

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Frank R. Addy, Circuit Court Judge

MICHAEL T. SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000435

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

INDEX

INDEXi

ISSUE PRESENTED1

STATEMENT2

ARGUMENT4

CONCLUSION7

PETITION TO BE RELIEVED AS COUNSEL.....8

ISSUE PRESENTED

Did the PCR Court err in holding Petitioner's guilty plea was intelligently, voluntarily, and knowingly entered in light of Petitioner's testimony that plea counsel coerced him to plead guilty while Petitioner was under the influence of medications?

STATEMENT

On January 9, 2012, Petitioner pled guilty to three counts of burglary in the first degree (Indictments 2011-GS-18-686, -87, -88) in front of the Honorable Diane S. Goodstein in Dorchester County. App. 163 – App. 167. Russell Hilton represented the State. Petitioner was represented by Christopher J. Murphy.

The facts presented at the guilty plea by Solicitor Hilton are as follows: The first burglary occurred on March 17, 2011.¹ App. 21, lines 18 – 19. Petitioner and his codefendants were alleged to have held the victim at gunpoint and stolen cash and a shotgun. App. 21 line 21 – App. 22 line 1. The second burglary occurred on March 18, 2011. App. 22 line 3. Petitioner was alleged to have stolen a laptop computer and cordless drill. App. 22 lines 17 – 20. The third burglary occurred on March 18, 2011 wherein Petitioner was alleged to have stolen a laptop computer and video camcorder. App. 22 line 25 – App. 23 line 4. Petitioner and his codefendants were later apprehended in Georgia. App. 23 lines 7 – 11.

Judge Goodstein sentenced Petitioner to 20 years' imprisonment for each charge with the sentences to run concurrent. App. 34 line 25 – App. 35 line 14. Petitioner did not appeal his conviction or sentence.

Petitioner filed a timely application for post-conviction relief on June 19, 2012. App. 38. Petitioner's application contained allegations of ineffective assistance of counsel, including inadequate adversarial skills and inadequate investigation. App. 40. He also sought to withdraw his guilty plea. App. 40.

¹ The Solicitor states that the burglary occurred on March 17, 2010. Upon information and belief, this burglary was alleged to have been part of a spree of other burglaries and therefore most likely took place in 2011. App. 62 line 14 – App. 63 line 2; App. 110, lines 22 – 24.

The State made its Return on or about October 19, 2012. An evidentiary hearing was conducted on October 26, 2015 before the Honorable Frank R. Addy, Jr. in St. George, South Carolina. App. 53. Tommy A. Thomas represented Petitioner, and the State was represented by J. Clayton Mitchell. Petitioner, his wife, and plea counsel testified during the hearing. On January 8, 2016, Judge Addy signed an Order denying Petitioner relief. App. 145. The Order of Dismissal was filed on January 15, 2016. App. 145. This Petition follows.

ARGUMENT

The PCR Court erred in holding Petitioner's guilty plea was intelligently, voluntarily, and knowingly entered in light of Petitioner's testimony that plea counsel coerced him to plead guilty while Petitioner was under the influence of medications.

Petitioner testified that, while in the county jail prior to his plea, he was taking "three or four" medications for a seizure disorder. App. 99 lines 16 – 21. He also testified that he brought this fact to the attention of plea counsel. App. 100 lines 17 – 25. Petitioner further testified that he told plea counsel that he was having trouble thinking straight. App. 101 lines 1 – 5. These problems manifested themselves at the time of his plea. App. 101 lines 12 – 19. As a result, at the evidentiary hearing in his PCR case, Petitioner testified in favor of his claim that his plea was not voluntary, freely, or intelligently made:

Q: Do you believe that your plea was freely and voluntarily - -

A: No, sir.

Q: - - given?

A: No, sir.

Q: Okay. Also the other components is that you knew what you were doing. Did you know what you were doing?

A: Not really, no.

Q: And intelligently. Did you have all the information that you needed to be able to make this decision to enter into a plea?

A: No, sir.

Q: And I think your words to me were that you felt like you were coerced into entering this plea?

A: I was definitely coerced into it.

App. 97 lines 3 – 17.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 243-244 (1969). The record must show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege." State v. Patterson, 278 S.C. 319, 322, 295 S.E.2d

264, 265 (1982) overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). Entering a guilty plea results in a waiver of several constitutional rights; therefore the Due Process Clause requires that defendants enter into guilty pleas voluntarily, knowingly, and intelligently. Burnett v. State, 352 S.C. 589, 591, 576 S.E.2d 144, 145 (2003).

Petitioner denied having any alcohol, drugs, or any other medication within the 72 hours preceding his guilty plea. App. 5 lines 17 – 19. Petitioner justified that denial as well as his subsequent guilty plea by stating that his testimony was a result of coercion; he pled guilty in order to avoid life in prison:

The only reason that I said what I said is because I was threatened with a life sentence... I said what I said because I was told if I didn't take the 20 (years) (then) I was going to get a life (sentence). I didn't want to go to prison for life, especially for something I knew I didn't do.

App. 115 lines 15 – 22.

Petitioner gathered this belief from conversations with plea counsel. App. 65 line 21 – App. 118 line 9. Petitioner was under the impression that he was faced with only two choices: accept the plea or receive a sentence of life in prison. App. 119 lines 13 – 16. The result was that his plea was not knowingly entered. App. 118 lines 23 – 25.

Plea counsel testified that he was not aware of the fact that Petitioner was taking any medications. App. 128 lines 15 – 19. Plea counsel was unsure whether, at the time of the plea, he was aware that Petitioner had a seizure disorder. App. 141 lines 1 – 3.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). The

right to the effective assistance of counsel extends to the plea bargaining process. Hill v. Lockhart, 474 U.S. 52, 57-59 (1985); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). Appellate courts give great deference to the PCR court's findings of fact and conclusions of law. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005). When reviewing a PCR court's decision, a reviewing court "is concerned only with whether any evidence of probative value exists to support the decision." Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006).

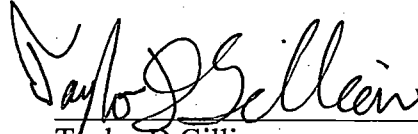
In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

Petitioner claims that erroneous advice from plea counsel induced the guilty plea. Had Petitioner been advised of possible defenses or even the potential sentencing ranges other than life in prison following a conviction, he would not have pled guilty.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his application for post-conviction relief, reverse the charges against him, and remand the case for a new trial.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of October, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Frank R. Addy, Circuit Court Judge

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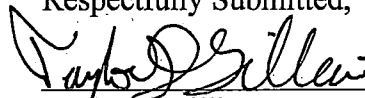
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael T. Sanders states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
 2. He has reviewed the record of petitioner's trial before Judge Frank R. Addy, which was held on October 26, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
 3. He 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 as counsel for Michael T. Sanders.

Respectfully Submitted,



Taylor D Gilliam

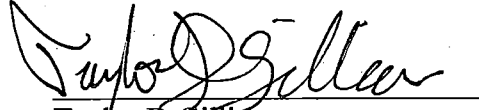
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of October, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of 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."



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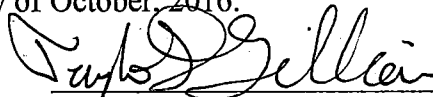
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RESPONDENT


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 Ruston Neely, 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 Michael T. Sanders, #290266, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 21st day of October, 2016.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

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

 _____ (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025