

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable John C. Hayes

Appellate Number 2017-00157

William L. Bright, Jr.,

Appellant,

v.

The State of South Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted,

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE COURT OF COMMON PLEAS ERR IN HOLDING THAT TRIAL COUNCIL WAS NOT INEFFECTIVE BY FAILING TO ADEQUATELY EXPLAIN THE FULL CONSEQUENCES OF THE APPELLANT'S GUILTY PLEA AND BY FAILING TO CLARIFY TO THE APPELLANT THAT HE WAS NOT ACCEPTING A PLEA DEAL WITH A ZERO TO THREE YEAR SENTENCE?

- II. DID THE COURT OF COMMON PLEAS ERR IN HOLDING THAT THE APPELLANT'S PLEA WAS NOT INVOLUNTARILY GIVEN WHEN THE APPELLANT WAS UNDER THE IMPRESSION THAT HE WAS ACCEPTING A PLEA DEAL FOR A ZERO TO THREE YEAR SENTENCE WHEN HE ACTUALLY RECEIVED TEN YEARS?

STATEMENT OF THE CASE

On May 14, 2014, the Appellant and another man, Ricky Gilstrap, allegedly entered the house of Jami Brothers in Greenville, South Carolina. While in the house, Gilstrap held the residents at gunpoint while he and the Appellant allegedly demanded certain personal belongings from the residents.

Approximately one week after this event, Gilstrap was arrested and identified the Appellant as the other participant in the crime. Gilstrap pled guilty to armed robbery and second degree burglary and received ten years.

On February 8, 2016, the Appellant pled guilty to second degree burglary and attempted armed robbery before the Honorable Edward W. Miller. Judge Miller sentenced him to concurrent terms of ten years.

Appellant filed an application for post-conviction relief *pro se* on June 17, 2016. On July 13, 2016, Appellant filed a motion to relieve trial counsel. On October 5, 2016, undersigned counsel filed a motion to amend Appellant's application for post-conviction relief, which was granted.

Appellant's amended application for post-conviction relief raised the following issues: 1) trial counsel rendered ineffective assistance of counsel by not fully explaining the consequences of the guilty plea, and 2) Appellant's guilty plea was involuntary because he was thought he was accepting a zero to three-year plea deal. A hearing was held on December 8, 2016, before the Honorable John C. Hayes in the Greenville County Court of Common Pleas. William G. Yarborough argued on behalf of Appellant, and Patrick Schmeckpeper represented the State. At the close of the hearing, Judge Hayes denied the Appellant's amended application for post-conviction relief. This appeal followed.

ARGUMENT

- I. THE COURT OF COMMON PLEAS ERRED IN HOLDING THAT TRIAL COUNCIL WAS NOT INEFFECTIVE BY FAILING TO ADEQUATELY EXPLAIN THE FULL CONSEQUENCES OF THE APPELLANT'S GUILTY PLEA AND BY FAILING TO CLARIFY TO THE APPELLANT THAT HE WAS NOT ACCEPTING A PLEA DEAL WITH A ZERO TO THREE YEAR SENTENCE.

Counsel is ineffective when “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984). The United States Supreme Court has given a two-prong test for determining ineffective assistance of counsel. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)). First, a defendant must show counsel’s performance was deficient, the standard being whether counsel’s conduct was reasonable under prevailing professional norms. Id. Second, counsel’s deficient performance must have prejudiced the defendant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” (internal citations and punctuation omitted). Id. Reasonable probability is defined as “probability sufficient to undermine confidence in the outcome of a trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). For a guilty plea, there must be a “reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Here, Appellant and his mother both testified that trial counsel made them understand that Appellant was to receive a zero to three-year sentence by entering a guilty plea. Appellant and his mother stated that they heard trial counsel say prior to the plea

hearing that the State had given Appellant an offer of zero to three years as a plea deal. Appellant thought that he was to receive this zero to three-year sentence for his guilty plea, and he did not understand the guilty plea proceeding and relied exclusively on trial counsel's advice. Trial counsel's performance was deficient by giving the Appellant the false impression that he was accepting a plea deal of zero to three years and by not clarifying to the Appellant the potential ten-year sentence he could receive. Because of trial counsel's deficient performance, Appellant was prejudiced by entering a guilty plea and receiving a ten-year sentence. If Appellant had not been operating under the misconception that he was entering a plea deal for a zero to three-year sentence, he would not have pled guilty and would have insisted on going to trial. Because of this, the trial court erred in finding that counsel was not ineffective during the guilty plea proceeding.

II. THE COURT OF COMMON PLEAS ERRED IN HOLDING THAT THE APPELLANT'S PLEA WAS NOT INVOLUNTARILY GIVEN WHEN THE APPELLANT WAS UNDER THE IMPRESSION THAT HE WAS ACCEPTING A PLEA DEAL FOR A ZERO TO THREE YEAR SENTENCE WHEN HE ACTUALLY RECEIVED TEN YEARS.

For a guilty plea to be knowingly and voluntarily entered into, "the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) (citing Boykin v. Alabama, 395 U.S. 238, 89 (1969)). Under South Carolina case law, "a plea made in ignorance of its direct consequences is entered in ignorance and is invalid." Burnett v. State, 352 S.C. 589, 592, 576 S.E.2d 144, 145 (2003) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 603 (1980)). Here, Appellant was under the misconception that he would receive a sentence of zero to three years; he did not think he was entering a guilty plea that could potentially give him a ten-year sentence. Appellant did not understand the direct consequences of his guilty plea because of this misconception, and thus his guilty plea was made in ignorance and the lower court erred in finding it voluntary and valid.

Appellant did not think he could interrupt the judge or stop the proceeding himself, and thus he did not withdraw his guilty plea. If Appellant knew that he could stay his guilty plea at any point by declining to proceed, then it is likely he would have done so. The fact that Appellant felt like he could not stop the proceeding shows that his plea was not voluntary.

Because the Appellant pled guilty in ignorance, thinking he was accepting a plea deal of zero to three years, and thought that once the proceedings began he could not stop them when he wanted to, the lower court erred in finding his guilty plea knowingly and

voluntarily entered.

CONCLUSION

For the foregoing reasons, the PCR court's order should be overturned and Appellant should be awarded a new trial.

RESPECTFULLY SUBMITTED THIS

15th of June of 2017.

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