STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Roger L. Couch, Circuit Court Judge

CHRISTOPHER DOVILLE

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002431

JOHNSON PETITION FOR WRIT OF CERTIORARI

Tiffany L. Butler
Appellate Defender

South Carolina Commission on Indigent Defense
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ISSUE PRESENTED

Did the PCR court err by finding plea counsel provided effective representation where counsel failed to communicate to Petitioner that the value of the stolen police car was less than $10,000.00, since Petitioner was indicted for grand larceny valued at more than $10,000.00, was facing a maximum sentence of ten years' imprisonment, and pled guilty only because he had no knowledge of the lower value of the stolen patrol car and that he should have pled to the lesser included offense?

STATEMENT OF FACTS

On January 19, 2012, at around 1:00 a.m., Jasper County police officers received a call about a suspicious person at the Plantation Inn Motel. App. 17, ll. 9 – 13. The individual was observed inside one of the motel rooms, which was supposed to be vacant. App. 17, ll. 13 – 15. The police responded and discovered Petitioner inside the room with the door chained. App. 17, ll. 16 – 20.

Petitioner was placed under arrest and charged with trespassing and defrauding an inn keeper for allegedly breaking into a vacant motel room without paying for it. App. 17, ll. 21 – 23. Petitioner was arrested, handcuffed, and placed into the back of the police car. App. 17, ll. 23 – 25. The officer locked the patrol car and walked back inside the motel to complete his report. App. 17, l. 23 – App. 18, l. 3.

While the officer was inside the building, Petitioner "managed to get through the middle panel window and into the front seat and at that point drove off in the car." App. 19, ll. 3 – 7. A short time later, a witness called in to dispatch to report a police car "wrecked in a ditch." App. 18, ll. 10 – 11. When officers arrived, Petitioner was not in the car. App. 18, ll. However, Petitioner was discovered lying on the porch of a nearby house with handcuffs on. App. 18, ll. 14 – 17. He was detained and arrested. App. 18, ll. 17 – 19.

On February 22, 2012, Petitioner was indicted for grand larceny of a vehicle valued at $10,000 or more, which carried a maximum of ten years' imprisonment. App. 18, ll. 17 – 19. Petitioner pled guilty as indicted before the Honorable J. Michael Baxley. App. 1. Robert Hughes represented Petitioner. Erin Vaux represented the State. App. 1.

At the guilty plea, the solicitor explained to the judge that the value of the patrol car prior to having the police equipment installed was $9,550.00. App. 19, ll. 17 – 19. After the equipment was installed, the car was valued at around $15,000.00. App. 19, ll. 19 – 21. The judge sentenced Petitioner to six years' imprisonment. App. 28, ll. 11 – 19.

Petitioner did not appeal his guilty plea or sentence.

PCR Hearing

Petitioner filed a PCR application on June 8, 2013 alleging ineffective assistance of counsel. App. 30. The State filed its return on May 8, 2015, requesting an evidentiary hearing. App. 37. On October 19, 2015, an evidentiary hearing was held before the Honorable Roger L. Couch. App. 49. Tristan Shaffer represented Petitioner. App. 50. J. Rutledge Johnson represented the State. App. 50.

Petitioner explained that plea counsel was not communicating with him about his case. App. 58, ll. 2 – 14. Petitioner stated that he learned the value of the police car was less than $10,000.00 at the guilty plea. App. 58, ll. 9 – 16. Petitioner asserted that counsel had not researched the value of the patrol car prior to the plea. App. 59, ll. 5 – 22. If Petitioner had known that the value of the car was less than $10,000.00 and that he could have received a lower sentence, he would not have pled guilty and would have gone to trial. App. 60, l. 9 – App. 61, l. 9.

Conversely, defense counsel asserted that the State showed him evidence that the patrol car was valued "well over $10,000.00." App. 69, 10 – 18. Counsel asserted that his strategy was to get the best deal that he could for Petitioner. App. 69, ll. 17 – 18. Counsel stated that the State made Petitioner a plea offer of six years' imprisonment in exchange for pleading guilty. App. 69, ll. 24 – 25. However, counsel agreed that if he

had gone to trial, his strategy would have been to challenge the value of the police car. App. 69, ll. 10 – 18.

Order of Dismissal

The PCR court issued an order of dismissal on November 9, 2015. App. 77. The court found that counsel "negotiated with the State in [Petitioner's] best interest." App. 80. The court also found that Petitioner made the decision to plead "freely and voluntarily without any threats or promises from anyone else." App. 80. The court wrote that Petitioner "failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby." App. 81.

Petitioner appealed the order of dismissal. This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred by finding plea counsel provided effective representation where counsel failed to communicate to Petitioner that the value of the stolen police car was less than $10,000.00, since Petitioner was indicted for grand larceny valued at more than $10,000.00, was facing a maximum sentence of ten years' imprisonment, and pled guilty only because he had no knowledge of the lower value of the stolen patrol car and that he should have pled to the lesser included offense.

According to S.C. Code Ann. § 16-13-30(B)(1) and (2):

> "(B) Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny. Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:
>
> (1) **five years** if the value of the personalty is more than two thousand dollars but less than ten thousand dollars;
>
> (2) **ten years** if the value of the personalty is ten thousand dollars or more." (emphasis added).

Plea counsel was ineffective for failing to communicate to Petitioner that the value of the patrol car was less than $10,000.00. Because Petitioner was indicted for grand larceny valued at more than $10,000.00, he was facing a maximum of ten years' imprisonment. However, Petitioner would have been facing a maximum sentence of five years' imprisonment at trial since the value of the patrol car was less than $10,000.00 and greater than $2,000.00.

The trial judge gave Petitioner credit for pleading guilty by sentencing Petitioner to six years' imprisonment when the maximum sentence was ten years. If Petitioner had pled guilty to the lesser included offense, with a five-year maximum sentence, he could have received a two or three-year sentence.

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland, 466 U.S. at 685 – 86. In the context of a guilty plea, a court will conduct a two-prong test when determining whether defense counsel's assistance was ineffective. Hill v. Lockhart, 474 U.S. 52, 58 (1985) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel's performance was deficient. Hill, 474 U.S. at 58 – 59. Whether counsel was "deficient" turns on whether the guilty plea was entered voluntarily, knowingly, and intelligently. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). See Hill, 474 U.S. at 56 (1985) ("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.'" (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

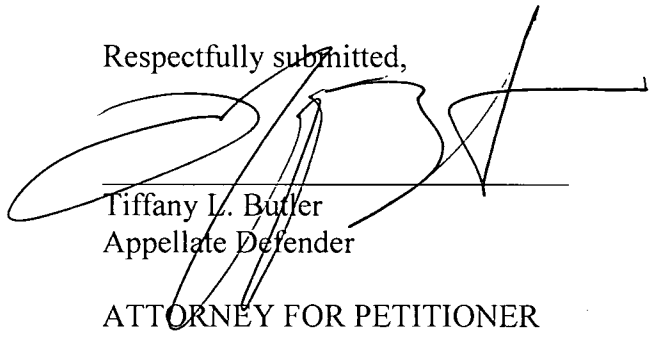
Second, the applicant must show that he was prejudiced by counsel's deficient performance during the guilty plea process. Hill, 474 U.S. at 59. Specifically, the applicant must show that there is a reasonable probability that "but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997).

Here, if counsel had communicated to Petitioner that the car was valued at $9,550.00, which is less than the value for which Petitioner was indicted, Petitioner would not have pled guilty. Petitioner would have insisted on going to trial where he would have argued for a lesser included offense and a sentence lower than six years' imprisonment.

CONCLUSION

For the reasons argued above, Petitioner Christopher Doville respectfully requests this Court to grant his petition for writ of certiorari.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of July, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County
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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Doville 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 12/1/2015. 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 Doville.

Respectfully submitted,

Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of July, 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 J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Christopher Doville, at 421 Wise Street, Ridgeland, SC 29936, this 18th day of July, 2016.

Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of July, 2016.
_____(L.S.)
Notary Public for South Carolina
My Commission Expires: May 12, 2025.