STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

MANUEL RASHON JETER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001206

PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUE PRESENTED

Did the PCR Court err in denying Petitioner relief where plea counsel was ineffective for being unprepared for a pre-trial suppression motion on the day that Petitioner was supposed to go to trial, where counsel's failure to investigate, interview, and subpoena witnesses for the motion also resulted in an involuntary guilty plea?

STATEMENT

On April 1, 2015, Petitioner pled guilty to trafficking cocaine, second offense; resisting, assaulting, or beating a police officer; and one count of possession of cocaine. App. 3 ll. 1 – 8. The plea took place before the Honorable J. Derham Cole in Spartanburg County. App. 1. George Kendall represented the State, and E. Joshua Schultz represented Petitioner. The plea was made with a recommendation that Petitioner receive a maximum of twenty years on all charges.

The facts presented at the guilty plea by the State were as follows:

On or about July 9, 2014, law enforcement was responding to an unrelated "domestic call" in Spartanburg. App. 12 l. 16 – App. 16 l. 6. An individual involved in that dispute suggested that a car containing Petitioner had been part of the dispute. Id. A traffic stop was performed, and law enforcement officers claimed to have smelled marijuana. Id. Petitioner was asked to get out of the car, and the State indicated that a baggie of cocaine fell from his pants. Id. Petitioner began running, and during the ensuing chase, Petitioner allegedly threw the cocaine in the direction of one of the officers. Id. Petitioner disputed this claim at his guilty plea. App. 16 ll. 13 – 20.

Petitioner and the plea judge discussed Petitioner's decision to go to trial:

> The Court: Do you think if your case did go to trial and they presented the testimony to a jury that there's some reasonable probability that a jury would find you guilty?
>
> Petitioner: Based on the - - based on the incident reports, yes, sir. But I don't think that a jury would find me guilty because I don't think they had - - I know I didn't throw cocaine on him. So I don't think he tested positive for cocaine.

The Court: Well, do you think there's no chance that a jury would find you guilty?

Petitioner: The jury may well find me guilty though because they'd probably go with the state.

App. 16 l. 23 – App. 17 l. 9.

Petitioner agreed that he wished to plead guilty to "wrap everything up at once rather than have separate trials on each of the charges." App. 17 ll. 10 – 14.

Following the above discussions, plea counsel advised that he had a very compelling issue to present at pretrial as to what car the officers originally followed in this case. App. 18 ll. 14 – 19. Notably, he revealed:

> Our contention at trial would have been that probable cause could not be established. But, at the same time, we believe that ... probable cause argument may not have been entirely successful in front of the Court. [Petitioner] actually brought that up to me.

App. 18 ll. 20 – 25.

Judge Cole accepted Petitioner's plea and sentenced Petitioner to fifteen years on the trafficking charge, ten years on the assaulting an officer while resisting arrest charge, and five years for the possession of less than one gram of cocaine second offense charge. App. 18 ll. 6 – 7; App. 26 ll. 5 – 17.

On January 25, 2016, Petitioner filed an application for post-conviction relief. App. 28 – 42. It contained allegations of ineffective assistance of counsel, including detailed claims that counsel failed to investigate, failure to subpoena witnesses, failure to move to suppress evidence, and prosecutorial misconduct. App. 35 – 42. As exhibits to his application, Petitioner included two incident reports from the actions giving rise to his arrest. App 43 – 51.

The State filed its Return on or about August 23, 2016. App. 52 – 60. An evidentiary hearing was held on March 24, 2017 before the Honorable Robin B. Stilwell. App. 62. J.

Falkner Wilkes represented Petitioner, and Valerie G. Giovanoli represented the State. Petitioner, plea counsel, Petitioner's aunt, and an individual from the underlying incident giving rise to law enforcement's presence in the area immediately before Petitioner's arrest testified at the hearing.

On April 19, 2017, Judge Stilwell issued his order denying Petitioner relief. App. 122 – 132. In particular, he found that counsel provided effective assistance in this case. App. 130.

This Petition follows.

ARGUMENT

The PCR Court erred in denying Petitioner relief where plea counsel was ineffective for being unprepared for a pre-trial suppression motion on the day that Petitioner was supposed to go to trial, where counsel's failure to investigate, interview, and subpoena witnesses for the motion also resulted in an involuntary guilty plea.

Background

At his guilty plea, Petitioner indicated that he had a defense to his charges, namely that the individual who pointed out the car he was in was mistaken and therefore misidentified him. Therefore, he argued, the police lacked probable cause for the resulting search, seizure, and arrest. App. 4 ll. 14 – 22; App. 72 l. 5 – App. 78 l. 25. When asked whether he knew that he was giving up those defenses by pleading guilty, Petitioner answered in the negative. App. 4 l. 24 – App. 5 l. 3. He later explained his answer:

> I didn't know... I was... givin[g] up my right [to contest the search and seizure], I thought that me and [counsel] would [have]been able to come in here and explain what was goin[g] on to the judge and maybe get a continuance to track Ms. Stinson down and bring her forward, uh, to go about buildin[g] the defense around the malpractice of the police.

App. 79 . 14 – App. 80 l. 7.

This was the first indication that Petitioner and counsel alike were unprepared.

The second sign that Petitioner was not ready to plead guilty manifested when he asked to speak to his counsel during the plea judge's colloquy. App. 7 ll. 17 – 20. At the evidentiary hearing, Petitioner explained that during that time he was asking "can we go to trial, why aren't we goin[g] to trial, why are you makin[g] me plea now?" App. 80 l. 25 – App. 81 l. 11. Counsel could not recall what was discussed at that time but believed it may have been related to the

suppression motion. App. 112 ll. 5 – 13. Counsel's response suggested that Petitioner should plead guilty, because otherwise he would receive a life sentence. App. 81 ll. 11 – 21.

The third instance of Petitioner's hesitation to plead guilty appeared when he admitted that he felt pressure, in the form of a threat from the State, to plead guilty. App. 8 ll. 2 – 15. Petitioner admitted that had he been aware that Stinson, as well as the police officers who generated the incident reports, were present at the courthouse to testify, he would not have pled guilty. App. 82 ll. 4 – 20.

Lastly, Petitioner alleged that counsel failed to subpoena a relevant witness, Tayvona Stinson, for his trial. App. 72 ll. 5 – 19. Counsel admitted that he did not issue a subpoena at all in this case. App. 109 l. 18 – App. 111 l. 6. Stinson was the one who pointed at Petitioner's car and suggested to police officers that he assaulted her. App. 72 l. 23 – App. 73 l. 13. According to incident reports, Stinson reported that the driver of a green Honda was the one who assaulted her. App. 43- 48. Petitioner was driving a Chevy Malibu. App. 74 ll. 1 – 11. Petitioner performed his own investigation while housed in the county jail. App. 77 l. 4 – App. 78 l. 4. He and his family obtained the incident report containing Stinson's rendition of the events and provided it to counsel. Id.

Stinson testified at the evidentiary hearing. App. 92. Recalling the events from the date of Petitioner's arrest, she testified:

> [Me] and [my boyfriend] had an altercation where he [dragged] me with his car. Um, I was at my best friend's house ... I called the police, um, the female officer came, um, I let her know what was going on. I wrote my accident report and when I looked over I [saw] a green Honda which was comin[g] out [of] the apartments across the street from our house and I said that he has a green Honda like that.

App. 92 ll. 14 – 25.

Stinson provided her boyfriend's name to the police officers. App. 93 ll. 1 – 8. She denied telling any of the police officers that her boyfriend drove a Chevy Malibu—she knew the difference between a Chevy Malibu and a Honda. App. 93 ll. 12 – 17.

Petitioner also denied throwing cocaine at the officer. App. 16 ll. 13 – 20. At that time, the plea judge asked Petitioner if there was "no chance that a jury would find [him] guilty," essentially suggesting that if a chance for a guilty verdict existed, Petitioner should plead guilty. App. 16 l. 21 – App. 17 l. 9.

Petitioner pled guilty, because he felt like he had no other option. He met with counsel four times before his guilty plea: "one was the initial ... meetin[g] after ... [Petitioner] retained him and; two was bond motions, we went into court for bond motions and then the third one was when he was comin[g] prepared me for trial on April 1." App. 66 ll. 15 – 24. Following the bond hearing, Petitioner remained unaware that he could be tried for these charges two weeks later; neither the State nor counsel informed him of this possibility. App. 68 ll. 1 – 11. April 1, 2015, the date of Petitioner's guilty plea, was supposed to be the date of Petitioner's trial. App. 67 ll. 6 – 13. Petitioner learned of this at the last minute. App. 68 ll. 7 – 15.

Petitioner did not have clothes for a trial—he was dressed in an orange jumpsuit from the county jail. App. 69 ll. 2 – 23. Counsel indicated that Petitioner would need to call a family member and request that clothes be brought to him, which he did. Id. With specificity, Petitioner testified about the disorganization on April 1, 2015:

> They picked me up [from the county jail], brought me to the courthouse and [counsel] came in and he, when he came in he came in with a plea agreement, he didn't have a, he didn't come to prepare for trial, he came with a plea agreement.

App. 69 l. 24 – App. 70 l. 4.

Petitioner's aunt, Jacqueline Prater, received a call from counsel on April 1, 2015. App. 90 ll. 7 – 13. Counsel informed Ms. Prater that Petitioner was going "to court" and needed clothes. App. 90 ll. 19 – 22. Ms. Prater brought clothes, but Petitioner never received them. App. 90 ll. 23 – 24. The call from counsel was the first Ms. Prater had heard of Petitioner needing clothes or going "to court." App. 90 l. 25 – App. 91 l. 4.

Petitioner was, in his own words, "discombobulated" and did not understand what counsel was explaining to him. App. 70 ll. 5 – 11. However, he relied on counsel's assurances that a term of seven years' house arrest was going to be negotiated. App. 70 l. 16 – App. 71 l. 4. He also confessed his fear—counsel suggested that Petitioner would receive a life sentence if he did not plead guilty. App. 71 ll. 5 – 19. As a result, his plea was not made voluntarily. App. 84 ll. 13 – 21.

As a result, Petitioner felt unprepared for trial; he testified that counsel never questioned Stinson. App. 79 ll. 1 – 13. He felt as if he only had two options: plead guilty or go to trial and receive a maximum sentence, which he believed would be a life sentence. App. 80 l. 15 – App. 81 l. 1. However, Petitioner was not the only one unprepared for trial.

Having practiced law since 2005, counsel was retained by Petitioner in a private capacity. App. 97 ll. 9 – 14. Counsel informed Petitioner immediately before the guilty plea that he would be going to trial that day. App. 102 ll. 16 – 19. At the time, counsel was in the middle of "an extremely busy week" and had "a large amount [of] cases on that docket." App. 102 l. 20 – App. 103 l. 5. Without interviewing Stinson, Counsel advised Petitioner to plead guilty. App. 107 l. 18 – App. 108 l. 2.

Counsel did not move for a continuance because he did not believe it would be granted, even though he had not received a continuance previously. App. 103 ll. 6 – 17. Counsel did not

keep notes of when he met with clients. App. 103 l. 23 – App. 104 l. 10. Counsel remembered that Petitioner believed he had a good defense regarding probable cause and the traffic stop. App. 105 l. 11 – App. 106 l. 2.

Counsel admitted that he was unprepared to argue a suppression motion in Petitioner's case: "I was unprepared for the suppression motion, um, and if we would've lost [our] suppression motion then it would [have] been difficult to maintain a not guilty verdict." App. 111 ll. 13 – App. 13; App. 112 ll. 21 – 25. In particular, Petitioner admitted that because he had not issued a subpoena to anyone, "it would [have] been difficult if ... that case had - - proceeded to a suppression motion to --- [present witnesses and evidence regarding the motion]. Id. As a result, counsel agreed that it would be fair to say that Petitioner would have been panicked due to the fact that his attorney was not "prepared to present on the one defense that he was adamant about on the day he's told he's going to trial." Id.

Counsel for Petitioner at the evidentiary hearing summarized the testimony at the close of the hearing:

> [T]he point that [Petitioner] has made ... from [the] beginning in his PCR is that he felt forced into plea[d]ing because of the lack of preparation for that day and he didn't even know he was goin[g] [to court] that day and then they took him over and said You're going to trial today, and of course his immediate question ... to counsel was, Are we prepared for my suppression motion, which counsel said he's held burden to all through the de - - the defense of the case, and of course counsel [cannot] be truthful and say Well, no we're really not, and as [counsel] said that [ ] would probably cause panic in his client, um, **it is that type of situation precisely ... that creates a[n] undue influence for a guilty plea**...
>
> I understand that he answered the judge's questions ... but if you even look at the colloquy he stopped it twice, raised the defense and then at the critical point of givin[g] up the jury trial said to us, Well, you know, I [ ] wanna talk to my lawyer and addressed it again and of course without any defense, without any witnesses, um, he was just kinda stuck in a position where, uh, the guilty plea unfortunately was his only choice.

App. 117 l. 8 – App. 118 l. 3. (emphasis added).

Discussion

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). An "unsound result" occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969) (provides that a defendant's decision to plead guilty must be knowingly and voluntarily made); see also State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) (provides that the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea).

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687. The two-part test adopted in Strickland "applies to challenges to guilty pleas based on ineffective assistance of counsel." Hill v. Lockhart, 474 U.S. 52, 58 (1985).

Specifically, 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," a defendant sufficiently undermines the required voluntary and intelligent character of a plea. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009); See Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009) (holding the difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary

nature of the plea"). It follows that deficient advice may deprive a defendant of his Constitutional right "to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal." Jones v. Barnes, 463 U.S. 745, 751 (1983).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the 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." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

Based on counsel's own admission, he was unprepared to argue the suppression motion, a "very compelling" issue which was brought to his attention by Petitioner, on April 1, 2015. App. 18 ll. 10 – 25. He had not spoken with a material witness, Tayvona Stinson. He had not issued any subpoenas yet the expectation was that Petitioner's case was proceeding to trial. He never informed Petitioner that his trial was to begin that day; it caught both of them off guard. App. 108 l. 19 – App. 109 l. 6. Instead, he advised Petitioner to plead guilty. Even though he had not received a continuance before, counsel did not request a continuance. His conduct constituted ineffective assistance of counsel, and Petitioner's resulting prejudice manifested itself in an involuntary guilty plea. Had counsel issued a subpoena to Stinson and the law enforcement officers who prepared incident reports, he would not have pled guilty. However, counsel failed to send any subpoenas, so his choices were either to proceed to trial with an unprepared attorney or plead guilty. Petitioner's guilty plea was the unsound result of counsel's ineffectiveness and lack of preparedness.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant his application for post-conviction relief, reverse the charges against him, and remand the case for a new trial.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of January, 2018.

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MANUEL RASHON JETER,

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V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the 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 Petition for Writ of Certiorari and a copy of the Appendix have been served on Manuel Rashon Jeter, #322715, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 26th day of January, 2018.

Taylor D Gilliam
Appellate Defender

SUBSCRIBED AND SWORN TO before me this 26th day of January, 2018.

ATTORNEY FOR PETITIONER

(L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2027