

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Newberry County

Honorable G. Thomas Cooper, Circuit Court Judge

HAROLD RUBEN AYTON,

RECEIVED
MAY 15 2018
PETITIONER
S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001887

JOHNSON PETITION FOR WRIT OF CERTIORARI

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in denying petitioner a new trial because his guilty plea was rendered unknowing and involuntary by the ineffective assistance of plea counsel?

STATEMENT

In September 2011, a Newberry County grand jury indicted petitioner for three counts of first degree criminal sexual conduct with a minor and two counts of sexual exploitation of a minor. App. 418 – 427. On December 3, 2012, petitioner was tried before the Honorable Eugene Griffith and a jury. App. 1. Megan Burchstead and Kelly Wilson Hall of the Attorney General’s Office represented the State. App. 1. Charles V. Verner represented petitioner. App. 1. After motion hearings and jury selection, petitioner pled guilty. App. 159, l. 11 – 180, l. 10. Judge Griffith sentenced petitioner to thirty-five years’ imprisonment on the CSC charges and consecutive five-year terms on the exploitation charges. App. 193, l. 21 – 194, l. 4.

On January 13, 2015, petitioner filed a PCR application. App. 197. On June 2, 2017, the Honorable G. Thomas Cooper held a hearing on petitioner’s PCR application. App. 312. Judah N. VanSyckel represented the State. App. 312. Laura Saunders represented petitioner. App. 312. On August 21, 2017, Judge Cooper denied petitioner’s application. App. 359. Petitioner filed a *pro se* Rule 59(e) motion after his attorney filed the notice of appeal. App. 375. This petition follows.

ARGUMENT

The PCR court erred in denying petitioner a new trial because his guilty plea was rendered unknowing and involuntary by the ineffective assistance of plea counsel.

Standard of Review

The appellate court defers to the PCR court's findings of fact and "will uphold them if there is evidence in the record to support them." Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839-40 (2018). The supporting evidence must be of probative value. Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). Questions of law are reviewed *de novo*. Smalls, 810 S.E.2d at 839-40.

Discussion

Petitioner unequivocally testified that his guilty plea was the product of coercion. App. 328, ll. 4 – 17. Facing serious sexual assault charges stemming from video on a phone that allegedly belonged to petitioner of a man who could not be identified, but with a tattoo similar to petitioner's tattoo, having sex with a child, plea counsel only met with petitioner on the day of his trial. App. 319, ll. 15 – 25. App. 329, ll. 20 – 24. App. 335, l. 5 – 339, l. 4. Petitioner had no idea that plea counsel would be representing him after another public defender entered private practice. App. 321, ll. 11 – 24. Had petitioner known that he had a new attorney, he would never have gone through with the plea. App. 321, ll. 11 – 24.

Petitioner never received the discovery material provided to his attorney. App. 321, l. 25 – 322, l. 13. He had no knowledge of the video the State claimed depicted him having sex with a child until the day he pled guilty. App. 323, ll. 9 – 17. Plea counsel confirmed that petitioner never saw the video until "either the day of or the day before trial." App. 338, l. 23 – 339, l. 10. When petitioner watched the video, the Attorney General's investigator stayed in the room with

petitioner and his attorney. App. 338, l. 21 – 339, l. 4. Petitioner only received copies of the discovery after his incarceration in the Department of Corrections. App. 323, ll. 18 – 22.

Petitioner never received a report of his mental evaluation. App. 324, l. 24 – 326, l. 10. Petitioner had two witnesses, but plea counsel never called them. App. 326, ll. 11 – 14. Once petitioner received his discovery, he learned that his indictments were invalid because the grand jury did not meet on the date written on the indictments. App. 326, l. 18 – 328, l. 17. When petitioner pled guilty, he merely read from a paper prepared by plea counsel. App. 330, ll. 5 – 18.

The PCR court erred in finding that petitioner knowingly and voluntarily pled guilty. Petitioner’s plea was the result of coercion. “Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process.” Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). “Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel.” Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted).

“The longstanding test for determining the validity of a guilty 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). Counsel cannot properly advise a client on any issue unless counsel has first performed a reasonable investigation. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

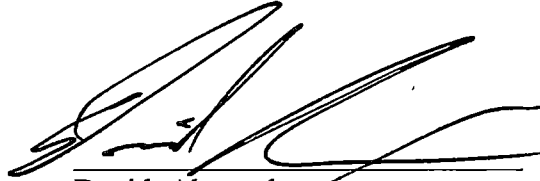
This Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant’s trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. This Court found such advice

deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

The erroneous advice provided in Hinson and Alexander is analogous to the lack of advice or preparation provided in this case. Petitioner could not make an intelligent decision about whether to plead guilty without fully reviewing his case. Petitioner could not be expected to make a snap decision about the serious charges he was facing when he viewed the State's key piece of evidence only on the day of trial. The lack of preparation by trial counsel and the failure to fully advise petitioner about the evidence against him left him no choice but to plead guilty. This plea was the product of coercion and this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari with the ultimate relief of reversing petitioner's convictions and granting him a new trial.

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of May, 2018.

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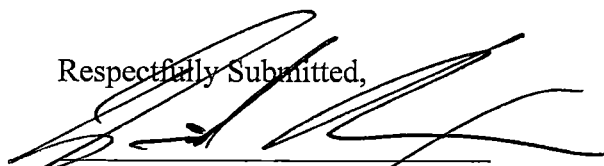
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Harold Ruben Ayton states:

1. He is an 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 the Honorable G. Thomas Cooper, which was held on June 5, 2017, 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 Harold Ruben Ayton.

Respectfully Submitted,




David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 15th day of May, 2018.

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."



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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 Megan Jameson, 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 Harold Ruben Ayton, #353371, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 15th day of May, 2018.



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 15th day of May, 2018.

Courtney Power (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.