STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

The Honorable J. Ernest Kinard, Jr., Deceased Circuit Court Judge

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Appellate Case No.: 2015-002016

STACARDO GRISSETT,.....Petitioner,

v.

STATE OF SOUTH CAROLINA,.....Respondent.

RETURN TO AUSTIN PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in failing to explain sentencing consequences to petitioner to the extent that a request for a six-year sentence would not constitute a guarantee that the plea judge would automatically issue a six-year prison term in the case.

STATEMENT OF THE CASE

Petitioner (Stacardo Grissett) was indicted at the April 2009 term of the Richland County Grand Jury for strong arm robbery (2009-GS-40-1493), kidnapping (2009-GS-40-1494), and lynching, second degree (2009-GS-40-1495). Tynika Claxton, Esquire represented Petitioner. On August 23, 2010, Petitioner appeared before the Honorable L. Casey Manning and pled guilty to strong arm robbery and lynching, second degree. He pled guilty pursuant to North Carolina v. Alford[1] to the kidnapping charge.[2] Judge Manning deferred sentencing until September 16, 2010, at which time he sentenced Petitioner confinement for ten (10) years imprisonment for lynching, eight (8) years for kidnapping, and ten (10) years for strong arm robbery, all sentences to run concurrently. The Applicant did not appeal his conviction and/or sentence.

Petitioner subsequently filed an application for post-conviction relief on July 8, 2011. Respondent filed a Return and Partial Motion to Dismiss on June 3, 2015, stating that his application was successive to the previous application for post-conviction relief and for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. A PCR hearing was held on September 10, 2012 at the Richland County Courthouse before the late Honorable J. Ernest Kinard, Jr. Petitioner was represented by David Belding, Esquire, and Robert D. Corney, Assistant Attorney General, appeared on behalf of the state. On February 1, 2012, Judge Kinard issued a Final Order of Dismissal denying Petitioner's claims of ineffective assistance of counsel in the case.

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[1] North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

[2] The plea and sentencing transcripts both show a charge of unlawful carrying of a pistol, for which Petitioner was sentenced to one year; however, Respondent is not in possession of any paperwork reflecting this charge, and it was not mentioned in the petition for writ of certiorari.

On October 7, 2014, petitioner filed a second PCR application requesting an Austin[3] appeal in the case. App.p. 134 - 138. The respondent filed a return on the Austin request and a motion to dismiss on the additional PCR issues raised. App.p. 139-144. A second PCR hearing was convened on August 25, 2015, at the Richland County Courthouse before the late Honorable Tanya A. Gee. App.p. 146-152. Petitioner was present at the hearing and represented by Jonathan D. Waller, Esquire, and Assistant Attorney General J. Clayton Mitchell appeared on behalf of the state. On August 18, 2015, Judge Gee issued an Order granting petitioner's request for a belated PCR appeal per Austin. App.p. 154-157. Petitioner appealed. On May 16, 2016, Petitioner filed a petition for writ of certiorari to this Court. This return follows.

[3] Austin v. State, 305 S.C. 453, 409 S.E.2d 375 (1991).

STANDARD OF REVIEW

This Court must affirm the post-conviction relief ("PCR") court's factual findings if there is any evidence of probative value in the record to support them. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). This Court should reverse the PCR court only where there is no probative evidence to support the decision or the decision was controlled by an error of law. Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010). Furthermore, this Court "gives great deference to the [PCR] court's findings of fact and conclusions of law." Id. (quoting Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005)).

ARGUMENT

Probative evidence exists to uphold the post-conviction relief judge's finding that plea counsel was not ineffective in his representation of Petitioner, though Petitioner believed that he was pleading to a six year sentence.

The petitioner in this matter alleges that plea counsel erred to the extent of being ineffective because she allegedly failed to explain that a request for a certain sentence would not guarantee that 'sentence. This allegation is completely unsupported by the record. Petitioner argues that it is within the plea or sentencing judge's discretion to sentence outside of a guideline, and cites to a United States Supreme Court opinion for this proposition.[4] Petitioner continues on to argue that a trial judge is under no duty to accept a sentencing recommendation, but that a defendant must understand the consequences of his plea.

Respondent does not contest any of these ideas; however, it argues that there is no evidence in the transcripts (of the plea, sentencing, and PCR hearing) to uphold the Petitioner's contentions and, additionally, this Court is required to affirm the PCR court's findings if there is any probative evidence in the record to uphold them. Dempsey, supra. Respondent submits that this evidence is bountiful.

The plea transcript is replete with references to and questions regarding the total amount of potential prison time that Petitioner was facing. On multiple occasions, the plea judge questions Petitioner about his knowledge of each charge, the potential sentence of each charge, and whether he is guilty of each charge. App.p.7, line 25-p.12, line 17; App.p.12, line 21-p.13, line 7; App.p.17, lines 1-25; App.p.18, line 25-p.21, line 13. Not only was the plea judge very thorough in ensuring Petitioner's understanding of the charges he faced and the consequences of those charges, he was very patient in securing the Petitioner's answers. Though Petitioner

[4] Gall v. United States, 552 U.S. 38 (2007).

testified that he was pleading guilty in order to avoid the possibility of receiving a life sentence at trial, he never wavered from the fact that he was, in fact, guilty. App.p.7, line 25-p. 12, line 17; App.p.18, line 25-p.21, line 13; App.p. 31, line 12-p.32, line 8.

Petitioner notes that the plea judge deferred sentencing because he "wanted to think about the sentence [he was] going to impose...because of [petitioner's] limited prior record and [him being] 20 years of age and there's some other things [he needed] to consider." App. p.32, lines 16-25. Petitioner also notes that plea counsel notified the court that he did not qualify for sentencing under the Youthful Offender Act, but she requested a short sentence based on his age and prior cooperation with law enforcement. App.p.43, line 21-p.44, line 8.[5] This was reinforced at the PCR hearing during plea counsel's testimony when she stated that she asked for a six year sentence because that was the maximum sentence allowed under the Youthful Offender Act. App.p.115, line 6-p.116, line 3. It is clear that she did her best to minimize Petitioner's exposure and sentencing, but that the idea of six years was never a recommended or negotiated sentence. App.p.111, line 22-p.112, line 10.

Current case law holds that, to be knowing and voluntary, a plea must be entered with awareness of the consequences of the plea, i.e., proper advice by the judge on mandatory sentencing. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A plea is knowingly and voluntarily entered even if there was confusion at the plea proceeding over the sentencing range because the applicant was correctly informed of maximum exposure. Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). A guilty plea entered because of a belief that a judge will impose a certain sentence is not involuntary. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (fact that defendant "hoped" and "expected" to get reduced

[5] At the sentencing hearing, there was further information provided by the State that Petitioner may have been pretending to have one or more potentially debilitating medical conditions. This information was reviewed by the judge before sentencing.

sentence does not render plea invalid); Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984) (fact that defendant "thought" judge would give lighter sentence not ground for relief).

Based on the abundance of case law and the clarity of the record, it is apparent that Petitioner understood the conditions and ramifications of the guilty plea as he entered it, he was competent to enter it, and he did so knowingly and voluntarily. This was the finding of the PCR judge, and probative evidence exists to uphold that decision. For these reasons, this petition for writ of certiorari should be denied and dismissed with prejudice.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

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By _____
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Oct. 3, 2016

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Return to Austin Petition for Writ of Certiorari** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Wanda H. Carter
S.C. Commission on Indigent Defense
Appellate Defense
PO Box 11589
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This 3rd day of October, 2016

FELICIA V. HAYES
Legal Assistant For Respondent