ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

RECEIVED
DEC -7 2016
S.C. SUPREME COURT

CHAD HOLLINGSWORTH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001053

JOHNSON PETITION FOR WRIT OF CERTIORARI

Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the PCR Court erred in finding that plea counsel rendered effective assistance of counsel where she failed to properly explain to Petitioner the terms of the solicitor's second plea offer for a twenty-year recommended sentence?

STATEMENT OF THE CASE

Indictments and Guilty Plea

On December 12, 2013, the Spartanburg County Grand Jury indicted Petitioner Chad Hollingsworth with two counts of grand larceny, value more than $2,000 but less than $10,000; two counts of failure to stop for a blue light; one count of carjacking; one count of first degree burglary; one count of assault and battery of a high and aggravated nature ("ABHAN"); one count of attempted murder; and one count of resisting arrest with a weapon. App. 131 – 146.

On July 7, 2014, Hollingsworth pled guilty to the above offenses before the Honorable Roger L. Couch. App. 1. Hollingsworth was represented by Claire Hall, and the state was represented by assistant solicitor Barry Barnette. App. 1. At the beginning of the hearing, the solicitor explained that the plea was "straight up" because the solicitor withdrew his prior offer when he learned that Hollingsworth wanted to relieve his attorney, Hall, that morning. App. 4, l. 7 – 5, l. 13; see also App. 32, ll. 4-16.

The state's version of the facts alleged that Hollingsworth was under the influence of narcotics when he broke into the home of Pauline Gossett. Surprised when Gossett returned home, Hollingsworth ran to the neighbors' house and was met by Officer Gary Neal, who was responding to a call for a burglary in progress. App. 21, l. 19 – 22, l. 8. Hollingsworth pulled out a knife and continued to run from Neal and other officers. App. 22, l. 9 – 23, l. 21. Hollingsworth broke a window on a green truck that was stopped in the roadway, attempted to get inside, but then ran to the porch of another house. Officers tased him, but it had no effect. Hollingsworth continued on foot to the HotSpot gas station, where he took a black Chevy Monte Carlo that had the keys left inside. Officer Teal fired two shots as Hollingsworth drove off. App. 23, l. 22 – 26, l. 2. Hollingsworth led police on a high speed chase and was eventually

stopped by police. Hollingsworth got out of the car and ran into Blalock Lake. Officers found him at an abandoned house near the lake, where they tased him twice and took his knife before arresting him. App. 26, ll. 3-25.

Hollingsworth was thirty-five years old and had an eighth grade education, though he eventually earned his GED. App. 13, l. 23 – 14, l. 8. He had three children, ages sixteen, eight, and three, and worked intermittently doing roofing. App. 14, l. 11 – 15, l. 2. Hollingsworth and his family members informed the court about his longtime struggle with drug dependency, specifically methamphetamine, since the deaths of his parents. App. 34 – 41. Hollingsworth said that he had no memory of the events for which he was charged. App. 39, ll. 2-4.

Judge Couch sentenced Hollingsworth to concurrent terms of five years for the two failure to stop for blue lights and grand larceny, ten years for resisting arrest, twenty years for ABHAN and carjacking, and twenty-five years for first degree burglary and attempted murder. App. 47 – 48.

Direct Appeal

Hall filed a Notice of Appeal from guilty plea on Hollingsworth behalf. App. 52 – 56; Rule 203, SCACR. Hollingsworth filed a *pro se* response on August 6, 2014. App. 57 – 60. The Court of Appeals dismissed the appeal on December 3, 2014, finding that the *pro se* explanation was insufficient. App. 61. The case was remitted on December 19, 2014. App. 62.

Post-Conviction Relief Application and Hearing

On December 8, 2014, Hollingsworth filed his application for post-conviction relief ("PCR"). App. 63 – 69. The state filed its Return on May 19, 2015. App. 70 – 74. On March 23, 2016, an evidentiary hearing was held before the Honorable R. Keith Kelly. App. 75. Hollingsworth was represented by Leah Moody, and the state was represented by assistant

attorney general Alicia Olive. App. 75. Hollingsworth and plea counsel Hall both testified. App. 76.

Hollingsworth explained his understanding that the state's original plea offer was for zero to thirty years and included dismissal of the burglary charge and one count of grand larceny. He stated that he wanted to accept that offer but that Hall instead negotiated another offer for a negotiated sentence of twenty years. Hollingsworth did not want to take that deal because he wanted to be able to argue for a lesser sentence and wanted the burglary charge, which carried a potential life sentence, off of the table. App. 81, l. 18 – 83, l. 4; App. 86, l. 17 – 87, l. 3; App. 96, l. 20 – 97, l. 19. He explained that the deal offered by the solicitor was "automatically twenty, not a zero to twenty." App. 96, l. 20 – 97, l. 2. He said that he would "have taken a zero to twenty [offer]." App. 97, l. 4.

Hollingsworth said that some of the statements in the officer's report were inconsistent with the videos provided in discovery. He did not think that Hall was listening to him and recalled that she told him that he was not her "co-counsel" and needed to let her do her job. App. 90, l. 15 – 91, l. 11; App. 92, ll. 13-16; App. 93, ll. 15-24; App. 94, l. 24 – 95, l. 2. On the day he entered his plea, Hollingsworth was told that he could either plea "straight up" or go to trial. He was not prepared for trial, so he pled guilty, intending to withdraw it on appeal. App. 83, ll. 9-24; App. 88, ll. 14-17; App. 99, ll. 2-4. Hollingsworth was also told that he would be parole eligible, but he is not. App. 87, ll. 13-15.

Claire Hall testified: "They charged him with a lot of things and some of them, you know, in my opinion, may have been a bit of a reach, but there was there was a lot of evidence of some stuff that would I think definitely shock a jury or a judge with what happened." App. 108, ll. 9-13. She said that the solicitor originally offered a plea to the burglary, which she said was a

"non-starter" because it carried fifteen years to life. App. 109, l. 15 – 110, l. 1. The solicitor eventually offered a recommendation of twenty years, such that she could have argued for less time. Hall could not recall if that offer involved dropping the burglary charge or not, but she said that Hollingsworth agreed to accept it approximately one week before the plea date. App. 110, ll. 2-20. However, on the day before the plea, Hollingsworth told her that he did not want to take the plea and wanted to relieve her as counsel. App. 111, ll. 5-20; App. 113, ll. 1-10; App. 115, l. 17 – 116, l. 24. When Hall told the judge and solicitor about Hollingsworth's desire to relieve her, the solicitor revoked the twenty-year offer. App. 113, ll. 11-16. Ultimately, Hollingsworth pled guilty "straight up." App. 112, ll. 18-22; App. 116, l. 24 – 117, l. 20.

On May 9, 2016, Judge Kelly filed an Order of Dismissal, denying Hollingsworth's request for post-conviction relief. App. 122 – 130.

ARGUMENT

The PCR Court erred in finding that plea counsel rendered effective assistance of counsel where she failed to properly explain to Petitioner the terms of the solicitor's second plea offer for a twenty-year recommended sentence.

Hollingsworth's testimony made clear that he misunderstood the solicitor's second offer to be a negotiated sentence of twenty years rather than the twenty-year recommendation that plea counsel Hall explained it to be in her testimony. Compare App. 81, l. 18 – 83, l. 4; App. 86, l. 17 – 87, l. 3; App. 96, l. 20 – 97, l. 19, with App. 110, ll. 2-20. Had Hall explained the solicitor's offer properly so that Hollingsworth understood that he was not agreeing to twenty years, Hollingsworth would have accepted the offer. App. 97, l. 4. Thus, the PCR court erred in finding that plea counsel was not deficient in her advice to Hollingsworth regarding entering a guilty plea. See App. 128. Hollingsworth was prejudiced in that he ultimately pled guilty "straight up" and was sentenced to twenty-five years, five years more than the recommendation in the solicitor's second plea offer.

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). 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). An "unsound result" occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969). Therefore, in the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000); see also Hill v. Lockhart, 474 U.S. 52, 56 (1985) ("The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.' " (quoting North Carolina v. Alford, 400 U.S. 25, 31(1970)). "The second, or 'prejudice,' requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. at 59. In other words,

> 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).

This Court has also held that "a defendant has the right to effective assistance of counsel during the plea bargaining process." Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009). "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused."

Missouri v. Frye, 132 S.Ct. 1399, 1408 (2012); see also Davie, 381 S.C. at 609, 675 S.E.2d at 420 (2009) (adopting "rule that counsel's failure to convey a plea offer constitutes deficient performance" and holding "counsel is required to fully communicate with the client so that the client can make an informed decision regarding any proposals by the State" (emphasis added)).

The United States Supreme Court noted in Missouri v. Frye 132 S.Ct. 1399, 1407 (2012), that the plea bargaining can benefit both parties by providing "[t]he potential to conserve valuable prosecutorial resources and for defendants to admit their crimes and receive more favorable terms at sentencing." The Court further stated that "[i]n order that these benefits can be realized, however, criminal defendants require effective counsel during plea negotiations." 132 S.Ct. at 1407-08. "Anything less might deny a defendant effective representation by counsel at the only stage when legal aid and advice would help him." Id. at 1408 (internal citations and quotations omitted).

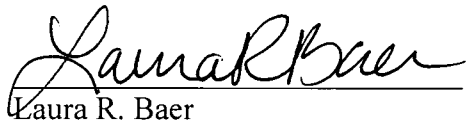
Here, counsel had a responsibility to explain the solicitor's offer to Hollingsworth in a way that he understood it. Hollingsworth understood the solicitor's second plea offer to be for a twenty-year negotiated sentence rather than a twenty-year recommendation, which would allow plea counsel to argue for less time. Even so, Hollingsworth initially indicated his acceptance of what he thought was a twenty-year negotiated sentence. However, after pondering what he thought was a weaker offer than the original zero to thirty, and Hall's dismissiveness of his questions and concerns, Hollingsworth told Hall that he wanted her relieved as his attorney and would not accept the twenty-year offer. Had Hollingsworth understood that offer to be how plea counsel explained it at the PCR hearing – a twenty-year recommendation – he would not have withdrawn his acceptance of the offer. It was only after Hall told the solicitor that Hollingsworth wanted to relieve her that the solicitor withdrew the twenty-year offer and required

Hollingsworth's plea to be entered "straight up" to all of the charges. Were it not for plea counsel's misadvice to Hollingsworth about the nature of the twenty-year offer, the plea negotiations would not have devolved to the "straight up" plea that resulted in Hollingsworth's twenty-five year sentence.

Thus, Hollingsworth met his burden of proving that plea counsel was ineffective, and the PCR court erred in denying his request for post-conviction relief.

CONCLUSION

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



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of December, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

CHAD HOLLINGSWORTH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Chad Hollingsworth states:

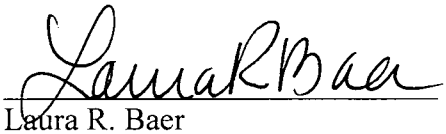
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. She has reviewed the record of petitioner's evidentiary hearing before Judge R. Keith Kelly, which was held on March 23, 2016, 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 Chad Hollingsworth.

Respectfully Submitted,



Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of December, 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

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 7th day of December, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

CHAD HOLLINGSWORTH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

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 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 Chad Hollingsworth, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 7th day of December, 2016.

Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 7th day of December, 2016.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023