

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2016-000775

Rudis Arnold Ventura, Petitioner,

v.

State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- 1) Did the PCR court err in denying Mr. Ventura's application for PCR based on trial counsel's:
a) failure to conduct a full investigation of the case prior to advising Mr. Ventura to cooperate with the State; and b) advising Mr. Ventura to cooperate with the State without first obtaining a written or oral plea agreement from the State granting Mr. Ventura immunity and or providing for an agreed upon sentence?
- 2) Did the PCR court err in denying Mr. Ventura's application for PCR based on Mr. Ventura's assertion that his trial counsel advised him that if he entered a guilty plea he would be sentenced to "time served" as a result of his cooperation with the State; thereby, rendering his guilty plea involuntary?

STATEMENT OF THE CASE

Rudis Arnold Ventura (herein referred to sometimes as "Mr. Ventura" or "Petitioner") was indicted in the May 2009 term of the Spartanburg County Grand Jury in the State of South Carolina for two counts of murder. (R. pp. 160-161). A year later, in May 2010, the Spartanburg County Grand Jury indicted Mr. Ventura on a third charge of burglary, first degree. (R. pp. 158-159).

The aforementioned charges arose as a result of a home invasion that occurred in 2009. Mr. Ventura rode with other co-defendants from Atlanta to South Carolina to the victims' home. (R. pp. 77-79). The purpose of the defendants going to the victims' home was purportedly to recover items that the victims had stolen from them. (R. pp. 77-79). It was believed that Mr. Ventura initially served as a lookout outside the victims' home. (R. pp. 77-79). When Mr. Ventura entered the residence, he was told by his co-defendants to go upstairs. (R. pp. 77-79). While Mr. Ventura was upstairs, his co-defendants shot and killed the victims. (R. pp. 77-79).

Mr. Ventura initially hired an attorney, Ralph Scott Davis, Esq. (herein referred to sometimes as "Mr. Davis" or "trial counsel") to represent him on the two counts of murder. (R. pp. 120-121). Later, Mr. Davis was also retained to represent Mr. Ventura on the burglary, first degree. Mr. Davis represented Mr. Ventura throughout the criminal proceedings in the lower court.

When Mr. Ventura hired Mr. Davis, Mr. Davis had to obtain the discovery materials from the Public Defenders' Office. (R. pp. 137-138). Mr. Davis testified that upon being retained by Mr. Ventura he didn't do any independent investigation into the allegations forming the basis of the charges against Mr. Ventura. (R. p. 138). Rather, Mr. Davis relied on his discussions with co-defendants' counsel, the Solicitor's office, and his review of the discovery materials. (R. p. 138). Mr. Davis visited the crime scene, but he took no further actions. (R. pp. 137-141).

Based on Mr. Davis' review of the discovery materials and discussions with the Solicitor's office, he advised Mr. Ventura to cooperate with the State. However, Mr. Davis did not obtain a written plea agreement from the State setting forth the terms, conditions, or benefits of Mr. Ventura's cooperation. (R. p. 147). Further, no immunity agreement was obtained setting forth that anything disclosed by Mr. Ventura during the course of his cooperation with the State would not be used against him in prosecuting the underlying case or in charging Mr. Ventura with further criminal conduct. (R. pp. 134, 147). Mr. Davis also did not obtain oral or written confirmation from the State setting forth any sentencing recommendations. (Id.). Nevertheless, based on Mr. Davis' advice, Mr. Ventura agreed to cooperate with law enforcement officers in investigating the murders. (R. pp. 122-124).

Mr. Ventura cooperated with law enforcement officers and the Solicitor's office for approximately two years. (R. pp. 110-111). Mr. Ventura maintained that Mr. Davis informed him that if he cooperated with law enforcement officers and the Solicitor's office he would receive a sentence that would result in his being released. (R. pp. 126-128). This formed the basis for Mr. Ventura's decision to cooperate with law enforcement officers. (Id.). Over the course of the two year period, Mr. Ventura remained incarcerated and provided assistance to law enforcement officers in solving the murders he was charged with participating and or committing. (R. pp. 121-

123). As a result, Mr. Ventura had numerous meetings with the Solicitor and law enforcement officers. (R. p. 123). Mr. Ventura was also polygraphed by the State outside the presence of his attorney. (R. p. 124). Mr. Ventura told law enforcement officers everything he knew about the murders and the circumstances surrounding them, including who was involved. (R. pp. 122-126). Mr. Ventura assisted the State in prosecuting those individuals who were involved in and actually committed the murders; and Mr. Ventura agreed to testify against his co-defendants. (R. pp. 109-111). Mr. Ventura's agreement to testify against his co-defendants resulted in his co-defendants pleading guilty. (Id.). Further, Mr. Ventura agreed to testify against the individuals involved in the murders who were fugitives. (Id).

Mr. Ventura maintained that as a result of the disclosures he made during the course of his cooperation with law enforcement officers and the Solicitor's office he was charged with an additional charge: burglary in the first degree. (R. p.126). Mr. Ventura asserted that he cooperated with law enforcement officers because Mr. Davis advised him that as a result of his cooperation the murder charges against him would be dismissed; and he would not be charged with a crime that would result in his receiving a life sentence. (R. p. 127). Mr. Ventura argued that his trial counsel advised him that he would receive a "time served" sentence upon entering a guilty plea to any charge(s). (R. pp. 128-129). Mr. Ventura maintained he was never told by Mr. Davis that "even if [he] wasn't the one that fired the weapon that [he] could still be charged and convicted of murder." (R. p. 130). Mr. Davis disagreed and opined that Mr. Ventura was confused. (R. pp. 134-135). Mr. Davis claimed he told Mr. Ventura that he would receive "credit" for the time that he had been incarcerated; not that he would receive a "time served" sentence and be released. (R. pp. 134-135). Mr. Davis did not employ the services of a Spanish interpreter when communicating with Mr. Ventura. (R. p. 133).

On February 3, 2011, based on the advice of his trial counsel, Mr. Ventura entered a guilty plea to burglary, first degree *and* two counts of accessory after the fact to murder. (R. pp. 54, 16, 18). Mr. Ventura entered this plea without the benefit of a written or oral plea agreement setting forth a sentencing recommendation. As a result of Mr. Ventura's guilty plea, the murder charges against him were dismissed.

On May 23, 2012, Mr. Ventura appeared before the court for sentencing. (R. p. 83). Mr. Davis requested Mr. Ventura receive a "time served" sentence based on Mr. Ventura's cooperation. (R. p. 111). At the time of Mr. Ventura's sentencing, he had been incarcerated for approximately three years. (R. pp. 110-111).

Mr. Ventura was sentenced to life imprisonment for burglary, first degree, and fifteen (15) years for each accessory after the fact to murder, all to run concurrently. (R. p. 114). Despite Mr. Ventura's cooperation and assistance in convicting the individuals involved in the murders and cooperating against those that remained fugitives, Mr. Ventura did not receive any consideration for his cooperation. (Id.). Mr. Ventura was only 29 years old when he was sentenced. (R. pp. 110-111). He did not have a criminal record. (Id.). Mr. Ventura maintained that had he known that he wouldn't receive a "time served" sentence he would not have cooperated with the State nor would he have entered a guilty plea. (R. pp. 128-129).

On May 24, 2012, Mr. Ventura, by and through trial counsel, filed a motion to reconsider the terms of his sentence. As a result of that motion, on January 28, 2013, Mr. Ventura's life sentence was reduced to forty years incarceration, with all terms of incarceration to run concurrently. Mr. Davis indicated that he was surprised by the sentence Mr. Ventura received and agreed that the sentence was not indicative of the cooperation Mr. Ventura provided to the State in convicting those who were involved in the murders. (R. p. 135).

No appeal was filed on Mr. Ventura's behalf. However, Mr. Ventura filed a post-conviction relief (PCR) application alleging his trial counsel was ineffective, and he entered an involuntary guilty plea. (R. pp. 27-52). An evidentiary hearing was held on November 10, 2015 and Mr. Ventura's petition was denied. (R. pp. 3-15).

ARGUMENTS

I. The PCR court erred in denying Mr. Ventura's application for PCR based on trial counsel's: a) failure to conduct a full investigation of the case prior to advising Mr. Ventura to cooperate with the State; and b) advising Mr. Ventura to cooperate with the State without first obtaining a written or oral plea agreement from the State granting Mr. Ventura immunity and or providing for an agreed upon sentence.

A. Standard of Review

This Court gives deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them. *See Jordan vs. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). Further, this Court reviews questions of law *de novo*. *See Jamison vs. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To prevail on a claim of ineffective assistance of counsel, a petitioner must show "...that counsel's performance was deficient, and that the deficiency prejudiced the defense." *Wiggins vs. Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003).

B. Argument.

Mr. Ventura asserts he was denied his Sixth Amendment right to effective assistance of counsel because trial counsel failed to fully investigate the facts and circumstances of the murder charges against him and advised him to cooperate with the State without obtaining an oral or written sentencing recommendation. Further, trial counsel did not explain to Mr. Ventura that he was cooperating with the State without any written immunity or plea agreement.

Mr. Ventura maintains that his trial counsel advised him to cooperate with law enforcement officers and the Solicitor's office over a two year period without investigating the facts and

circumstances of the underlying charge(s) of murder against him. Mr. Ventura argues that had trial counsel conducted an investigation into the facts and circumstances of the underlying charges, he may have not advised Mr. Ventura to cooperate with law enforcement officers and the Solicitor's office without the benefit of a written or oral agreement granting him immunity from being prosecuted for his disclosures. Specifically, as a result of Mr. Ventura's admissions, Mr. Ventura maintains the State charged him with burglary in the first degree a year after he had made disclosures. (R. pp. 134, 147). Prior to cooperating with law enforcement officers, Mr. Ventura's trial counsel did not make him aware that he could be charged with additional crimes based on the information he provided during his cooperation. (R. pp. 125-126).

Further, Mr. Ventura was facing a potential life sentence when he began cooperating with the State. (R. p. 160). Based on his trial counsel's advice, Mr. Ventura believed that his extensive cooperation and the fact that he was not the person who committed the murders would result in his receiving substantial consideration for his cooperation upon the entry of a guilty plea. (R. pp. 126-129). In fact, Mr. Ventura believed he would receive a "time served" sentence as a result of his assistance in convicting those that had committed the murders. (Id.). Trial counsel advised Mr. Ventura to cooperate with the State without first explaining to him that he was cooperating without the benefit of a written plea agreement or sentencing recommendation from the State. (Id.). It was uncontroverted during the PCR hearing that trial counsel did not advise Mr. Ventura that he could receive a life sentence or a substantial term of incarceration, despite his cooperation. Rather, trial counsel opined that Mr. Ventura was confused about the "credit" he would receive for the time he had been incarcerated. (R. p. 130, 134-135). There was no testimony at the PCR hearing that Mr. Ventura was ever informed by his trial counsel that he could receive a life sentence and or a substantial sentence for entering a guilty plea to the crimes charged. In fact, at Mr. Ventura's

sentencing hearing, Mr. Davis requested a “time served” sentence; and Mr. Ventura believed the court would grant the same. (R. p. 111).

Although Mr. Ventura and trial counsel communicated in English, trial counsel admitted that Mr. Ventura was confused about the sentence he would receive upon his entry of a guilty plea. At the PCR hearing, a Spanish translator was provided to ensure there was no confusion during the course of the proceedings. (R. p. 119). However, trial counsel never employed the services of a translator to ensure Mr. Ventura understood that he would not be receiving the benefit of a written plea agreement setting forth a sentencing recommendation with the State; and upon his entry of a guilty plea it would be in the discretion of the sentencing court as to the sentence he would receive. (R. p. 133).

Moreover, trial counsel should have advised Mr. Ventura that if he cooperated and received a sentence that was harsher than he expected, there would be no basis for him to enforce any agreement he had with the State because no agreement existed.

In the instant matter, Mr. Ventura was not provided with the information he desperately needed to be able to make an informed decision about how to proceed forward with his defense. That is, Mr. Ventura was not fully advised of the benefits and detriments of his cooperation with the State. Mr. Ventura’s trial counsel’s performance was deficient as he failed to adequately advise Mr. Ventura of the consequences of his cooperation with the State. Mr. Ventura was not made aware that he was cooperating without the benefit of any agreement with the State nor was he advised how his disclosures to the State could be used against him. Mr. Ventura followed his trial counsel’s advice blindly, and he was prejudiced. Mr. Ventura testified that he would have proceeded to trial had he known that he did not have the benefit of any agreement(s) with the State

for his cooperation; and his cooperation was going to result in an additional charge being brought against him.

Based thereon, and as further set forth herein above and below, this Court should find that Mr. Ventura was denied his Sixth Amendment right to the effective assistance of counsel.

II. The PCR court erred in denying Mr. Ventura’s application for PCR based on Mr. Ventura’s assertion that his trial counsel advised him that if he entered a guilty plea he would be sentenced to “time served” as a result of his cooperation with the State; thereby rendering his guilty plea involuntary.

A. Standard of Review.

As stated above, this Court gives deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them. *See Jordan vs. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). Further, this Court reviews questions of law *de novo*. *See Jamison vs. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To prevail on a claim of ineffective assistance of counsel, a petitioner must show “...that counsel’s performance was deficient, and that the deficiency prejudiced the defense.” *Wiggins vs. Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003).

“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 the 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.” *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

B. Argument.

“In the context of a guilty plea, the court must determine whether 1) counsel's advice was within the range of competence demanded of attorneys in criminal cases i.e. was counsel's performance deficient, and 2) if there is a reasonable probability that, but for counsel's errors, the

defendant would not have pled guilty.” *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (citing *Hill v. Lockhart*, 474 U.S. 52, 56–58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). “In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea. *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991)). “The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.” *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006).

Mr. Ventura maintains that he would not have entered a guilty plea but for trial counsel’s advice that his cooperation with law enforcement officers would result in his receiving a lower sentence, that is, a time served sentence. (R. pp. 128-129). Mr. Ventura only cooperated with law enforcement officers and the Solicitor’s office because he believed that upon entering a guilty plea and finishing his cooperation he “was going to go home.” (R. p. 127). Mr. Ventura based this belief on the representations his attorney made to him that he (trial counsel) had negotiated an agreement with the Solicitor’s office on behalf of Mr. Ventura that would result in his receiving a substantial benefit for his cooperation. (Id). Mr. Ventura proceeded forward with cooperating with law enforcement officers and entering a guilty plea because he was told by his attorney that law enforcement officers and the Solicitor’s office was going to help him. (R. p. 127). Specifically, that he was going to go home. (Id).

Trial counsel’s failure to advise Mr. Ventura that he would not receive a sentencing recommendation from the Solicitor’s office upon his entry of a guilty plea and that the sentencing court could sentence him to life imprisonment was ineffective. Further, Mr. Ventura was prejudiced by his trial counsel’s conduct.

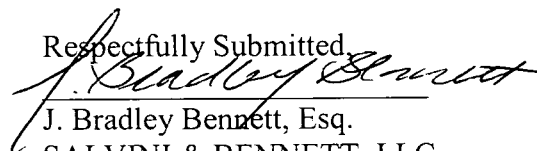
“To establish prejudice, the proper analysis is to determine whether there was a reasonable probability that, but for counsel's unprofessional errors, the defendant would not have pled guilty and would have insisted on going to trial.” *Thompson v. State*, 340 S.C. 112, 116–17, 531 S.E.2d 294, 296–97 (2000) (citing *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). In the instant case, had trial counsel advised Mr. Ventura that the court (even in light of his cooperation) had the right to sentence him to life imprisonment, he would not have entered a guilty plea. There is a reasonable probability in this matter that Mr. Ventura would not have entered a guilty plea had he known that he did not have an agreement with the Solicitor’s office for “time served” and or a substantially reduced sentence. Trial counsel agreed that Mr. Ventura was confused about receiving credit for the time he had served prior to his sentencing. Trial counsel was thus put on notice that Mr. Ventura did not understand the risk he was taking by cooperating with law enforcement officers without the benefit of an agreement with the Solicitor’s office for a sentencing recommendation.

Based thereon, this Court should find that Mr. Ventura was denied his Sixth Amendment right to the effective assistance of counsel.

CONCLUSION

Based on the foregoing, as further set forth herein above, this Court should find that Mr. Ventura was denied his Sixth Amendment right to the effective assistance of counsel and reverse and remand this matter.

Respectfully Submitted,



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Dated: August 11, 2016
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2016-000775

Rudis Arnold Ventura, Petitioner,

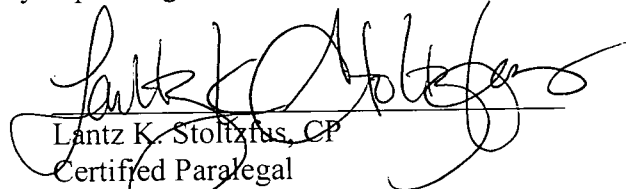
v.

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that, on August 31, 2016, I served a copy of the PETITION FOR WRIT OF CERTIORARI and APPENDIX OF PETITIONER in this action, on counsel of record by mailing the PETITION and APPENDIX to her address as so stated below and by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed.

August 31, 2016
Greenville, South Carolina


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August 31, 2016

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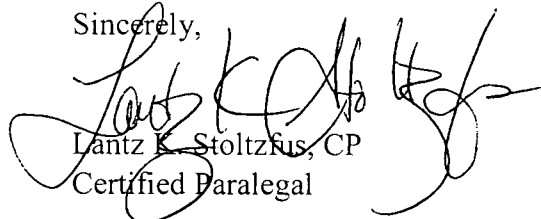
IN THE MATTER OF: *Rudis Arnold Ventura vs. State of South Carolina*
Appellate Case No. 2016-000775

Dear Clerk of Court:

Enclosed please find the PETITION FOR WRIT OF CERTIORARI, APPENDIX OF PETITIONER, and PROOF OF SERVICE for filing in the above-referenced matter. Please return the extra filed copy (1) of the PETITION FOR WRIT OF CERTIORARI and filed copies (2) of the PROOF OF SERVICE to our office in the enclosed self-addressed envelope provided herein, postage fully prepaid thereon.

If you have any questions or concerns, please do not hesitate to call me. I appreciate your kind assistance in this matter.

Sincerely,



Lantz K. Stoltzfus, CP
Certified Paralegal

Encls.

cc: Alicia A. Olive, Esq.

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