

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Maite Murphy, Circuit Court Judge

RONALD LANCE,

ORIGINAL

RECEIVED

DEC 16 2016

S.C. SUPREME COURT
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001418

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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ISSUE PRESENTED

Did the PCR Court err in denying Petitioner relief where plea counsel provided ineffective assistance by failing to explain the State's prior plea offer and failing to advise that Petitioner could challenge the State's evidence, resulting in an involuntary and unknowing guilty plea?

STATEMENT

A Dorchester County Grand Jury indicted Petitioner for armed robbery and entering a bank with intent to steal during its December 2013 term. App. 112 – App. 115. On Wednesday, November 5, 2014, Petitioner pled guilty without a recommendation or negotiated sentence before the Honorable Kristi Harrington. App. 1. Pierce Wehman represented Petitioner. Donald Sorenson represented the State. The facts presented by the Solicitor are as follows:

On the afternoon of July 1, 2013, two individuals armed with handguns entered a bank in North Charleston. App. 10 lines 12 – 22. Bank employees handed money over to the two men who then left the bank. App. 12 lines 11 – 20. The same bank had been robbed three months prior, on April 1, 2013. App. 12 lines 21 – 22. As a result, the bank acquired GPS tracking devices which were utilized during the July 1 robbery.¹ App. 13 lines 13 – 25. Law enforcement became involved and located a white Hyundai Sonata with three young black males in it. App. 14 lines 17 – 25. A high-speed chase ensued. App. 15 lines 10 – 25. Following a collision involving the white Sonata, its occupants fled and could not be located. App. 15 line 21 – App. 16 line 10.

The following morning, Petitioner and codefendant Tyrone Ellison were located on the porch of a house in close proximity to where the car accident occurred. App. 16 lines 11 – 21. Based upon the statement of the third individual who was driving the Sonata, Petitioner and Ellison were taken into custody. App. 14 line 17 – App. 15 line 9; App. 16 line 23 line 23 – App. 17 line 5. Petitioner gave a statement to law enforcement. App. 53 line 13 – App. 54 line 5.

¹ Upon information and belief, these devices allowed law enforcement to track the location of the money.

Judge Harrington accepted Petitioner's guilty plea and sentenced him to a term of thirty years imprisonment on each charge, to run concurrently. App. 19 lines 13 – 19; App. 27 lines 11 – 18.

On June 23, 2015, Petitioner filed an application for post-conviction relief. App. 29. Petitioner's application contained allegations of ineffective assistance of counsel, including claims that his guilty plea was involuntarily entered.

An evidentiary hearing was held on February 22, 2016 before the Honorable Maite Murphy. App. 43. Rodney Davis represented Petitioner, and Clay Mitchell represented the State. Petitioner and his two plea attorneys testified during the hearing. On May 23, 2016 Judge Murphy issued her order denying Petitioner relief. App. 105. The Order of Dismissal was filed on June 6, 2016. This Petition follows.

ARGUMENT

The PCR Court erred in denying Petitioner relief where plea counsel provided ineffective assistance by failing to explain the State's prior plea offer and failing to advise that Petitioner could challenge the State's evidence, resulting in an involuntary and unknowing guilty plea.

From the time he was charged until the moment he pled guilty, Petitioner was represented by three different attorneys: Ash Chisolm, Mary LeMatty, and Pierce Wehman. App. 47 line 25 – App. 49 line 11. The case was transferred from Chisolm to LeMatty to Wehman, with the latter handling the guilty plea. App. 47 line 25 – App. 49 line 11. Wehman and Petitioner met twice prior to the guilty plea. App. 49 line 23 – App. 50 line 4. According to Petitioner, Wehman brought a plea offer of twenty years from the solicitor's office to one of those meetings. App. 50 lines 12 – 19. Petitioner testified that Wehman stated that he could get a sentence in the range of eight to twenty. App. 51 lines 2 – 12. Based upon this advice, Petitioner rejected the offer of twenty years. App. 52 lines 12 – 19. Petitioner claimed that Wehman was under the impression that the maximum sentence would not be imposed. App. 56 lines 12 – 21.

Petitioner asserted that during his two meetings with Wehman, they never discussed trial strategies. Petitioner testified that had Wehman discussed with him the possibility of suppressing his statement, which was taken in the hospital, he would have pled not guilty. App. 59 lines 19 – 24. Similar testimony was elicited regarding an identification line-up and a codefendant's inconsistent statements; had Wehman discussed the possibility of challenging these pieces of evidence with Petitioner, Petitioner would have elected to go to trial. App. 69 line 25 – App. 6 line 18. Wehman did not discuss with Petitioner the details regarding a Jackson

v. Denno 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964) or Neil v. Biggers 409 U.S. 188, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972) hearing. App. 80 lines 3 – 9.

In the course of representing Petitioner, Wehman advised Petitioner that “[he] thought [he] could probably do better than the twenty to twenty-five, but that it was not a guarantee.” App. 85 lines 20 – 22.

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).

Based on Petitioner’s testimony, he was unaware of his right to challenge and/or suppress his statement and the out of court identification. Furthermore, the plea judge’s colloquy did not inform him of his right to challenge evidence as a right which he was waiving. App. 8 lines 12 – 21.

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's case was assigned to Wehman during his first month of practice. App. 73 lines 1 – 8. As Petitioner testified, had he been aware of the potential challenges which he could have raised at trial, he would not have pled guilty. It was Wehman's job to discuss with Petitioner these trial strategies. Petitioner believed that Wehman was ready for neither a trial nor a guilty plea. App.


59 lines 10 – 18. As a result, Petitioner correctly asserts Wehman’s performance was deficient and fell below reasonable professional norms. Had Petitioner been advised of the opportunity to suppress his statement or the identification, he would have either accepted the plea offer or gone to trial.

Petitioner testified that it was his understanding that the twenty year plea offer only entailed the armed robbery charge. App. 67 lines 13 – 16. Wehman clarified the offer, stating that it was a negotiated offer for a sentence range of twenty to twenty-five years on the armed robbery charge only. App. 74 line 25 – App. 75 line 12. There was not a plea offer for entering a bank with the intent to steal. Wehman claimed to have discussed the armed robbery offer on both of his visits to see Petitioner. App. 75 lines 13 – 17. According to Wehman, Petitioner would have rather received 30 years on the open plea than sign the offer for twenty to twenty-five years, because he wanted “a shot at less than 20 [years].” App. 78 lines 8 – 14.

Nonetheless, Petitioner was under the impression that Wehman would successfully advocate for a sentence of less than the twenty to twenty-five year offer which was rejected. Additionally, he claims that he was unaware of the potential challenges which were available to him regarding his statement and a subsequent identification. As a result, his guilty plea was unknowingly made.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his petition for writ of certiorari to allow full briefing on this issue, reverse the charges against him, and remand the case for a new trial.


Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of December, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Maite Murphy, Circuit Court Judge

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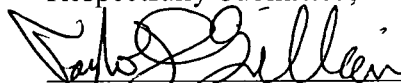
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronald L. Lance 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 Maite Murphy, which was held on February 22, 2016, 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 him as counsel for Ronald L. Lance.

Respectfully Submitted,



Taylor D Gilliam


Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of December, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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."

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

Taylor D Gilliam
Appellate Defender

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

This 16th day of December, 2016.

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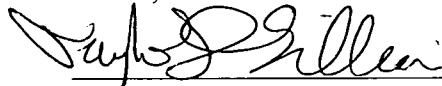
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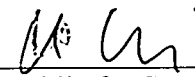
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CERTIFICATE OF SERVICE
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon 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 Ronald L. Lance, #310167, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 16th day of December, 2016.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 16th day of December, 2016.

 (L.S)

Notary Public for South Carolina
My Commission Expires: 5/12/2025