STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Larry B. Hyman, Circuit Court Judge

SAMA CHAKA QUINLAND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000693

JOHNSON PETITION FOR WRIT OF CERTIORARI

Laura R. Baer
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ISSUE PRESENTED

Whether the PCR court erred in finding that plea counsel provided effective assistance of counsel in advising Appellant to plead guilty to a reduced charge of voluntary manslaughter with no negotiation or recommendation as to sentencing, where there was no evidence that the state could have proven the greater charge of murder had the case gone to trial, such that Petitioner received no real benefit from his guilty plea when the judge sentenced him to the maximum of thirty years?

STATEMENT OF THE CASE

Guilty Plea

Petitioner Sama Quinland was arrested on charges of murder and armed robbery on August 28, 2012. On June 13, 2013, Quinland waived presentment to the grand jury and pled guilty to voluntary manslaughter before the Honorable Benjamin Culbertson. App. 1 – 3; App. 7. Quinland was represented by Andrea Price, and the state was represented by assistant solicitor Kenli Bare. App. 1. According to the solicitor, a nineteen year old transgendered man, DeAndre Fulton, posed as a female on-line offering sexual services. Quinland, thinking that Fulton was a woman, engaged in a sexual act with Fulton. Afterward, when Quinland learned that Fulton was a woman, he was overcome with an "extreme sense of rage and/or anger" and killed Fulton. App. 10 - 12. The state nolle prossed the armed robbery charge. App. 12, ll. 18-21.

Another public defender, James Cheeks, met with Quinland and testified in support of mitigation regarding Quinland's remorse and Fulton's deceptive appearance. App. 13, l. 25 - 19, l. 19. Quinland also spoke during sentencing and expressed his sympathy for Fulton's family and his family. He said that he never thought that he would face this kind of a charge. App. 20, ll. 19-23 Judge Culbertson sentenced Quinland to the maximum sentence of thirty years. App. 25.

Quinland filed a notice of appeal from his guilty plea, which was dismissed. App. 43, ll. 12-13; App. 75.

Post-Conviction Relief

On March 13, 2014, Quinland filed an application for post-conviction relief. App. 27. The State filed its Return on September 8, 2014. App. 34. On November 12, 2015, an evidentiary hearing was held before the Honorable Larry B. Hyman, Jr. Quinland was

represented by Leah Moody, and the state was represented by assistant attorney general Alicia Olive. App. 40. Both Quinland and plea counsel Andrea Price testified at the hearing.

Quinland testified that Price never fully discussed the option of going to trial on the murder charge, but instead focused on him entering a plea to voluntary manslaughter. Because it was an "open plea," there was no negotiation or recommendation as to his sentence such that he could have been sentenced to a maximum of thirty years. While Quinland admitted that he was never guaranteed a sentence, he said that Price advised him that he would likely receive a sentence of between two and fifteen years. App. 45, l. 16 – 46, l. 2; App. 47, ll. 3 – 50, l. 8; App. 51, l. 9 – 53, l. 12; App. 59, ll. 19-20. Quinland said that there was no malice aforethought involved. He thought he was going out with a woman and acted in a sudden heat of passion. App. 48, l. 15 – 49, l. 4. He averred that had he gone to trial, he would not have been convicted of murder. Rather, he would have been convicted of voluntary manslaughter after a trial and received less than the maximum sentence that he received from pleading guilty to voluntary manslaughter. Ap. 53, l. 13 – 54, l. 1.

Price said that she and Quinland agreed that his actions amounted only to voluntary manslaughter, not murder. App. 62, l. 21 – 63, l. 19. She opined that the solicitor apparently also agreed with that assessment, which is why she made a plea offer for voluntary manslaughter. Price advised Quinland that he had a "decent defense" that the conduct amounted only to voluntary manslaughter. App. 64, l. 15- 65, l. However, she said that there was no defense to the voluntary manslaughter charge. App. 63, ll. 20-21. Even so, she advised Quinland that he would receive "a very substantial sentence" if he went to trial. App. 67, ll. 2-20. Price admitted that the plea offer did not include a negotiated sentence. App. 65, ll. 15-18.

At the conclusion of the PCR hearing, Judge Hyman ruled that he would deny Quinland's PCR application and asked the state to prepare the Order. App. 71, l. 10 – 72, l. 13. On March 14, 2016, Judge Hyman filed an Order of Dismissal denying Quinland's PCR application. App. 74 – 82.

ARGUMENT

The PCR court erred in finding that plea counsel provided effective assistance of counsel in advising Appellant to plead guilty to a reduced charge of voluntary manslaughter with no negotiation or recommendation as to sentencing, where there was no evidence that the state could have proven the greater charge of murder had the case gone to trial, such that Petitioner received no real benefit from his guilty plea when the judge sentenced him to the maximum of thirty years.

Plea counsel Price advised Quinland that he should accept the State's offer to plead guilty to a lesser-included offense of voluntary manslaughter despite the lack of any recommendation or negotiation as to sentencing. App. 64, l. 15 – App. 65, l. 18; App. 66, ll. 12-15. Quinland's alternative was to proceed to trial on the charges of murder and armed robbery. App. 55, l. 18 – 56, l. 9. While Price expressed confidence in the defense that Quinland's actions amounted only to voluntary manslaughter, she advised him that he would receive "a very substantial sentence" if he went to trial. App. 62, l. 21 – 63, l. 8; App. 64, ll. 15 -22; App. 67 ll. 9-15. Yet, had Quinland been convicted of voluntary manslaughter after a trial he would not have received any more than the substantial thirty-year sentence that he received as a result of his guilty plea. See S.C. CODE ANN. § 16-3-50 ("A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years."). Thus, plea counsel misled Quinland into thinking that he was receiving some sort of benefit by pleading guilty, when, in fact, he was not.

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 (1984). "Where allegations of ineffective assistance of counsel are made, the question becomes, 'whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' " Butler v.

State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686). 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).

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. "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). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The United States Supreme Court has held that "[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results." Brady v. United States, 397 U.S. 742, 758 (1970).

> A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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.

Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)); see also Hill, 474 U.S. at 59 (footnote omitted). In order to enter a voluntary guilty plea, "a defendant must know the direct consequences of his plea, including the actual value of any commitments made to him." Hammond v. United States, 528 F.2d 15, 19 (4th Cir. 1975).

Here, plea counsel and Quinland both agreed that the evidence suggested that the killing of the Decedent was voluntary manslaughter rather than murder. App. 53, ll. 13-18; App. 62, l. 21 – 63, l. 3. Even at the guilty plea hearing, the solicitor said:

> It's the state's position that since the victim represented himself as a female, but the defendant found out that he was a male while engaging in those private acts, there was no malice aforethought at the time of the killing, but in an extreme sense of rage and/or anger. That's also indicated, in the state's opinion, by the number of stab wounds and gunshot wounds that the victim suffered. It's for that reason that we've agreed to allow the plea to voluntary manslaughter as opposed to the original charge that he was charged with, which was murder.

App. 12, ll. 8-17. While there may have been the possibility of a conviction for armed robbery, such a sentence may well have been run concurrent to the voluntary manslaughter sentence. See Tant v. South Carolina Department of Corrections, 408 S.C. 334, 759 S.E.2d 398 (2014) ("The rule of law is well settled that two or more sentences of a defendant to the same place of confinement run concurrently, in the absence of specific provisions in the judgment to the contrary." (quoting Finley v. State, 219 S.C. 278, 282, 64 S.E.2d 881, 882 (1951))).

While both Quinland and plea counsel testified that no promises were made as to sentencing, plea counsel did not deny Quinland's allegation that she told him that he would likely receive a sentence between two and fifteen years if he pled guilty. App. 53, ll. 1-7; App. 59, ll. 19-20; App. 65, ll. 19-20. Plea counsel also advised Quinland that if he were instead to go to trial, he would receive "a very substantial sentence." App. 67, ll. 9-15. Had Quinland not been deceived by plea counsel's baseless projection of a lesser sentence at a plea hearing, he would have instead gone to trial. App. 53, ll. 13-18.

CONCLUSION

Based on the foregoing, Petitioner Sama Quinland respectfully requests that this Court grant his petition for writ of certiorari and order further briefing on the issue raised herein.

Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of October, 2016.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sama Chaka Quinland 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 Larry B. Hyman, which was held on November 12, 2015, 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 Sama Chaka Quinland.

Respectfully Submitted,

Laura R. Baer

Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

This 21st day of October, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of 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."

Laura R. Baer
Appellate Defender

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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 Alicia Olive, 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 Sama Chaka Quinland, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 21st day of October, 2016.

Laura R. Baer

Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2016.

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