

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Dorchester County

Maite Murphy, Circuit Court Judge

CHRISTOPHER A. BATY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002100

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR judge err in failing to find plea counsel ineffective for failing to file a motion to reconsider the twenty year sentences imposed for burglary first degree and two counts of kidnapping when Petitioner was sixteen years of age at the time of the offenses, he fully cooperated with the police, he had learning disabilities and his only prior record was a juvenile adjudication for marijuana?

STATEMENT

In March of 2012, the Dorchester County Grand Jury indicted Petitioner Baty for burglary first degree and two counts of kidnapping, indictments #2012-GS-18-0053, 54, 55. On October 8, 2012, Baty appeared before the Honorable Kristi Lea Harrington and pled guilty as charged. Mitch Farley represented Baty at the guilty plea. Glenn Justice represented the State. Judge Harrington sentenced Baty to twenty (20) years concurrent for each charge. Baty did not appeal the sentence or conviction.

On May 28, 2013, Baty filed an application for post conviction relief. The State filed a return on November 22, 2013. On May 21, 2015, an evidentiary hearing was held before the Honorable Maite Murphy. Rodney D. Davis represented Baty and the PCR evidentiary hearing. J. Clayton Mitchell represented the State. In a written order filed August 27, 2015, Judge Murphy denied relief and dismissed the application. A timely notice of intent to appeal was served on August 25, 2015. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in failing to find plea counsel ineffective for failing to file a motion to reconsider the twenty year sentences imposed for burglary first degree and two counts of kidnapping when Petitioner was sixteen years of age at the time of the offenses, he fully cooperated with the police, he had learning disabilities and his only prior record was a juvenile adjudication for marijuana.

During the guilty plea defense counsel asked the judge to impose the mandatory minimum fifteen (15) year sentence based on Petitioner's age and mental capacity. (App. p. 26, lines 12-14). Defense counsel advised the plea judge that Petitioner had learning disabilities, his only prior record was a juvenile probation case for marijuana, and he cooperated with the police. (App. p. 24, line 23 – p. 25, lines 1-25). Defense counsel also advised the plea judge that Petitioner worked with one of the co-defendants, an older gentlemen with a lengthy criminal record. (App. p. 25, lines 12-15). The prosecutor told the plea judge that the victim felt sorry for Petitioner and felt like he was forced into the situation. (App. p. 27, lines 1-7). The guilty pleas were entered without negotiations or recommendation. (App. p. 34, 37, 40). Despite the substantial mitigation presented, the judge sentenced Petitioner to a twenty (20) year sentence. Defense counsel failed to file a motion to reconsider sentence.

In the order of dismissal the PCR judge found that Petitioner entered the guilty pleas freely, voluntarily and intelligently. (App. p. 86). The PCR judge erred. Plea counsel was ineffective in failing to file a motion to reconsider sentence.

The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). If a timely motion to reconsider sentence had been filed, the plea judge would have had the authority to reconsider the sentence imposed. When the judge declined to impose the mandatory minimum fifteen year sentence, as requested, plea counsel should have filed the motion to reconsider.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). “A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.’ ” Pittman v.

State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “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, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

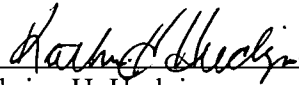
“The second, or ‘prejudice,’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. at 59, 106 S.Ct. 366. “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea 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, but would have insisted on going to trial.” Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

Plea counsel was ineffective in failing to file a motion to reconsider the twenty year sentence imposed. There is a reasonable probability that but for counsel’s deficient performance, the plea judge would have reduced the sentence based on Petitioner’s age, lack of criminal record, learning disabilities and cooperation with the police.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of May, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO DORCHESTER COUNTY
MAITE MURPHY, CIRCUIT COURT JUDGE

CHRISTOPHER A. BATY,

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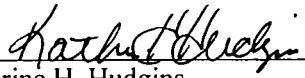
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher A. Baty states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on May 21, 2015. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She 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 her as counsel for Christopher A. Baty.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

This 23rd day of May, 2016

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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 Clay Mitchell, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Christopher A. Baty, #352802, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of May, 2016.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of May, 2016.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.