

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

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Certiorari to Pickens County

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Honorable Eugene C. Griffith, Circuit Court Judge

MAY 11 2017

S.C. SUPREME COURT

BRANDON GARREN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2015-000756

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BRIEF OF RESPONDENT
—————

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR RESPONDENT

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ISSUES PRESENTED

PETITIONER'S QUESTIONS PRESENTED

1.

Did the PCR judge err in finding respondent was entitled to a new trial because respondent failed to meet his burden of proving either that plea counsel was ineffective in not requesting a psychological evaluation or that he suffered any resulting prejudice?

2.

Did the PCR judge err in finding respondent was entitled to a new trial because respondent failed to meet his burden of proving his guilty plea was involuntary?

RESPONDENT'S COUNTER-QUESTIONS PRESENTED

1.

Whether any evidence supports the trial judge's finding that plea counsel performed deficiently in failing to request a competency examination?

2.

Whether any evidence supports the PCR judge's finding that Respondent's guilty plea was involuntary because respondent was under the influence of medication, he demonstrated he did not understand the effect of his plea, and plea counsel failed to have a psychological evaluation conducted?

STATEMENT OF THE CASE

On December 11, 2012, a Pickens County grand jury indicted respondent for attempted murder and domestic violence of a high and aggravated nature. App. 78-82. On January 31, 2013, respondent pled guilty to CDVHAN and ABHAN before the Honorable Letitia H. Verdin. App. 1-2. App. 7, l. 11 - 8, l. 13. App. 13, ll. 5 – 6. Respondent pled guilty in a hearing along with five other defendants whose charges were unrelated to respondent's charges. App. 1 – 2. Frank Eppes represented respondent and two other defendants at the hearing. App. 2. Sam Tooker represented the State. App. 2. Judge Verdin sentenced respondent to concurrent terms of fifteen years' imprisonment for ABHAN and ten years' imprisonment for CDVHAN. App. 33, ll. 11 – 14. App. 87-88.

On November 4, 2013, respondent filed a PCR application. App. 35. On December 15, 2014, a hearing was held before the Honorable Eugene C. Griffith, Jr. App. 52. R. Mills Ariail, Jr. represented respondent. App. 52. Karen C. Ratigan represented the State. App. 52. On March 12, 2015, Judge Griffith granted respondent a new trial. App. 72. On November 9, 2016, this Court granted the State's petition for certiorari.

ARGUMENT

1.

Ample evidence supports the trial judge's finding that plea counsel performed deficiently in failing to request a competency examination.

The PCR court ruled that respondent, Brandon Garren ("Garren") "did not understand the specifics of his guilty plea because of his mental incapacity and that he would not have pled guilty if he was not under the influence of medication at the time of his plea." App. 75. The PCR court found that respondent "met his burden proving that trial counsel should have requested that Applicant have a psychological evaluation before Applicant plead guilty and that applicant was under the influence of medication which affected his ability to understand what he was doing on the day of his plea." App. 75. Ample evidence supports these conclusions and findings.

"In reviewing a PCR court's decision, this Court will uphold the PCR court's findings if there is any evidence of probative value to support them." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Garren's testimony and plea counsel's testimony both support the PCR court's determination that plea counsel performed deficiently in failing to order a competency evaluation.

Garren pled guilty at a plea hearing with multiple defendants. App. 1-2. Plea counsel represented two other defendants at the hearing. App. 2. Plea counsel's other two clients' charges were unrelated to Garren's charges. App. 13, ll. 11 – 23. App. 21, l. 5 – 22, l. 17. At the PCR hearing, Garren testified that the medication given him at the jail caused him not to understand the proceedings. App. 57, l. 6 – 58, l. 11. Statements made during the plea colloquy corroborate Garren's PCR testimony. Garren failed to respond when Judge Verdin asked him if he understood that his offenses were classified as violent. App. 7, ll. 18 – 22. He again failed to

respond when the court asked him if he knew he was giving up his right to remain silent. App. 11, ll. 10 – 14. These two failures to respond were despite respondent being the last in line to answer questions and being able to hear the responses from the other defendants. App. 6, l. 3 – 7, l. 25. App. 10, l. 22 – 11, l. 14. Garren heard five other defendants respond “Yes, ma’am” and still failed to respond. App. 6, l. 3 – 7, l. 25. App. 10, l. 22 – 11, l. 14.

When the court finished with the other five defendants and turned to Garren, plea counsel had to call to him and tell him where to stand. App. 24, ll. 10 – 15. The complainant’s brother told the court that at one point, Garren believed he was the Apostle Paul. App. 28, ll. 17 – 23. Plea counsel told the court that Garren “obviously has some mental problems.” App. 31, ll. 12 – 17. He further stated:

[Garren] also has a disease that the detention center could confirm where iron builds up in his blood. He literally has to have a pint of blood taken from him between every two weeks and every month. Since he’s gotten into the detention center and gotten off pills, he tells me he’s gained 46 pounds. He’s gained 46 pounds.

App. 31, ll. 18 – 24.

At the PCR hearing, plea counsel elaborated: “[Garren] had extensive health problems that went to his mental health going back a decade or more. He had some kind of vitamin deficiency that really affects his ability to do everything.” App. 66, ll. 19 – 22. Garren’s mother told Judge Verdin, “My son has got numerous health problems. He needs medical help, which he’s getting some of at the LEC.” App. 32, ll. 14 – 16. Garren’s mother said he had “a team of doctors.” App. 32, ll. 18 – 22. Garren testified:

I don’t know what kind of medication they was giving me in the county. But they have a way of giving medication that’s—they have a bunch of little glasses on a tray. And they just give you medicine. I don’t know if they give me the wrong medicine or what they done. But I had a reaction two different times to that medicine they give me.

App. 57, ll. 6 – 17.

The above evidence amply supports the PCR court’s finding that plea counsel performed deficiently in not requesting a psychological evaluation. App. 74-75. “Once a PCR applicant has established his counsel was deficient in failing to obtain a mental competency evaluation, he is entitled to relief if he demonstrates a reasonable probability that he was incompetent at the time he pled guilty.” Ramirez v. State, 419 S.C. 14, 22, 795 S.E.2d 841, 845 (2017). The State’s argument focuses solely on plea counsel’s testimony at the PCR hearing that he believed Garren was competent, but ignores the other evidence in the record that supports the PCR court’s findings. The PCR court credited Garren’s testimony that he was on medication and incapable of understanding what occurred at the plea hearing. The State’s argument seems to assume that a PCR court errs when it credits the testimony of an applicant. Garren’s testimony—which was corroborated by plea counsel’s recitation of his health problems both at the plea hearing and at the PCR hearing—satisfies the “any evidence of probative value” standard. Furthermore, plea counsel’s testimony at the PCR hearing shows that he was on notice of Garren’s long history of mental health problems and still failed to have him evaluated.

Every criminal defendant has the right to be present at his trial, and this right includes the right to be mentally present. U.S. Const. amends. V, VI, XIV. The conviction of an accused person while he is incompetent violates due process. Pate v. Robinson, 383 U.S. 375, 378 (1966). In Sanders v. United States, 373 U.S. 1, 5 (1963), the defendant alleged that his guilty plea was involuntary because of narcotics administered at the jail. During the guilty plea, the defendant asked the judge to send him to a specific prison “for addiction cure” and that he had “been using narcotics off and on for quite a while.” Id. at 4. The habeas judge denied relief without a hearing and the United States Supreme Court reversed. Id. at 19 – 23.

The Sanders Court noted that “[w]hether or not petitioner was under the influence of narcotics would not necessarily have been apparent to the trial judge.” Id. at 20. “However regular the proceedings at which he signed a waiver of indictment, declined assistance of counsel, and pleaded guilty might appear from the transcript, it still might be the case that petitioner did not make an intelligent and understanding waiver of his constitutional rights.” Id. at 19-20. See also Hansford v. United States, 365 F.2d 920, 924 (D.C. Cir. 1966) (“This reasoning applies with particular force to a defendant who may be under the influence of narcotics, since the symptoms and effects of an acute brain syndrome produced by narcotics will often not be apparent to a lay observer, even a judge, but only to an expert.”).

Precisely for the point made in Sanders—that mental issues and intoxication are not easy to spot—the PCR judge correctly found that plea counsel should have ordered a psychological evaluation. Plea counsel admitted as much when he observed that Garren’s “affect is to this day so much different than my typical client that I have real concerns that I made a mistake.” App. 68, l. 13 – 69, l. 2. With a client whose affect stood out from the multitude of defendants the very experienced plea counsel has represented, not having an expert evaluate Garren’s mental status and the effect of his medication was indeed a mistake. The PCR judge also had an opportunity to observe Garren at the hearing. The PCR judge’s ability to observe Garren and his crediting of plea counsel’s testimony on this point are entitled to deference.

Much like the Government in Sanders, the State points to the plea hearing as evidence that Garren’s plea was voluntary. The Sanders Court rejected this argument. In this case, the PCR court also rejected this argument in crediting Garren’s testimony about the circumstances of his plea. Just like in Sanders, there was evidence at the plea hearing that Garren was medicated. Much like the defendant in Sanders requested an “addiction cure,” in this case plea counsel told the court at the

plea about Garren's rare blood disease that had been confirmed by the jail. Because sufficient evidence supports the PCR judge's finding that Garren should have been evaluated and trial counsel performed deficiently, under the rule of Ramirez, the PCR court correctly granted relief. This Court should affirm.

2.

Ample evidence supports the PCR judge's finding that Respondent's guilty plea was involuntary because respondent was under the influence of medication, he demonstrated he did not understand the effect of his plea and plea counsel failed to have a psychological evaluation conducted.

As detailed above, substantial evidence supports the PCR judge's conclusion that respondent's guilty plea was unknowing and involuntary. The proper standard of review of a PCR court's order is whether "any evidence of probative value" exists to support the court's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). "This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law." Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

"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). "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).

"Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently

by defendants.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers.” Id. A defendant must also “be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Id.

The PCR court ruled that Garren “was under the influence of medication which affected his ability to understand what he was doing on the day of his plea.” App. 75. Evidence in the record supports the court’s finding. Garren unequivocally testified that he did not understand what he was doing on the day of the plea. App. 57, l. 25 – 58, l. 3. The State failed to shake Garren on cross-examination as he testified that he did not remember anything about the guilty plea itself or telling the judge that no one had made any promises to him. App. 62, ll. 1 – 10. The only thing Garren could remember was plea counsel “Mr. Eppes come in the hallway and told me he wasn’t never going to represent me again.” App. 62, ll. 8 – 12.

The State emphasizes plea counsel’s testimony at the PCR hearing that he believed Garren was competent; however, Judge Griffith credited plea counsel’s concerns regarding Garren’s mental and physical health. App. 66, ll. 7 – 22. The PCR judge found Garren “met his burden proving trial counsel should have requested that Applicant have a psychological evaluation before Applicant plead guilty. . . .” App. 74-75. The court’s finding was reasonably based on Garren’s testimony as corroborated by portions of plea counsel’s testimony.

“The PCR court’s findings on matters of credibility are given great deference by this Court.” Goins at 573, 726 S.E.2d at 3. The PCR judge credited Garren’s testimony regarding the influence of medication. He also credited plea counsel’s testimony that Garren had mental problems and he should have ordered a psychological evaluation. App. 74-75. The PCR judge found that Garren

would not have pled guilty but for “his mental incapacity” and had he not been “under the influence of medication at the time of his plea.” App. 75.

On appeal, this Court defers to these credibility findings, which establish an involuntary guilty plea and prejudice. The PCR judge’s ruling is supported by ample evidence and this Court should affirm.

CONCLUSION

For the foregoing reasons, the judgment of the PCR court should be affirmed.

David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

This 11th day of May, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Honorable Eugene C. Griffith, Circuit Court Judge

BRANDON GARREN,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Respondent in the above referenced case has been served upon Ruston W. Nealy, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Respondent has been served on Brandon Garren, #354160, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 11th day of May, 2017.

David Alexander
Appellate Defender
ATTORNEY FOR RESPONDENT

SUBSCRIBED AND SWORN TO before me
this 11th day of May, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 11, 2017

Ruston W. Nealy, Esquire
Assistant Attorney General
Columbia, SC

Re: Brandon Garren v. State of South Carolina

Dear Mr. Nealy:

Enclosed are two copies of the Brief of Respondent in the above entitled case, which I have filed today with the South Carolina Supreme Court.

Please call me if you have any questions.

Sincerely,

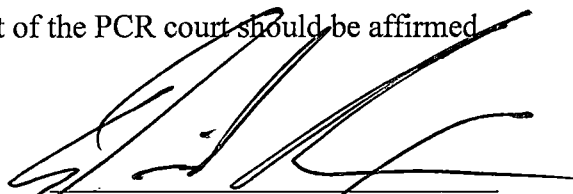
David Alexander
Appellate Defender

DAA/csb

Enclosure

CONCLUSION

For the foregoing reasons, the judgment of the PCR court should be affirmed.

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

David Alexander
Appellate Defender

ATTORNEY FOR RESPONDENT

This 11th day of May, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Honorable Eugene C. Griffith, Circuit Court Judge

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RESPONDENT,

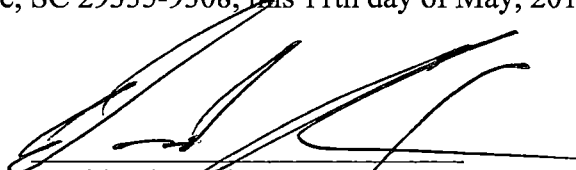
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David Alexander
Appellate Defender
ATTORNEY FOR RESPONDENT

SUBSCRIBED AND SWORN TO before me
this 11th day of May, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023