

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Paul M. Burch, Circuit Court Judge

JAMES MURPHY, II

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002097

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where he pled guilty because plea counsel promised him that he would receive a ten to fifteen year sentence if he pled guilty instead of going to trial, and where he pled guilty and received a twenty eight year sentence instead?

STATEMENT

During the June 2012 term, the Florence County Grand Jury indicted Petitioner for Armed Robbery, Kidnapping, Conspiracy to commit Armed Robbery and Kidnapping, and Possession of a Weapon during the Commission of a Violent Crime. App. 107 – 109. Petitioner pled guilty because his plea counsel advised him he would only receive a ten to fifteen year sentence. App. 47, ll. 9 – 25. Petitioner pled guilty on February 15, 2013, in front of the Honorable William H. Seals, Jr. App. 1. Michael Miller represented Petitioner and Johnny Etheride represented the state. Id. Judge Seals accepted Petitioner's guilty plea and sentenced him to twenty-eight years' imprisonment. App. 14, ll. 24 – 25; 20, ll. 23 – 25.

On July 16, 2013, Petitioner filed a post-conviction relief application that alleged ineffective assistance of counsel because counsel told him he would get ten to fifteen years imprisonment if he pled guilty and he actually received twenty-eight years imprisonment after he pled guilty. App. 23 – 28. On May 6, 2014, the state filed its return. App. 30 – 34. On March 15, 2017, an evidentiary hearing was held before the Honorable Paul M. Burch. App. 36. Jonathon D. Waller represented Petitioner and Lindsay A. McCallister represented the state. Id. On September 1, 2017, Judge Burch issued an order of dismissal because Petitioner failed to present evidence that plea counsel provided deficient performance. App. 94 – 104.

This Petition for Writ of Certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made where he pled guilty because plea counsel promised him that he would receive a ten to fifteen year sentence if he pled guilty instead of going to trial, and where he pled guilty and received a twenty eight year sentence instead.

Relevant Facts

At Petitioner's guilty plea hearing the state alleged the following underlying facts. Petitioner and three other men approached Hakeem Adams, the complainant, in the parking lot of an apartment complex where Adams' girlfriend and child lived. App. 8, l. 23 – 9, l. 13. One of the men held Adams up at gun point. App. 9, ll. 20 – 21. Along with three other men, Petitioner forced Adams into the backseat of the car they were driving and then took Adams' car. App. 9, ll. 21 – 22.

They brought Adams to a secluded place and, the state alleged, Petitioner shot at him three times. App. 10, ll. 18 – 24. There is no record that Petitioner struck Adams, and plea counsel stated that while Petitioner may have been a principal in the kidnapping and robbery, he acted at the behest of the ringleader co-defendant. App. 18, ll. 2 – 13. Plea counsel further argued that the fact that Petitioner missed all of the shots he took at Adams was evidence that Petitioner did not want to kill him. App. 18, ll. 18 – 22. Adams played dead and the men left. App. 10, l. 24 – 11, l. 1. Adams ran to a nearby house and called the police. App. 11, ll. 4 – 8. Police found Petitioner along with one co-defendant in Adams' car. App. 11, ll. 17 – 24. Petitioner was arrested and in his presence were proceeds from the robbery and a gun. App. 11, l. 24 – 12, l. 3. Since the incident spanned multiple counties, Petitioner waived venue in Florence County to plead in Marion County in an effort to resolve the case in its entirety. App. 4, ll. 9 – 12.

At PCR, Petitioner testified that he was under the impression that his attorney made a plea deal with the state for a sentence between ten and fifteen years. App. 59, ll. 10 – 12. Petitioner believed that he had to waive venue and plead in Marion County because plea counsel told him that the deal was time sensitive, and if he did not plead now, in Marion County for a ten to fifteen year sentence, he will have to go to trial. App. 47, ll. 9 – 25. Petitioner testified he only waived venue in Florence County, and did not go to trial, with the understanding that he would receive ten to fifteen years if pled guilty in Marion County. Id.

At PCR, plea counsel, Michael Miller, denied Petitioner's allegation that he promised Petitioner how much time Petitioner would receive because, plea counsel, "had no such basis to make that promise." App. 72, l. 23 – 73, l. 1. However at PCR, plea counsel testified incorrectly multiple times about the plea hearing. For example, at PCR, plea counsel mentioned that the victim gave a very impassioned statement to the court, "I remember... the victim gave a very impassioned statement to the court." App. 73, ll. 13 – 14. He also testified that he believed that Judge Seals gave Petitioner an unduly harsh sentence because the state "had a victim in there saying he was thinking he was going to die." App. 74, ll. 13 – 20. However, the Hakeem Adams did not make a statement at the plea hearing, a relative of Adams' made a statement and nowhere in that statement did the relative discuss Adams' mentality at the time of the shooting. App. 14, ll. 3 – 14. Plea counsel's confusion regarding the details of the plea hearing undermine the reliability of his testimony that he did not guarantee Petitioner a ten to fifteen year sentence if he plead guilty.

Judge Burch filed the Order of Dismissal on September 1, 2017, and found that Petitioner failed to satisfy the burden of proof for ineffective assistance of counsel. Judge Burch found that the plea colloquy, Petitioner's admission of guilt at the plea, that Petitioner did not challenge the

facts presented by the state at the plea, and that Petitioner stated he was satisfied with his attorney showed that Petitioner's plea was entered freely, voluntarily, knowingly, and intelligently. App. 102. That was an error and that error prejudiced Petitioner.

Discussion

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made because plea counsel improperly induced Petitioner guilty plea when he promised Petitioner that the judge would only sentence him to ten to fifteen years imprisonment if he pled guilty. Further, Petitioner was prejudiced by plea counsel's influence because he received a sentence far longer than the one promised, and as Petitioner's PCR testimony indicated, he would not have waived venue and pled guilty but for plea counsel's promise that he would be sentenced to ten to fifteen years. App. 47, ll. 19 – 25.

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, 106 S.Ct. 366, 369 (1985) (internal quotations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (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. 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, 106 S.Ct. at 370. “[T]he voluntariness of a guilty plea is not determined by an examination of a specific inquiry made

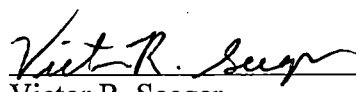
by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Holden v. State, 393 S.C. 565, 573, 713 S.E.2d 611, 615 (2011).

“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, 104 S.Ct. at 2063 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275, 276, 63 S.Ct. 236, 240 (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, 90 S.Ct. 1463, 1472 (1970) (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (1957)). Accordingly, counsel provides ineffective assistance when he makes a misrepresentation that induces the defendant to plead guilty.

In this case, Petitioner was induced into waiving venue and pleading guilty by plea counsel’s promise that he would receive ten to fifteen years imprisonment if he pled guilty. There was a reasonable probability that but for plea counsel’s promise, Petitioner would not have pled guilty and would have insisted on proceeding to trial. App. 47, ll. 9 – 25. Thus, Petitioner was prejudiced by plea counsel’s promise that he would serve ten to fifteen years if he pled guilty because he would not have pled guilty without plea counsel’s promise, and, after Petitioner pled guilty, he received a sentence far more severe than the one promised.

CONCLUSION

By reason of the foregoing arguments, Petitioner respectfully requests this Court grant the petition for Writ of Certiorari and permit full briefing on the issue presented.



Victor R. Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of May, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Paul M. Burch, Circuit Court Judge

JAMES MURPHY, II

PETITIONER

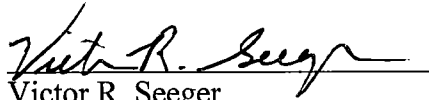
V.

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 Lindsey McCallister, 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 James Murphy, II, #354373, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 29th day of May, 2018.



Victor R. Seeger
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 29th day of May, 2018.

 (L.S)

Notary Public for South Carolina
My Commission Expires: July 3, 2023