

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

KRISTIE MARTIN BISHOP,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000530

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
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

ORIGINAL

RECEIVED

OCT 30 2017

PETITIONER
S.C. SUPREME COURT

INDEX

INDEXi

ISSUE PRESENTED 1

STATEMENT2

ARGUMENT4

CONCLUSION7

PETITION TO BE RELIEVED AS COUNSEL.....8

ISSUE PRESENTED

Did the PCR Court err in holding that Petitioner's guilty plea was intelligently, voluntarily, and knowingly entered in light of Petitioner's testimony that counsel never advised her that her past convictions could be taken into consideration by the sentencing judge and that she did not understand the ramifications of pleading guilty under Alford?

STATEMENT

Petitioner was indicted by a Spartanburg County Grand Jury on September 26, 2014 for the following crimes: financial transaction card fraud, obtaining money by false pretenses, petty larceny, FTC fraud, armed robbery, and possession of a weapon during a violent crime. App. 3 l. 8 – App. 5 l. 9; App. 144 – 165. On May 14, 2015, before the Honorable R. Keith Kelly, Petitioner pled guilty under North Carolina v. Alford¹ to all of the above except the possession of a weapon during a violent crime charge, which was dismissed. App. 4 ll. 18 – 22; App. 5 ll. 7 – 9. Most of the charges were enhanced due to Petitioner’s previous property offenses. App. 3 ll. 13 – 16. Barry Barnette represented the State, and Joshua Schultz and A. Julia Tat represented Petitioner.

The facts as presented by the Solicitor are as follows: In August and September 2014, Petitioner and Krystal Lynch, who became acquainted while incarcerated at the Department of Corrections, robbed a Wal-Mart, an UltraTan, and multiple individuals in Spartanburg County. App. 26 l. 8 – App. 30 l. 16. Both defendants were arrested and gave statements. App. 30 ll. 17 – 18.

Judge Kelly accepted Petitioner’s guilty plea. App. 35 ll. 9 – 12. He sentenced Petitioner to a term of twenty years’ imprisonment on the armed robbery charge, ten years on the financial transaction card charge, ten years on each of the larceny charges, ten years on each of the financial transaction card fraud charges, ten years on the obtaining property under false pretenses, and ten years on each of the financial transaction card theft charges. App. 62 l. 14 –

¹ 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

App. 63 l. 16. The sentences were imposed to run concurrently, and credit was given for time served. App. 63 ll. 13 – 16.

On September 18, 2015, Petitioner filed an application for post-conviction relief. App. 65. She alleged that her constitutional rights were violated and that she received ineffective assistance of counsel. App. 67. The State filed its Return on or about July 1, 2016. App. 74. Petitioner subsequently amended her post-conviction relief application on October 14, 2016, adding thirty-one additional claims. App. 83 – 86.

An evidentiary hearing was conducted before the Honorable Frank R. Addy on November 9, 2016. App. 87. Alicia Olive represented the State, and Rodney W. Richey represented Petitioner. Petitioner and his two plea attorneys testified at the hearing.

An Order of Dismissal was issued on February 13, 2017 and filed on February 22, 2017. App. 129 – 143. The PCR judge dismissed Petitioner's application based upon a finding that Petitioner failed to prove prejudice and that plea counsel provided effective representation. App. 140.

This Petition follows.

ARGUMENT

The PCR Court erred in holding that Petitioner's guilty plea was intelligently, voluntarily, and knowingly entered in light of Petitioner's testimony that counsel never advised her that her past convictions could be taken into consideration by the sentencing judge and that she did not understand the ramifications of pleading guilty under Alford.

Petitioner chose to plead guilty rather than potentially going before a different trial judge and getting a harsher sentence. App. 92 ll. 2 – 9. She believed her plea counsel utilized this scare tactic in order to force her into pleading guilty. App. 92 ll. 12 – 17. Therefore, on the eve of trial, Petitioner chose to plead guilty. App. 91 l. 20 – App. 92 l. 1; App. 114 ll. 7 – 16. At that time, Petitioner had not discussed any trial strategy with counsel. App. 97 ll. 19 – 24.

Plea counsel never explained the intricacies of an Alford plea, according to Petitioner. App. 95 ll. 9 – 19; App. 103 l. 24 – App. 104 l. 1; App. 111 ll. 14 – 18. Furthermore, petitioner did not believe that plea counsel fully investigated her case. App. 99 ll. 20 – 22. Additionally, she testified at the evidentiary hearing that “[n]o one ever advised [her] of the fact that [her] past criminal convictions could hurt [her].” App. 107 ll. 10 – 14. Petitioner also indicated that she did not know what she was giving up by electing to plead guilty, because plea counsel never discussed it with her. App. 108 ll. 13 – 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).

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).

Plea counsel admitted that he believed Petitioner received a harsh sentence. App. 117 ll. 8 – 16. It is unclear whether she derived a benefit from the guilty plea. In addition to not knowing the logistics of an Alford plea, Petitioner was denied effective assistance of counsel when she was never informed that her past convictions could be used to enhance the indictments and to weigh on the mind of the sentencing judge. Therefore, she was prejudiced by the actions and inactions of her plea counsel and is entitled to a new trial.

CONCLUSION

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



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of October, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

KRISTIE MARTIN BISHOP,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kristie Martin Bishop 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 Frank R. Addy, which was held on November 9, 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 Kristie Martin Bishop.

Respectfully Submitted,

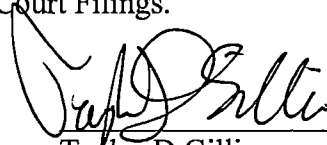


Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 30th day of October, 2017.

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."



Taylor D Gilliam
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 30th day of October, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

KRISTIE MARTIN BISHOP,

PETITIONER

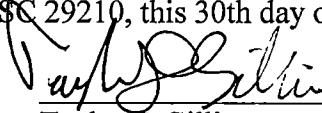
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

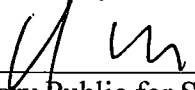
CERTIFICATE OF SERVICE

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 Valerie Garcia Giovanoli, 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 Kristie Martin Bishop, #332220, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 30th day of October, 2017.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 30th day of October, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025