

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Williamsburg County

Honorable Brian M. Gibbons, Circuit Court Judge

GEORGE J. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001028

JOHNSON PETITION FOR WRIT OF CERTIORARI

Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR PETITIONER

INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT OF THE CASE.....2

ARGUMENT

Petitioner’s guilty plea was not knowingly, intelligently, and voluntarily made where he pled guilty due to plea counsel’s promise that he would be housed in a rehabilitative facility in Beaufort County as opposed to a prison institution within the Department of Corrections if he pled guilty, and where Petitioner was prejudiced because Petitioner has never received any rehabilitative services, has always been housed within the Department of Corrections, and, most importantly, would have proceeded to trial but for counsel’s promise.....5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL.....9

ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made where he pled guilty due to plea counsel's promise that he would be housed in a rehabilitative facility in Beaufort County as opposed to a prison institution within the Department of Corrections if he pled guilty, and where Petitioner was prejudiced because Petitioner has never received any rehabilitative services, has always been housed within the Department of Corrections, and, most importantly, would have proceeded to trial but for counsel's promise?

STATEMENT OF THE CASE

A Williamsburg County Grand Jury indicted Petitioner on May 3, 2012 for grand larceny, on January 17, 2013 for first degree criminal sexual conduct with a minor, and on May 8, 2014 for third degree criminal sexual conduct. App. 109-114. On January 27, 2015, the day after his case was called to trial, Petitioner pled guilty as indicted before the Honorable George C. James, Jr. App. 1. Assistant Solicitor Kimberly Barr represented the state, and Amanda Shuler represented Petitioner. App. 1. Pursuant to a sentencing recommendation from the state, Judge James sentenced Petitioner to twenty five years for first degree criminal sexual conduct with a minor, ten years for third degree criminal sexual conduct, and ten years for grand larceny. All sentences were ordered to be served concurrently. App. 29, 1. 3 – 30, 1. 3.

On July 2, 2015, Petitioner filed an application for post-conviction relief (PCR). App. 32-38. The state filed a return to this application dated October 28, 2015. App. 39-43. With the assistance of counsel, Petitioner filed an amended application on February 16, 2016 raising the claim argued in this petition. App. 44. An evidentiary hearing was convened on November 7, 2016 before the Honorable Brian M. Gibbons. App. 45. Assistant Attorney General Julie Coleman represented the state, and Lance Boozer represented Petitioner. App. 45.

Petitioner testified at the evidentiary hearing that plea counsel promised him that if he pled guilty he would be housed in a rehabilitative facility in Beaufort as opposed to a prison facility within the Department of Corrections. Petitioner had previously been evaluated by a psychologist based on counsel's request, and the psychologist ultimately found Petitioner could be rehabilitated with the proper services. App. 63, ll. 2-24. Petitioner was under the impression based on counsel's promise that after he pled guilty he would be transferred to and treated at a rehabilitation center. However, after Petitioner's guilty plea, he was housed at a regular prison

institution within the Department of Corrections. At the time of the evidentiary hearing, Petitioner had yet to receive any rehabilitative services whatsoever. App. 64, ll. 3-22.

Amanda Shuler, Petitioner's plea counsel, testified that she never promised Petitioner that he would be housed in a rehabilitative facility or receive rehabilitative services if he pled guilty, as opposed to serving his sentence in a prison facility within the Department of Corrections. She maintained that Petitioner's confusion was likely caused by their discussion about the Sexual Violent Predator Act, and how the act could potentially affect Petitioner in the future. Shuler explained to Petitioner that if he was found guilty of criminal sexual conduct or pled guilty to criminal sexual conduct, given his prior record, he would likely be evaluated pursuant to the Sexual Violent Predator Act, and "if he was found to be unable to go back into the general population . . . , or because of the likelihood that he could reoffend, then he would not be released" after he completed his sentence. App. 81, l. 19 – 82, l. 4.

The PCR judge ultimately found Petitioner's guilty plea was freely, voluntarily, and intelligently made. App. 107. The judge found Petitioner was never promised or offered rehabilitative treatment in exchange for his guilty plea, and that his testimony in this regard was not credible. App. 106. Moreover, the judge found very credible plea counsel's testimony that she advised Petitioner of all the facts and risks of pleading guilty. App. 106. Consequently, the judge denied Petitioner relief. App. 107.

Because Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to plea counsel's promise that he would be housed in a rehabilitative facility in Beaufort as opposed to a prison facility within the Department of Corrections if he pled guilty, and because Petitioner was prejudiced since he has never received any rehabilitative services, has always been housed in a

prison institution within the Department of Corrections, and, most importantly, would have proceeded to trial but for counsel's promise, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where he pled guilty due to plea counsel's promise that he would be housed in a rehabilitative facility in Beaufort County as opposed to a prison institution within the Department of Corrections if he pled guilty, and where Petitioner was prejudiced because Petitioner has never received any rehabilitative services, has always been housed within the Department of Corrections, and, most importantly, would have proceeded to trial but for counsel's promise.

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made due to the improper influence of plea counsel's promise that Petitioner would be housed in a rehabilitative facility in Beaufort County as opposed to a prison facility within the Department of Corrections if he pled guilty. Petitioner was prejudiced by counsel's improper influence because, as Petitioner's testimony indicated, he would not have pled guilty but for plea counsel's promise that he would receive rehabilitative services, which he so desired. Instead, Petitioner would have proceeded to trial. Petitioner's testimony that he would have gone to trial is corroborated by the fact that he had previously turned down a fifteen year offer from the state, and the fact that Petitioner's jury trial for first degree criminal sexual conduct with a minor was already underway when he ultimately pled guilty.

The difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). "The longstanding test for determining the validity of a plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (internal quotations omitted) (applying the two-part test for

claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984), to claims of the same against plea counsel).

First, “the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” Id. On the other hand, the prejudice requirement focuses on whether “there is a reasonable probability that, but for counsel’s errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. “[T]he voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Holden v. State, 393 S.C. 565, 572-574, 713 S.E.2d 611, 615 (2011) (citing Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000)).

“The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ‘ample opportunity to meet the case of the prosecution’ to which they are entitled.” Strickland, 466 U.S. at 685 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275-276 (1942)). Additionally, a guilty plea that was “entered by one fully aware of the direct consequences . . . must stand *unless* induced by . . . misrepresentation (including unfulfilled or unfulfillable promises) . . .” Brady v. United States, 397 U.S. 742, 755 (1970) (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (reversed on other grounds, 356 U.S. 26 (1958)) (emphasis added). Accordingly, counsel provides ineffective assistance in the adversarial system when he induces the defendant to plead guilty.

In this case, Petitioner was induced into pleading guilty by plea counsel’s promise that Petitioner would be housed in a rehabilitative facility in Beaufort as opposed to a prison facility

within the Department of Corrections. This promise prevented Petitioner's guilty plea from being knowingly and voluntarily made and, consequently, rendered it invalid. See Berry, 381 S.C. at 635, 675 S.E.2d at 427. A plea is not voluntary when it is induced by misrepresentation including unfulfilled promises. See Brady, 397 U.S. at 755, 90 S.Ct. at 1472. A reasonably competent criminal defense attorney would not have promised Petitioner that he would be housed in a rehabilitative facility without any sort of agreement with the assistant solicitor or confirmation from the Department of Corrections.

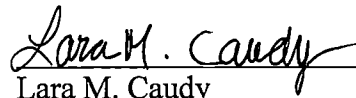
Additionally, there is a reasonable probability that but for plea counsel's promise, Petitioner would not have pled guilty and would have insisted on proceeding to trial. Petitioner testified that had he known he would not have been housed in a rehabilitative facility, he would not have pled guilty. Instead, he would have gone to trial. App. 64, ll. 16-22. Thus, Petitioner was prejudiced by plea counsel's promise. Lockhart, 474 U.S. at 59. It was *only* because of this promise that Petitioner decided to plead guilty. Petitioner's testimony that he would have gone to trial is corroborated by the fact that he had previously turned down a fifteen year offer from the state, and the fact that Petitioner's jury trial for first degree criminal sexual conduct with a minor was already underway when he ultimately pled guilty.

As a result of Petitioner's involuntary plea and the resulting prejudice, this Court respectfully should reverse Petitioner's convictions and sentence and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented. In the event this Court dispenses with further briefing, Petitioner respectfully requests this Court reverse the decision of the PCR court and remand a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of December, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable Brian M. Gibbons, Circuit Court Judge

GEORGE J. WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

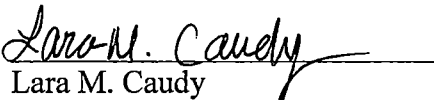
PETITION TO BE RELIEVED AS COUNSEL

Counsel for George J. Williams states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
2. She has reviewed the records and transcript of Petitioner's post-conviction relief hearing, which was held on November 7, 2016 before the Honorable Brian M. Gibbons, and, in her opinion, seeking certiorari from the order of dismissal is without merit.
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 George J. Williams.

Respectfully Submitted,

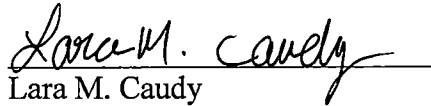

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of December, 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."



Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR PETITIONER

This 13th day of December, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable Brian M. Gibbons, Circuit Court Judge

GEORGE J. WILLIAMS,

PETITIONER

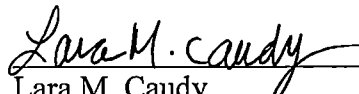
V.

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 have 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 upon George J. Williams, #191416, at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472, this 13th day of December, 2017.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

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

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