

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable Roger L. Couch, Circuit Court Judge

Rion Beaty, Petitioner,

v.

State of South Carolina Respondent.

Appellate Case No. 2016-000492

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Attorney General

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ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

- 1. Was Petitioner's guilty plea knowingly, intelligently, and voluntarily made?**

STANDARD OF REVIEW

In reviewing a PCR court's decision, an appellate court is concerned only with whether there is any evidence of probative value that supports the decision. Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011) (citing Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010)). 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. at 589, 690 S.E.2d at 79. 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

1. The PCR Court correctly denied Petitioner's allegation that his guilty plea was not knowingly, intelligently, and voluntarily made.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). 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. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Petitioner's own testimony at the evidentiary hearing is informative in determining whether his guilty plea was knowing, intelligent, and voluntary. Petitioner claimed the following:

1. Petitioner wanted a ten year plea deal. App. p.57, 63-64.
2. Petitioner discussed defenses and alibis with plea counsel. App. p.61-62.
3. Petitioner signed plea affidavit, which covered all the aspects of the plea and Petitioner's constitutional rights, with plea counsel. App. p.63.
4. Petitioner put 'no' as his answer on the plea affidavit asking whether there were any recommendations by the State. App. p.24.

5. Petitioner testified the State had videos, two eye witnesses, and statements made against him. App. p.62, 69.
6. Petitioner testified he agreed with the facts presented by the solicitor. App. p.69.
7. At the conclusion of the guilty plea, Petitioner apologized to the victims for what he had done. App. p.70.

At the evidentiary hearing, Petitioner stated multiple times he was hysterical during his guilty plea. App. p. 57, 62, 70. However, Petitioner testified he never told the judge. App. p.69. Furthermore, plea counsel testified Petitioner was not hysterical, but was upset after receiving fifteen year sentence. App. p.80. The PCR Court found Petitioner's testimony not credible. App. p.110.

Petitioner's witness, Lee Mitchell, originally stated plea counsel negotiated a ten year deal for Petitioner. App. p.49. The witness corrected that statement under cross-examination; he stated plea counsel told him he would try to get Petitioner ten years. App. p.51. Plea counsel testified he never told or guaranteed Petitioner or anyone in Petitioner's family that he would receive a ten year sentence. App. p.93. Plea counsel stated he has never done that in his years of practicing criminal defense. App. p.93. The PCR Court found plea counsel's testimony credible. App. p.110.

Petitioner admitted that plea counsel went over his rights and defenses with him. Furthermore, he admitted to reading and signing a plea affidavit that went over his rights and the aspects of his plea. Petitioner was dissatisfied and upset with his fifteen year sentence. App. p.80. However, plea counsel credibly testified he told Petitioner there was no guarantee of a ten year sentence. Statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his

statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). As indicated by counsel's advice and the plea affidavit, Petitioner knew the sentencing range he was facing and the lack of sentencing negotiations. Petitioner's expectation of ten years, tempered by plea counsel's advice that there was no guarantee, is not a valid reason to invalidate his guilty plea.

2. The PCR Court correctly found that grounds for a White claim existed and properly granted a belated direct appeal.

The State does not contest the Petitioner's allegation he was improperly denied a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).


CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the petition be denied. If this Court sees fit to grant the petition for writ of certiorari, Petitioner would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

November 28, 2016

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Beaufort County
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

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S.C. SUPREME COURT

RION BEATY,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

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

Lara M. Caudy, Esquire
SC Commission of Indigent Defense
Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 28th day of November, 2016


ASHLEY HAWORTH
LEGAL ASSISTANT



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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

November 28, 2016

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Rion Beaty v. State of South Carolina
Appellate Case No. 2016-000492
Lower Court Case No: 2014-CP-07-1495

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Ruston W. Neely
Assistant Attorney General
SC Bar No. 100192

RWN/ah
Enclosures

cc: Lara M. Caudy, Esquire