

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE SUPREME COURT

—————
Certiorari to Williamsburg County

Honorable Brian M. Gibbons, Circuit Court Judge
—————

RECEIVED

NOV 13 2017

S.C. SUPREME COURT

ANTHONY Q. ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001248

—————
JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

Laura R. Baer
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

INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT OF THE CASE.....2

ARGUMENT3

The PCR court erred in finding that the plea counsel rendered effective assistance where she failed to provide Petitioner with a copy of the discovery materials until after he entered his guilty plea.

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL7

ISSUE PRESENTED

Whether the PCR court erred in finding that the plea counsel rendered effective assistance where she failed to provide Petitioner with a copy of the discovery materials until after he entered his guilty plea?

STATEMENT OF THE CASE

On July 31, 2014, the Williamsburg County Grand Jury returned indictments against Petitioner Anthony Robinson for threatening a public official and two counts of throwing bodily fluids by a prisoner App. 56 – 61.

On May 18, 2015, Robinson appeared before the Honorable Kristi L. Harrington and pled guilty to the offense of threatening a public official. App. 1; App. 4 – 5. Robinson was represented by Julie Shivers and David Schwacke, and the State was represented by assistant attorney generals LaRone Washington and Ashley McMahan. App. 2. As part of the plea negotiations, the State recommended concurrent sentencing and dismissed the throwing bodily fluids charges. App. 7, ll. 13-15. Judge Harrington accepted the guilty plea and imposed a concurrent five year sentence. App. 7, l. 23 – 8, l. 15; App. 67.

On September 2, 2015, Robinson filed an application for post-conviction relief (“PCR”). App. 10. On January 27, 2016, the State filed its return. App. 17. On November 7, 2016, an evidentiary hearing was held before the Honorable Brian M. Gibbons. Robinson was represented by Lance Boozer, and the State was represented by assistant attorney general Julie Coleman. App. 22. The matter was taken under advisement. App. 51, ll. 1-10. On May 4, 2017, Judge Gibbons filed a written Order of Dismissal denying Robinson’s PCR application. App. 54.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in finding that the plea counsel rendered effective assistance where she failed to provide Petitioner with a copy of the discovery materials until after he entered his guilty plea.

In 2004, Petitioner Anthony Robinson was sentenced by the Honorable Clifton Newman to life imprisonment for murder. The State alleged that eight years after his plea and sentence, on January 13, 2012, Robinson wrote a letter to Judge Newman stating that he was going to have Judge Newman killed. App. 6, l. 20 – App. 7, l. 9. Julie Shivers represented Robinson on his threatening a public official charge. Shivers’ communications with Robinson regarding his case were all done via written letter, with the exception of one telephone conference call made the month of the plea hearing, which Robinson did not recall. App. 27, ll. 7-18; App. 38, l. 21 – 39, l. 7; App. 43, ll. 6-12. They did not meet in person until the day that Robinson’s case was set to go to trial. Following jury qualification, counsel went back to meet with Robinson. Shivers said it was then that Robinson “indicated . . . that he wished to change his plea and enter a [guilty] plea.” App. 44, ll. 12-18. The State agreed to extended their original plea offer of a concurrent five year sentence on the threatening a public official charge and to dismiss the two throwing bodily fluids charges. App. 41, ll. 14-19.

Robinson had trouble with the prison withholding his legal mail and never received the discovery materials that Shivers purportedly sent to him. He notified her of this on the day of the plea and Shivers provided him with the copy of discovery she had on hand, but he was not able to review it until after the plea had been entered. App. 27, l. 19 – 28, l. 5; App. 28, ll. 18-20. According to Shivers, she requested discovery pursuant to Rule 5, SCRCrimP, and mailed a copy of what she received to Robinson prior to their May telephone conversation. App. 39, ll. 8-15. Shivers said that Robinson should have received the discovery materials in advance of the May

call and that Robinson never mentioned that they were not received during their telephone conversation. App. 43, ll. 13-23. The first indication that Shivers had that Robinson had not received her mail was on the day of the hearing, at which time she gave him an extra copy of “everything” from the Rule 5 response. App. 44, ll. 5-11.

Robinson had discussed challenging the handwriting analysis with counsel, but he did not actually see the letter that would serve as the crux of the State’s case until after the plea. After reviewing it, he wanted to challenge the handwriting. App. 31, l. 23 – 33, l. 7. Had the case proceeded to trial, counsel said that she would have sought to have the letter excluded because the handwriting analysis was not conducted through the use of an official handwriting exemplar. Rather, the letter was compared to the PCR application previously filed in Robinson’s underlying murder case. App. 39, l. 10 – 40, l. 15; App. 45, l. 23 – 46, l. 7.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Rule 71.1, SCRCP(e). The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758 (1970).

“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.” Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). “A reasonable probability

is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).


This Court has held that “a defendant has the right to effective assistance of counsel during the plea bargaining process.” Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419. “[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” Missouri v. Frye, 566 U.S. 134, 145 (2012); see also Davie, 381 S.C. at 609, 675 S.E.2d at 420 (2009) (adopting “rule that counsel’s failure to convey a plea offer constitutes deficient performance” and holding “counsel is required to *fully communicate* with the client so that the client can make an *informed decision* regarding any proposals by the State” (emphasis added)). Plea bargaining can benefit both parties by providing “[t]he potential to conserve valuable prosecutorial resources and for defendants to admit their crimes and receive more favorable terms at sentencing.” Frye, 566 U.S. at 144. “In order that these benefits can be realized, however, criminal defendants require effective counsel during plea negotiations.” Id. “Anything less might deny a defendant effective representation by counsel at the only stage when legal aid and advice would help him.” Id. (internal citations and quotations omitted).

In the present case, Robinson could not make an informed decision regarding whether to plead guilty or exercise his constitutional right to a jury trial without first seeing the weight of the State’s evidence against him. Once plea counsel learned that Robinson did not receive the discovery materials she mailed to him, her duty was not to just provide him with a copy to take with him. Rather, counsel should have insured that Robinson was provided adequate time to review the materials before entering the plea. This was not a case where Robinson was brought to court with the intended purpose of pleading guilty. He was on the trial docket and the initial

jury qualification had taken place. A reasonable attorney would have requested a brief delay to allow Robinson to make an informed decision regarding the waiver of his rights. Once able to review the discovery after the plea, Robinson realized that there was a meritorious claim that the handwriting analysis connected the letter to him was flawed. Had he known the strength of that argument, he would not have pled guilty but instead proceeded to trial.

CONCLUSION

Based on the foregoing, Petitioner Anthony Q. Robinson respectfully requests that this Court grant the petition for writ of certiorari and order further briefing on the issue raised herein.



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of November, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable Brian M. Gibbons, Circuit Court Judge

ANTHONY Q. ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Anthony Q. Robinson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's evidentiary hearing before Judge Brian M. Gibbons, which was held on November 7, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Anthony Q. Robinson.

Respectfully Submitted,



Laura R. Baer


Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of November, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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."


Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

This 13th day of November, 2017.

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

NOV 13 2017

S.C. SUPREME COURT

Certiorari to Williamsburg County

Honorable Brian M. Gibbons, Circuit Court Judge

ANTHONY Q. ROBINSON,

PETITIONER


V.

STATE OF SOUTH CAROLINA,

RESPONDENT

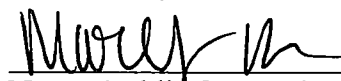
CERTIFICATE OF SERVICE

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 Julie Coleman, 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 Anthony Q. Robinson, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 13th day of November, 2017.



Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 13th day of November, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027