

Petition for writ of certiorari in post-conviction relief action

The state of South Carolina

In the Supreme Court

Appeal from Charleston County

Court of common pleas

Doyet A. early III, circuit judge

Case no: 2014-CP-10-05043

Frank Middleton 284177.....Petitioner

V.

State of South Carolina.....Respondent

Pro se brief

Petition for writ of Certiorari

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S.C. SUPREME COURT

State of South Carolina

In the Supreme Court

Certiorari to Charleston County

Honorable Doyet A. Early, circuit court judge

Frank Middleton,

Petitioner

V.

State of South Carolina,

Respondent

Appellate case no: 2016-001524

Pro se, Petition for writ of certiorari

Frank Middleton SCDC# 284177

KerCI Magnolia B Unit Rm. 15 T

4848 Goldmine Highway

Kershaw, South Carolina 29067

Issues Presented

Whether the PCR Court erred in denying Applicant relief where Plea Counsel provided ineffective assistance by leading Applicant to believe, based on the Solicitor's comments, that he may receive no jail time if he pled guilty to strong arm robbery and Applicant in fact received 14 years' imprisonment?

Did the PCR Court erred in denying Applicant relief based on his testimony not being credible.

Did the PCR Court erred in denying Applicant relief based on Plea Counsel testimony being credible.

Statement:

After being indicted for armed robbery by a Charleston county grand jury during its October 2012 term, petitioner pled guilty to strong armed robbery before the honorable Thomas L. Hughston Jr. on April 9, 2014 Beattie butler represented petitioner but due to health concerns, Rhett Dunaway handled the plea. Greg Voigt, Assistant solicitor, appeared on behalf of the state. The facts presented by the prosecution were as follows:

On April 29, 2012 a man with a bandana over his face entered the Five Guys restaurant on savannah highway in west Ashley. This individual was armed with a firearm and requested that the cashier put money in a bag. He left the restaurant with approximately \$680.00. As this man was leaving, local children from petitioner's nearby neighborhood were entering the restaurant and recognized the gunman as petitioner. Petitioner was subsequently apprehended.

Prior to his guilty plea but after being apprehended, petitioner cooperated in a high profile murder case; he testified on behalf of the state with nothing to gain and nothing promised. According to the assistant solicitor, petitioner was "a big help to [the state] in the Marley Lyon trial." The plea judge was not advised in great detail regarding petitioner's assistance in that trial. According to plea counsel the prosecution *nolle prossed* petitioner's two weapon charges and reduced the indicted offense of armed robbery to strong armed robbery as a result of petitioner's testimony. Additionally the assistant solicitor told plea counsel, "I don't really care if [petitioner] gets time."

However, during petitioner's guilty plea, the assistant solicitor did not mention the recommendation of time served. All that was said regarding the sentencing offer was:

The reason for the offer from a—and after you hear this record you'll wonder why I'm offering what I'm offering, but the reason for the offer was partially due to Mr. Middleton's cooperation in a recent high-profile murder case.

Following that statement, the assistance solicitor never actually advised the court what his offer was.

Counsel Dunaway sought time served and probation as a sentence:

So, judge, it's a tall order to ask for but if I'm wrong the solicitor can correct me. I don't believe the solicitor is asking for active time. I think the time that he's done is sufficient, according to the solicitor, but if a period of probation might be granted don't think we'll be seeing Mr. Middleton back.

The plea judge sentenced petitioner to a term of 14 years...

Argument

Did the PCR Court erred in denying Applicant relief where Plea Counsel Provided ineffective assistance by leading Applicant to believe, based on the Solicitor's Comments, that he may receive no jail time if he pled guilty to strong armed robbery and Applicant in fact received fourteen years' imprisonment.

Applicant testified at his PCR hearing that he met Plea Counsel on the day of his guilty Plea hearing, Plea Counsel and Applicant talked about his help in the Marley Lyon case, The information Applicant received from Plea Counsel are as follow:

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Appendix Direct examination

APP. 46 lines 7-13 Q. Do you have a recollection of when you first met with my client, Mr. Middleton

A. I met with him either the day before or the day of the Plea. Q. Okay. That would be for the first time? A. Correct

APP. 46 lines 14-25

Q. Okay. And had you spoken with Mr. Voigt what -- did you have conversation with Mr. Voigt prior to talking to Mr. Denaway?

A. Prior to talking to Mr. Middleton? Q. excuse me. Yes, I am sorry you had conversation with the solicitor about a plea?

A. I did. Q. Okay. And what was your understanding of what they were offering? A. If I could step back just

slightly. Mr. Butler had represented Mr. Middleton for some period of time. Mr. Butler got sick and was going APP. 47 lines 1-8 to be out on sick leave. I can't remember if it was Mr.

Butler or my boss Mr. Pennington who -- I think it was Mr. Pennington who approached me and said can you handle this plea. And I saw what the charge was. I said well, I will do what you want, but he said well, this is kind of wired up and there is a great offer and Beattie is out sick. I don't know if I spoke to Mr. Butler or not.

APP. 47 Lines 16-25

So when I spoke to Mr. Voigt, he said, you know, Mr. Middleton was a big help to us in the Marley Lyon trial. I want to do what I can for him. It's an armed robbery, there's two weapons charges, one was possession of a weapon during the commission of a violent crime, the other was possession of a weapon by convicted felon. He said I will get rid of the gun charges, I will even knock it down to a strong arm. And at that time, really up until this day, a reduction from armed -- APP. 48 lines 1-8 robbery to a strong armed robbery with Scarlett Wilson is almost unheard of. Use to be kind of the

Way that how we used to operate, but not anymore. So I am willing to do that. He said Rhett, frankly, I don't really care if he get time. I really appreciate what he did. I said that sounds great.

However, during Applicant's guilty Plea, the Assistance Solicitor did not mention the recommendation of time served. All that was said regarding the sentencing offer was, The reason for the offer from a-- and after you hear this record you'll wonder why I'm offering what I'm offering but the reason for the offer was partially due to Mr. Middleton's cooperation in a recent high-end-profile murder case. Plea transcript page 5 lines 12-16

Following that statement, the Assistance Solicitor never actually advise the court what his offer was.

Plea transcript page 11 lines 5-10

Plea Counsel Dunaway sought time served and probation as a sentence,

So, Judge, it's a tall order to ask but if I'm wrong the solicitor can correct me. I don't believe the solicitor is asking for active time. I think the time that he's done is sufficient, according to the solicitor, but if a period of probation might be grant I don't think we'll be seeing Mr. Middleton back. And the Plea Judge sentence Applicant to a term of 14 years.

Plea Counsel was ineffective when the State failed to honor the plea agreement it made with Applicant and trial Counsel failed to ensure that the State adhered

to the Original Plea agreement of 70 Active Time.

This Court has rule in Sprouse v. State, 355 S.C. 335 S.C. 335, 349 585 S.E. 2d 278, 281 (2003)

A Plea of guilty must be freely and understandingly made and a plea of guilty if induced by promises which deprived it of character of voluntary act, is void and should be set aside. The plea transcript, and the PCR transcript will show that the State did not keep it end of the plea bargain as told to Applicant for him to plea guilty. Applicant would never have pled guilty to what plea Counsel misled the PCR court to believed, that he was able to get the State to let him be for Applicant for a time served sentence. Applicant been in jail for 709 days and told his Attorney that he would go to trial before he plea to a 0-15 offer from the State not knowing what he was going to get. Applicant last plea offer from Mr. Butler was a ten years offer. Had plea Counsel correctly informed him to the plea as he told the PCR court, Applicant would never had gone to a unknown guilty plea.

The PCR Court rule that Applicant testimony is not credible. The PCR court Applicant admitted nobody threatened him to plead guilty, and there were no promise other than the negotiations to entice him to plead guilty.

The PCR Court, This Court also finds Counsel provided effective assistance of Counsel in this case. Counsel advise Applicant of the charges and the sentences

the Charges carried. Counsel negotiated with State in Applicant's best interest, namely that counsel negotiated a sentence in which he could argue for a time served-Sentence. This Court further finds Counsel made a strategic decision to negotiate a strong arm robbery charge for dismissal of the gun Charges as Applicant contributed to the Solving of a murder.

Applicant admitt why he responded in the negative during the Portion of the Plea Colloquy related to Promises or threats, Applicant testified that he was advised Counsel to answer that way.

Applicant his asking this honorable Court to review the Plea transcript, and the PCR transcript for a ruling on who testimony is Credible.

Applicant is asking that the 14 years Sentence be vacate and the original Plea deal of time served be honored.

Conclusion

For the foregoing reason, Applicant request that the Court grant his Petition for writ of Certiorari to allow full briefing on this issue.

Frank Middleton 294177
FRANK MIDDLETON 294177

This

State of South Carolina

In The Supreme Court

Certiorari to Charleston County
Honorable Doyet A. Early, Circuit Court Judge

FRANK MIDDLETON, Petitioner

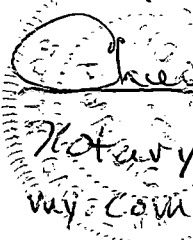
v.

State of South Carolina, Respondent

Certificate of Service

The undersigned hereby certifies that a true copy of Par Se, Petitioner for Writ Certiorari in the above referenced case has been served to the clerk of court, The Supreme Court of South Carolina, 1231 Gervais Street, 29201

Subscribed and sworn to before me
this 20th April 2017


Cheryl R. Frost
Notary Public for South Carolina
My Commission Expires:
Jan 27, 2025

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MAILROOM (SOUTH)