

STATE OF SOUTH CAROLINA
In The Supreme Court

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JAN 27 2017

APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable Thomas A. Russo, Circuit Court Judge

Lavard D. Lind-BaezPetitioner,

v.

State of South Carolina,Respondent:

Appellate Case No. 2016-000282

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INDEX

QUESTION PRESENTED1

STANDARD OF REVIEW2

ARGUMENT:

 1. There was probative evidence to support the PCR court’s finding that
 Petitioner’s plea was knowing, voluntary, and intelligent when plea counsel
 testified that he advised Petitioner of the pros and cons of proceeding to trial
 and ultimately left the decision to Petitioner3

CONCLUSION.....6

QUESTION PRESENTED

Was there probative evidence to support the PCR court's finding that Petitioner's plea was knowing, voluntary, and intelligent when plea counsel testified that he advised Petitioner of the pros and cons of proceeding to trial and ultimately left the decision to Petitioner?

STANDARD OF REVIEW

In a post-conviction relief action, the proper standard of review is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). "This Court gives great deference to the post-conviction relief (PCR) courts findings of fact and conclusions of law." Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005). "The Petitioner bears the burden of proving the allegations in their application." Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

There was probative evidence to support the PCR court's finding that Petitioner's plea was knowing, voluntary, and intelligent when plea counsel testified that he advised Petitioner of the pros and cons of proceeding to trial and ultimately left the decision to Petitioner.

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). Therefore, 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). 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). Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding. Scott v. State, 334 S.C. 248, 513 S.E.2d 100 (1999).

Petitioner stated that he felt like he "was left with no choice, either take the time or spend the rest of my life in prison." App. 74. The State had a very strong case against Petitioner. There was audio and cell phone record evidence implicating Petitioner of a controlled drug buy. App.

12. Petitioner was the driver, and owner of the vehicle, who fled the scene and ran from law enforcement with the drugs inside. App. 14. "Flight from prosecution is admissible as evidence of guilt. Evidence of flight has been held to constitute evidence of defendant's guilty knowledge and intent." State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005) (citations omitted). The State also had a codefendant, who gave a statement to law enforcement and was willing to testify against Petitioner. App. 78. The PCR court found Applicant's decision was, "a well-reasoned choice – in light of his poor trial prospects and overwhelming evidence of guilt – designed to mitigate the risk of spending the rest of his natural life in prison." App. 175.

Petitioner claimed he never wanted to plead guilty. App. 58. Petitioner claimed there was no audio implicating him. App. 60. Petitioner claimed he never spoke about the evidence with plea counsel. App. 63. Petitioner claimed plea counsel would refuse to represent him if the case went to trial the next day. App. 65. Petitioner claimed plea counsel never discussed his defenses. App. 66. Petitioner claimed plea counsel whispered in his ear what to say in response to the judge's colloquy. App. 67. The PCR court found Petitioner's testimony lacked credibility. App. 172. "This Court gives great deference to a PCR judge's findings where matters of credibility are involved." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (citations omitted).

Plea counsel's testimony refuted each claim Petitioner made and the PCR court found plea counsel's testimony credible. App. 172. Plea counsel testified to the following:

1. He explained the pros and cons of testifying at trial to Petitioner, including the possibility the State could impeach him with his prior convictions. App. 106-107, 111.
2. He never told Petitioner what to do and deferred to Petitioner's final decision. App. 111, 123.
3. He would have advised Petitioner not to testify at trial. App. 107.
4. Petitioner understood the risks of testifying and it would have been his choice. App. 107.
5. He explained to Petitioner the benefits of the plea and the risk of a trial. App. 108.

6. Petitioner seemed to understand their conversations. App. 109.
7. If Petitioner wanted a trial, he was ready to try the case. App. 111, 123.
8. After his explanation of the pros and cons of trial, Petitioner weighed the risks and made an informed and intelligent decision to plead guilty because of his fear of a substantially greater sentence at trial. App. 111, 122.
9. It was Petitioner's decision to plead guilty. App. 107, 111, 122.
10. He explained the significance of an Alford plea to Petitioner before the day of the plea and it was re-emphasized the day of the plea by the plea judge and counsel. App. 77, 108, 122.

Plea counsel's credible testimony directly contradicts Petitioner's argument in his Petition for Writ of Certiorari: "Clearly counsel erred in advising petitioner that he had to plead guilty rather than go to trial because a trial required his testimony and that taking a stand would expose his drug priors, which would result in a sure conviction and a higher sentence." Petitioner WoC 5. Petitioner's argument relies on Petitioner's testimony, which was found to lack credibility by the PCR judge. Plea counsel's credible testimony refuted Petitioner's claims and provided the PCR judge with probative evidence on which to base his ruling dismissing Petitioner's application.

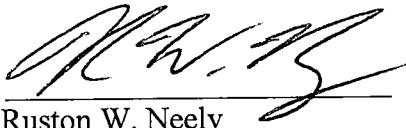
CONCLUSION

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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Jan 27, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County
Court of Common Pleas
The Honorable D. Craig Brown, Circuit Court Judge

2013-CP-26-0936
Appellate Case No. 2016-000282

LAVARD D. LIND-BAEZ,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

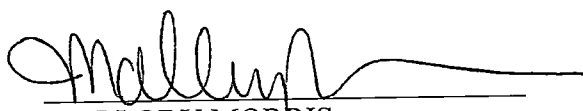
Respondent.

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:

Ms. Wanda H. Carter, Esquire
SC Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

This 27th day of January, 2017


MALLORY MORRIS
Legal Assistant for Respondent