

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Larry B. Hyman, Circuit Court Judge

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SC SUPREME COURT

STEVEN ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000105

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in coercing petitioner to plead guilty to burglary via the solicitor's threat to obtain a second burglary indictment against him per the theory that he allegedly entered the dwelling twice on the same night because although it appeared initially that this would result in the receipt of a greater sentence; nonetheless, the most likely result would have been that the two burglaries would have been viewed as a continuing course of conduct and treated as one offense at sentencing.

STATEMENT

Petitioner Steven Rogers pled guilty to first degree burglary during the November 2012 term of the Berkeley County General Sessions Court before Judge R. Markley Dennis, and was sentenced to imprisonment for a period of fifteen years. Debi Littlejohn represented petitioner at the plea proceeding and Assistant Solicitor Ashley Cornwell appeared on behalf of the state.

App. 1 – 21. Petitioner did not appeal his conviction or sentence.

On December 3, 2013, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 23 – 40. The respondent filed a return dated March 26, 2015, requesting that a hearing be held in the case. App. 41 - 46.

A PCR hearing was convened on September 10, 2015, at the Charleston County Courthouse before Judge Larry B. Hyman. App. 47 - 98. Petitioner was present at the PCR hearing and represented by Lance Shealy Boozer, and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state.

On December 7, 2015, Judge Hyman issued an Order denying petitioner's claims that trial counsel's assistance was ineffective in the case, and that his guilty plea was given involuntarily. App. 100 – 105.

Petitioner appealed Judge Hyman's Order dismissing and denying relief on the PCR claims raised in the action. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel erred in coercing petitioner to plead guilty to burglary via the solicitor's threat to obtain a second burglary indictment against him per the theory that he allegedly entered the dwelling twice on the same night because although it appeared initially that this would result in the receipt of a greater sentence; nonetheless, the most likely result would have been that the two burglaries would have been viewed as a continuing course of conduct and treated as one offense at sentencing.

During the plea proceeding, the solicitor apprised the plea judge of the facts of the case. The solicitor stated that on January 23, 2012, petitioner allegedly entered a homeowner's residence located in Berkeley County by kicking in the door and popping off the window screens, and then took guns, money, food, and clothing from the house. App. 12, l. 7 – p. 13, l. 2.

During the PCR hearing, petitioner testified that he was coerced and tricked into pleading guilty because the solicitor threatened to obtain a second burglary indictment against him allegedly because he entered the dwelling twice, which would have doubled his sentencing exposure to a total thirty-year sentence at the very minimum. App. 62 , l. 8 – p. 65, l. 4; App. 64, l. 9 – p. 65, l.4; App. 54, l. 24 – p. 55, l. 3. App. 70, l. 16 – 25; App 71, lines 1-12. Petitioner added that he believed he would have received a thirty-year sentence if he had been indicted on a second burglary charge and testified regarding this as follows:

Q. And nobody threatened you to plead guilty? I know you had a threat of trial, that's one thing, but nobody physically threatened you to get you to plead guilty, did they?

A. Yes, I was threatened.

Q. What was the threat?

A. That I would receive at least 30 years in prison if I didn't.
App. 70, lines 16-25

Trial counsel testified at the hearing and explained that the solicitor advised that “there had been two entries into that home” and made it known that there was a possibility that another burglary indictment could materialize in the case. App. 82, l. 2 – 6. Counsel stated that she advised petitioner that he could receive a thirty-year sentence if he ended up with two burglary charges against him. App. 83, l. 10 – 14.

The PCR judge ruled that petitioner’s claim that he was coerced into pleading guilty was “not credible” and denied and dismissed his allegation that his plea was given involuntarily. App. 103-104.

A guilty plea must represent a voluntary and intelligent choice among alternative causes of action open to a defendant. North Carolina v. Alford, 400 U.S. 25 (1970). Petitioner’s plea was not a voluntary and intelligent choice among alternative causes of actions available to him.

Petitioner was coerced into pleading guilty to burglary in order to avoid a thirty-year sentence under the threat of a second burglary charge that hung over him because he knew not that a thirty-year sentence was unlikely regardless of whether another burglary charge materialized because the inference was that the two acts occurred on the same date at nearly the same time, which meant that the judge would most likely have treated both burglary charges as one offense because they were connected “at times so closely...that they may be considered as one offense” under S.C. Code Ann. § 17-25-50. Note further that it was entirely possible that petitioner might have received two concurrent fifteen-year terms had he been twice indicted on the offense of burglary. Compare State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003), where the Court held that the trial judge properly refused to impose a LWOP sentence after the defendant received two separate guilty verdicts for trafficking in crack cocaine because the offenses constituted a continuous cause of conduct committed so closely in time, i.e. during

September 21 – 23, 1996, and September 27, 1996, respectively, that the convictions were considered as one conviction under S.C. Code Ann. § 17-25-50.

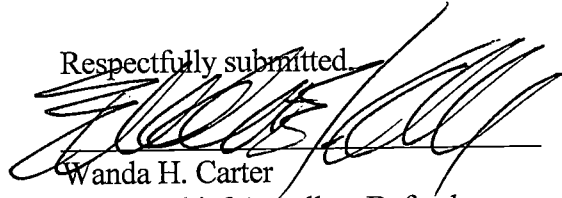
Since petitioner declared that he was innocent and desired a trial by jury on the burglary indictment (App. 56, l. 14 – p. 57, l. 12; App. 67, l. 18-25; App. 71, l. 17 – p. 72, l. 19), then his burglary plea was coerced via the threat of a possible second burglary charge due to the fear of a thirty-year sentence if adjudicated on two burglary charges because he was unaware of the fact that his sentencing consequences might not have been as grave as trial counsel predicted to him per S.C. Code Ann. 17-25-50. Hence, counsel's representation was deficient in petitioner's case in violation of the Sixth Amendment to the extent that counsel failed to bring the sentencing option at issue to petitioner's attention. Petitioner was prejudiced because counsel's error led him to forego his right to a jury trial based on a misunderstanding of sentencing consequences in his case. See Hill v. Lockhart, 484 U.S. 50 (1985).

In addition, petitioner's plea was involuntarily given because it was coerced. The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances, one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C 417, 179 S.E. 2d 210 (1971) citing to Sweet v. State 255 S.C. 293, 178 S.E. 2d 657 (1971). Clearly, petitioner was coerced into pleading guilty to burglary under the circumstances of this case and therefore, his plea was considered involuntarily given at the plea proceeding.

CONCLUSION

Based on the foregoing argument, petitioner requests that this Court grant the petition and allow full briefing on the above-raised issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of July, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County
Larry B. Hyman, Circuit Court Judge

STEVEN ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

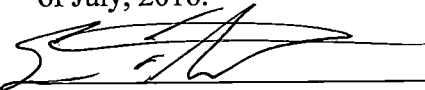
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Steven Rogers #353340 at Allendale Correctional Institution, P.O. Box 1151, Hwy. 47, Fairfax, SC 29827, this 13th day of July, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of July, 2016.



(L.S.)

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