior relationship between counsel and respondent's family. Defense counsel said: "I have been in professional relationships with many of his family members and we have had a good working and professional relationship..." App. 3, ll. 18 – 5, l. 14; App. 6, l. 20 – 7, l. 9.

During this hearing, the trial judge asked defense counsel what was the minimum and maximum sentence on the charge of murder for which respondent had been indicted. Defense

counsel correctly answered that the minimum sentence was thirty years imprisonment, and the maximum was life imprisonment. App. 7, ll. 10-24. The judge then asked how old respondent was at the time. Defense counsel answered: "22 years old." App. 7, l. 25 – 8, l. 4.

The judge next turned to the sentencing range for the plea offer to voluntary manslaughter. Defense counsel correctly answered that the minimum sentence was two years and that the maximum was thirty year. App. 8, ll. 5-19.

The judge then inquired: "Is voluntary manslaughter parole eligible?" Defense Counsel answered, "I believe it is, your honor." The judge then asked the solicitor: "You agree with that, solicitor?" Solicitor Garfield answered, "Yes sir." App. 8, ll. 5-24.

The appealing nature of the guilty plea now established, the judge next addressed respondent who obviously had heard this colloquy on parole for voluntary manslaughter. App. 8, l. 25 – 10, l. 5. Respondent said he was "[r]eally pleased with Mr. Roberson with like his response or whatever," and he said he did not mean any "disrespect" to counsel. "I just really want . . . I want to have a fair shot, your Honor, that's all." App. 10, ll. 1-19. The judge ultimately denied the motion to relieve defense counsel, and to continue the case. The selection of the trial jury then began immediately.[1] App. 14, l. 21 – 15, l. 24.

The guilty plea

The next morning, on April 25, 2012, Respondent Meetze entered his guilty plea to the crime of voluntary manslaughter. App. 46. l. 3 – 48, l. 15. Respondent told the judge he was twenty-two years old, had a high school diploma, and that he was working at the Kentucky Fried

[1] Jury selection reveals that the jury panel that would have tried this case had seven black jurors and one oriental juror. Defense counsel excused four other black jurors. App. 31, l. 2 – 32, l. 11; App. 25, l. 20 – 34, l. 25.

Chicken. App. 48, ll. 12-21. As will be seen infra, the judge later observed that he thought respondent and the decedent both came from very good families.

The solicitor told the judge that the incident in this case occurred when the decedent was making a lot of noise following the "best birthday party of his life." However, the decedent's girlfriend was angry because the decedent stayed out "partying all night," and their argument grew loud. Respondent's mother came outside to ask for quiet because she wanted to sleep, and the argument was preventing her from doing so. The solicitor offered that the decedent apparently insulted respondent's mother, and called "her the B word." The state's theory of the case was that respondent met up with the decedent a short ways away, and kicked him about twenty times for his comments to his mother. Tragically, when the decedent was taken to the hospital he developed a rare form of pneumonia that could only be caught in a hospital setting, and he died days later. App. 57, l. 2 – 59, l. 3. The judge deferred sentencing pending a pre-sentence investigation. App. 60, ll. 11-18.

Sentencing hearing

During the sentencing hearing, the solicitor repeated the allegations about the incident, and the tragic manner in which the decedent developed pneumonia in the hospital. App. 65, l. 19 – 69, l. 7. After the judge heard from several witnesses supporting the respondent, and witnesses about the effect of the decedent's loss, respondent apologized to the decedent's family: "I'm fully aware of my actions, and I'm very remorseful about them." App. 82, ll. 12-21.

Strangely, but respectfully, defense counsel chose to attack the victim about the circumstances that led to his tragic death. Counsel told the judge that the decedent and his friends had taunted respondent and his family for years before this incident occurred. App. 85, l. 14 – 92, l.

6. Defense counsel also cited to the decedent's intoxication and marijuana in his system at the time of the incident. App. 91, ll. 5-12.

Solicitor Garfield reacted angrily: "It is very hard for me as a prosecutor and as a citizen of this community to listen to all that has been presented . . . The solicitor's anger led to testy exchanges with defense counsel during the sentencing hearing. App. 93, l. 4 – 98, l. 25.

The judge observed in the end that he was impressed with both families, he said that respondent was "an intelligent young man and should be a model to people..." and sentenced respondent to twenty-one years imprisonment for voluntary manslaughter. App. 101, l. 23 – 105, l. 12.

Post-conviction relief testimony

Post-conviction Counsel Thomas Young, Jr. told the Honorable Robert Hood that the only issue in this case concerned respondent being erroneously advised that he was eligible for parole if he pled guilty to the charge of voluntary manslaughter. Respondent testified that, as to the offense of voluntary manslaughter, he understood from "the judge, the solicitor, as well as my counsel that it was parole eligible." App. 136, ll. 10-20. Petitioner said if he was told the offense was not parole eligible he would have proceeded to trial. App. 137, ll. 2-6. Petitioner said: "**I was told by my counsel that I can be eligible for parole if I just pled on out to voluntary manslaughter.**" App. 137, ll. 22-25. (emphasis added).

Respondent acknowledged counsel never told him he could guarantee **when** respondent would be released from prison if he pled guilty to voluntary manslaughter. "He never explained that to me. *He just told me I'd be eligible for parole.*" App. 144, ll. 7-11. (emphasis added). Respondent said he just understood parole to mean "you'd be able to go in front of a board, and you might be released on parole." App. 144, l. 21 – 145, l. 15.

Respondent told the PCR judge if he had known the truth about the sentence for voluntary manslaughter that he would have taken his chances with a jury trial. App. 145, ll. 10-18.

The following occurred between the PCR judge and respondent:

> Q. What I heard you say is that Mr. Roberson - - we're using this, this term parole eligibility.
>
> A. Yes, sir.
>
> Q. Right, and you've discussed that with you attorney, correct?
>
> A. Yes, sir.
>
> Q. Now I thought I heard you say that Mr. Roberson did not explain what parole eligibility means. Did you say that or not say that?
>
> A. I recall saying that he, **he told me that I would be eligible for parole, but far as going into details, no. No, sir**.

App. 150, l. 6-17. (emphasis added).

Respondent later repeated that he was told by defense counsel that he was parole eligible but it was not explained to him what exactly parole meant. App. 151, ll. 2-5. As seen, the judge found the erroneous advice from defense counsel that respondent could be paroled if he pled guilty to the charge of voluntary manslaughter was the critical factor in respondent pleading guilty.

The judge rejected the state's contention that defense counsel advised respondent that he would have to serve at least eighty-five percent of his sentence if he pled guilty to voluntary manslaughter. Again, those credibility findings are entitled to great deference on appeal.

Solicitor Garfield testified that she thought all parties agreeing on the record that respondent would be parole eligible if he pled guilty to voluntary manslaughter meant respondent could be placed on "community supervision," not parole. Solicitor Garfield said this was a matter of "terminology . . . among criminal practitioners." App. 158, ll. 16-25. Garfield admitted she did

not know what Judge McMahon was thinking about or what his understanding was when he asked the question about parole for voluntary manslaughter. App. 159, l. 16-25.

Defense Counsel Roberson testified during the PCR hearing that voluntary manslaughter was a violent crime, and that respondent would have to serve eighty-five percent to be eligible for release. App. 164, l. 24 – 165, l. 19. Defense counsel recalled talking about parole eligibility "on the record when the judge was going through that colloquy, but I don't know that I ever really had a serious discussion with him about parole eligibility . . . there's some quirky things that's going on interpreting parole eligibility for serious offenses, most-serious offenses. Then we have classes of misdemeanors and that kind of thing, and it gets to be awfully quirky. And the reason that I hesitate to be more definitive in how I explain to them what parole eligibility and all this stuff is - - because some of it can't become a reality, or they can't know until the Department of Corrections evaluates their record going in. And then there's some things that they're eligible for that they can earn." App. 172, l. 23 – 173, l. 14.

Defense counsel claimed that respondent, and apparently even his family, understood that respondent would have to serve *at least eighty-five percent of his sentence* before being eligible for release from prison. App. 174, l. 16 – 175, l. 8.

Again, the PCR judge found that the erroneous advice that respondent would be eligible for parole, and not his general knowledge of what parole eligibility meant from his family and the general community, led respondent to plead guilty rather than going to trial. App. 197.

Discussion

The PCR judge in this case found that defense counsel told respondent, and led him to believe that he would be eligible for parole if he pled guilty to voluntary manslaughter. Since the trial judge, defense counsel, and the solicitor all agreed on the record that respondent could be

paroled if he pled guilty to voluntary manslaughter, this finding by the PCR judge on erroneous parole advice is hardly surprising. Moreover, this Court gives "great deference to the post-conviction relief court's finding of facts and conclusions of law." See Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010).

Further, the judge found it was this erroneous advice from defense counsel about respondent being eligible for parole, and not general information from his family or the community about parole, which led respondent to plead guilty. Throughout the certiorari petition the state seems to take the PCR judge to task, and not accept the deference to which his findings are entitled. There was certainly evidence in this record, as seen above, to support that conclusion by the PCR judge.[2]

Again, both the state and respondent sent in proposed orders to the trial judge. The state's proposed order wanted the PCR judge to conclude that he believed defense counsel told respondent he would have to serve at least eighty-five percent of his sentence for voluntary manslaughter before it was ever possible that he could be released. That was **not the finding** that the PCR judge chose to make after listening to the testimony, considering the entire record, and sizing up the credibility of the respondent. Not only are the PCR court's findings entitled to great deference, but the standard of review is "any evidence of probative value." See Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989).

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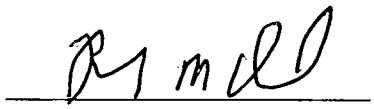
[2] Further, and respectfully, the solicitor's testimony during the PCR hearing that the "parole eligibility" that defense counsel, she and the judge all agreed that respondent was entitled to really referred to "community supervision" is untenable given the legal standard in this case. The applicability of some of these prison release or supervision programs, in different situations, are often difficult for experienced lawyers to understand. It would have been, and is, unreasonable to expect that respondent would understand that "parole eligibility" really meant "community supervision" even if undersigned counsel thought, which he certainly does not, that that was the topic of the trial judge's inquiry at the time everyone agreed respondent was eligible for parole.

The judge in the final analysis found that respondent was erroneously advised about being eligible for parole if he pled guilty to the crime of voluntary manslaughter, and that if he had not been misadvised he would not have pled guilty, and would have gone to trial. See Hill v. Lockhart, 474 U.S. 52 (1985). There is, most respectfully, no need for certiorari to be granted in this case.

CONCLUSION

By reason of the foregoing arguments, the petition for writ of certiorari should be denied.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR RESPONDENT.

This 8th day of April, 2016

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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 Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Vander Davon Meetze, #351032, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 8th day of April, 2016.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 8th day
of April, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.