ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Darlington County

Honorable Thomas A. Russo, Circuit Court Judge

EDDIE A. HUGGINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002433

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge err in refusing to find that a threat of prosecuting Petitioner's family members to the full extent of the law if Petitioner did not enter a guilty plea rendered the plea involuntary?

STATEMENT

In November of 2008, the Darlington County Grand Jury indicted Petitioner Huggins for murder and armed robbery, indictments #2008-GS-16-1507, 1506. The State served notice of intent to seek the death penalty. On December 22, 2010, Petitioner appeared before the Honorable Michael G. Nettles and pled guilty to murder for a negotiated sentence of life without parole. As part of the negotiations, the State withdrew the notice of intent to seek the death penalty and dropped the armed robbery charge. S. Boyd Young and Henry M. Anderson, Jr. represented Petitioner. Kernard E. Redmond prosecuted the case. Petitioner did not appeal his sentence or conviction.

On December 21, 2011, Petitioner signed an application for post- conviction relief [PCR] which was filed on December 28, 2011. The State filed a return on November 19, 2014. On July 28, 2015, an evidentiary hearing was held before the Honorable Thomas A. Russo. Tristan Shaffer represented Petitioner at the PCR hearing. Joshua L. Thomas represented the State. In a written order signed October 7, 2015, Judge Russo denied relief and dismissed the application. A timely notice of intent to appeal was served on November 25, 2015. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to find that a threat of prosecuting Petitioner's family members to the full extent of the law if Petitioner did not enter a guilty plea rendered the plea involuntary.

In the post-conviction relief application Petitioner asserts that he was coerced into entering a guilty plea. (App. p. 29). During the PCR hearing when Petitioner was asked why he pled guilty he responded, "Because I was informed that if I – if I didn't plea, that if I didn't take the plea bargain, that my family would be prosecuted to the fullest." (App. p. 62, lines 11-16). Petitioner's sisters and a niece were charged with accessory after the fact of murder based on their assistance to Petitioner in leaving the state. (App. p. 62, line 23 – p.63, lines 1-2; p. 68, line 21 – p. 69, lines 1-21; pp. 81-86). Petitioner testified that he was scheduled for trial in January but pled guilty in December 2010, because, "Well, when – when we went to Florence, when I was in the back , he told me – Boyd told me that the solicitor said that they'd drop all pending charges of – or reduce charges on my family if I plead guilty." (App. p. 63, lines 6-9).

During the PCR hearing plea counsel Young was asked if there were any other conditions associated with the plea offer. (App. p. 49, lines 22-23). Young answered, "I believe that there was an – at least an offer was supposed to be extended to some of his co-defendants or all of his co-defendant. I don't recall the specifics." (App. pp. 49, line 24 –p. 50, line 1). Plea counsel Anderson testified that, "My understanding of what was going to happen with the co-defendants is their charges were going to be dismissed or either substantially reduced." (App. p. 66, lines 23-25). During the PCR hearing the prosecutor was asked if there was an agreement in regard to resolving the charges against the co-defendants in exchange for Petitioner's guilty plea. (App. p. 69, lines 16-18). The prosecutor testified, "There – well, I guess for lack of a better term, yes.

We – the understanding was that once he pled, we would go ahead and resolve the cases against the two females. (App. p. 69, lines 19-21). The prosecutor admitted that that charges against two of the co-defendants were remanded to magistrate's court in March of 2011, and a charge against another co-defendant was nolle prossed in February of 2011, after Petitioner's guilty plea. (App. p. 70, lines 9-16).

In the order of dismissal the PCR judge wrote:

> The Court finds Applicant failed to demonstrate his guilty plea was coerced by threats of prosecution of his co-defendants. Regarding this allegation, the Court finds credible the testimony of plea counsel and the solicitor that Applicant sought to assistance for his family as part of his plea. The Court also finds credible the testimony of plea counsel and the solicitor that the result of the co-defendant's cases comported with everyone's understanding of the plea terms. Furthermore, the Court notes there is "no intrinsic constitutional infirmity in broadening plea negotiations so as to permit third party beneficiaries." Harman v. Mohn. 683 F.2d 834, 837 (4th Cir. 1982). Here, the charges against the co-defendants were brought well before plea bargaining began in Applicant's case. The limited record before this Court indicates the State did not act in bad faith in seeking charges against the co-defendants based on their involvement in Applicant evading capture. Furthermore, plea counsel did not represent any of the codefendants. Nothing in this record indicates Applicant's plea was coerced by the State's agreement to reduce or dismiss the charges against the co-defendants. Id. at 837-38 (dismissal of charges against defendant's wife's as part of plea bargain acceptable where wife was indicted separately and represented by different counsel).
>
> Furthermore, Applicant raised no objections to the terms of his agreement at his plea hearing. In fact, the record before this Court demonstrates Applicant received the benefit of his bargain, as the charges against the co-defendants were reduced or dismissed. See United States V. Morrow. 914 F.2d 608, 613 (4th Cir. 1990) (linked plea not involuntary where defendant admitted the only reason he entered plea was to help third-party). To the extent Applicant now claims his plea was coerced by threats the State would prosecute his family, the Court finds that testimony not credible and refuted by the record. Accordingly, the Court finds Applicant's plea was knowingly, intelligently, freely, and voluntarily entered with a full understanding of the consequences thereof.

(App. pp. 92-93). The PCR judge erred. The guilty plea was rendered involuntary by the threat to prosecute Petitioner's family members to the full extent of the law if Petitioner did not enter a guilty plea.

In Harman v. Mohn, 683 F.2d 834, 837 (4th Cir. 1982), the Court wrote:

> There seems to be a general consensus, with which we concur, that guilty pleas made in consideration of lenient treatment as against third persons pose a greater danger of coercion than purely bilateral plea bargaining, and that, accordingly, "special care must be taken to ascertain the voluntariness of guilty pleas entered in such circumstances." United States v. Tursi, 576 F.2d 396, 398 (1st Cir. 1978). See Crow v. United States, 397 F.2d 284 (10th Cir. 1968); Johnson v. Wilson, 371 F.2d 911 (9th Cir. 1967). As a threshold matter, we see no intrinsic constitutional infirmity in broadening plea negotiations so as to permit third party beneficiaries. It is generally within a prosecutor's discretion merely to inform an accused that an implicated third person "will be brought to book if he does not plead (guilty).... If (an accused) elects to sacrifice himself for such motives, that is his choice ..." Kent v. United States, 272 F.2d 795, 798 (1st Cir. 1959). Recognizing, however, that threats to prosecute third persons can carry leverage wholly unrelated to the validity of the underlying charge, we think that prosecutors who choose to use that technique must observe a high standard of good faith. Indeed, absent probable cause to believe that the third person has committed a crime, offering "concessions" as to him or her constitutes a species of fraud. At a minimum, we think that prosecutors may not induce guilty pleas by means of threats which, if carried out, would warrant ethical censure.

The Court went on to hold that:

> Plea bargains, which include adverse or lenient treatment for some person other than the accused, are not per se invalid, but these situations demand that prosecutors exercise a high standard of good faith in negotiating such pleas and that courts accepting such pleas examine them carefully to insure that the accused understands the plea agreement and the consequences not only to himself, but to such third persons as may be affected by the plea bargain.

Harman v. Mohn, 683 F.2d 834, 838 (4th Cir. 1982).

The promise of leniency to a third party in a plea agreement, although a legitimate prosecutorial tool that does not render a plea per se invalid, "might pose a greater danger of inducing a false guilty plea by skewing the assessment of the risks a defendant must consider." United States v. Morrow, 914 F.2d 608, 613 (4th Cir.1990) (internal quotation marks omitted).

Accordingly, "[s]pecial care must be taken to determine the voluntariness" of such a plea. Morrow, 914 F.2d at 613.

The judge in the present case did not have an opportunity to examine the condition of the guilty plea dealing with the co-defendant family members to insure that Petitioner understood the plea agreement and consequences as to himself and the co-defendants because the judge was not made aware of the condition of the plea agreement. The condition was not mentioned during the guilty plea. When asked if resolving the family member's charges was part of the plea agreement, plea counsel Young testified, "I want to tell you that if it had been part of the plea deal, I would have made sure it was on the record. But obviously it's not in the transcript. I know we talked about it but I believe that Mr. Anderson has a better recollection of that than I do." (App. p. 59). The special care required when a plea bargain includes lenient treatment of a third person, as in this case, was not given.

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)).

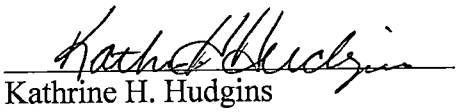
"The second, or 'prejudice,' requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. at 59, 106 S.Ct. 366. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character 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 place the condition of the plea agreement dealing with the resolution of the charges against Petitioner's family members on the record during the guilty plea. The special care required when a plea bargain includes lenient treatment of a third person was not given because the judge was unaware of the condition. The guilty plea was rendered involuntary by the threat to prosecute Petitioner's family members to the full extent of the law if Petitioner did not enter a guilty plea. There is a reasonable probability that, but for the threat, Petitioner would not have pled guilty and instead would have insisted on going to trial.

CONCLUSION

Based on the above argument this court should grant the petition for writ of certiorari to allow further briefing on the issue.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of August, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County
Honorable Thomas A. Russo, Circuit Court Judge

EDDIE A. HUGGINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002433

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eddie A. Huggins states:

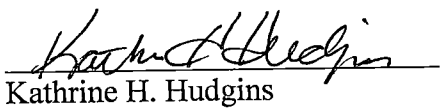
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. She has reviewed the record of petitioner's trial before Judge Thomas A. Russo, which was held on July 28, 2015 (PCR Hearing), and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Eddie A. Huggins.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

This 23rd day of August, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of [Attorney His Her] ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Kathrine H. Hudgins
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

This 23rd day of August, 2016.

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APPELLATE CASE NO. 2015-002433

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Caitlin Hastings, 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 Eddie A. Huggins, #130099, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 23rd day of August, 2016.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 23rd day of August, 2016.

(L.S)
Notary Public for South Carolina
My Commission Expires: April 27, 2026