

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post-Conviction Relief

William H. Seals, Jr., Circuit Court Judge

Appellate Case No.: 2018-000214

Hector Cases-Carreras #363117,..... Petitioner,

vs.

State of South Carolina,Respondent.

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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- Dover v. State, 304 S.C. 433, 434, 405 S.E. 2d 391, 392 (1991)
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SOUTH CAROLINA RULES OF CIVIL PROCEDURE

Rule 71.1 (e)

QUESTION PRESENTED

Did the Lower Court erred in not Granting Post Conviction Relief on the basis that the Petitioner did not freely, voluntarily, knowingly and intelligently enter into his guilty plea?

STATEMENT OF THE CASE

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry county Clerk of Court. Petitioner was indicted at the May, 2014 term of the Horry County Grand Jury for trafficking in illegal drugs (heroin), 28 grams or more (2014-GS-26-02133). David J. Canty, Esq. represented Petitioner through a preliminary hearing. Dean N. Mureddu, Esq. represented Petitioner thereafter. David P. Caraker, of the Fifteenth Circuit Solicitor's Office prosecuted the case. On February 23, 2015, Petitioner pled guilty to the lesser-included offense of trafficking in heroin, between 4 and 14 grams, first offense. The Honorable Michael G. Nettles sentenced Petitioner to imprisonment for a term of 18 years. Petitioner did not appeal his plea or sentence.

STANDARD OF REVIEW

In a post-conviction relief action, an Applicant has the burden of proving the allegations in his or her application. Rule 71.1 (e), SCRPC: Bulter v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985). When an Applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E. 2d 441 (quoting Stickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms". Cherry at 117, 386 S.E. 2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E. 2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E. 2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E. 2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E. 2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

ARGUMENT

The Petitioner in this case alleges that his guilty plea was not freely, voluntarily, knowingly and intelligently given for the following reasons:

- A. That the Petitioner doesn't speak English and had difficulty understanding his attorney as well as understanding the plea.
- B. That the Petitioner was coerced into accepting the plea offer because it was his understanding that if he was to accept the plea, the charges would be dismissed against his daughter-in-law.
- C. That he felt that counsel was not prepared to try the case and he was forced into taking the plea.

The Petitioner testified that he initially retained counsel and that he was represented by David J. Canty, Esq. through the preliminary hearing. After the preliminary hearing, a second attorney, Dean Mureddu was appointed to represent him. (App. p. 25-26) He testified that he met trial counsel three times, five to ten minutes each time. He stated that he never went over any of the discovery with his attorney. (App. p. 26, lines 9-13) He also testified that there was an alleged video and stated that he was only able to see the video one hour prior to going to trial. (App. p. 27, lines 7-10)

The Petitioner testified that prior to his plea, he was told that he had to accept the plea or go to trial. His attorney told him that he did not have any way to win the trial. At that point, Petitioner told trial counsel that he felt like he was not ready for trial. (App. p. 27, lines 20-25, p. 28, lines 1-4)

Petitioner stated that he had difficulty in communicating with his attorney. On the occasions that he met with his trial counsel that he would take his wife with him, she would assist in interpretation at these meetings. Even with his wife's assistance, he often had difficulty understanding what was happening. He testified that it was difficult for his wife to translate the legal terms and that he did not understand all of these terms prior to accepting the plea. (App. p. 30) He also acknowledged that in other instances there were different interpreters, but that he really didn't understand their language because all Spanish is not the same (App. p. 28-29) He stated that he understood that he had pled guilty, but he did not feel like he had entered into his plea freely and voluntarily nor intelligently or knowingly given. (App. p. 30-31)

Mr. Carreras testified that his trial counsel brought him an offer of eighteen (18) years and his son would receive fifteen (15) years. Petitioner wanted his attorney to negotiate fifteen (15) years for him and twelve (12) years for his son. However, Trial Counsel said that the best that could be done was eighteen (18) years for him and fifteen (15) for his son and that his daughter-in-law would go free. He stated that it was his understanding that he had to plea so that his daughter-in-law would not be prosecuted. (App. p. 29)

It is generally accepted that it is required for a Defendant to knowingly and voluntarily enter into a plea of guilty. A Defendant must have a full understanding of the consequences of his plea and of the charges against him Gustine v. State 325 S.C. 123, 128, 480 S.E. 2d 444, 446 (1997) and Simpson v. State 317 S.C. 506, 455 S.E. 2d 175 (1995). Where a demand of a Solicitor is coercive when made as part of the plea offer is to be determined on a case by case basis. Wade v. State 308 S.C. 552, 419 S.E. 2d 781 (1992). The Petitioner testified that

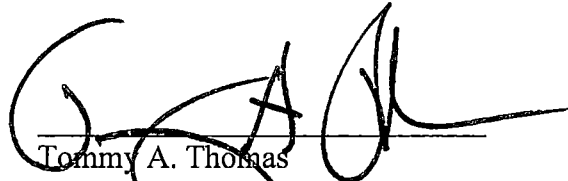
he felt like this plea was a group deal and that he had to plea in order for his daughter-in-law to be released.

In the case at hand, the PCR Court found that Petitioner's Counsel was not ineffective for failing to hire and utilize a professional interpreter in the course of his representation. However, Petitioner is Spanish speaking and had difficulty understanding the communication with his attorney. Petitioner did not understand the legal process of what he was doing. The investigative report states that Petitioner had a language barrier with police. (App. p. 70, lines 11-18). Counsel Murredu admits that the Petitioner has a language barrier and alludes to the barrier before the Court. (App. pp. 43-44). He stated that without an interpreter he wouldn't have gotten anywhere. However, counsel admits that an interpreter was not present at his most significant meeting. (App. p. 44). Petitioner's wife interpreted at that meeting however, Counsel didn't "know her degree of knowledge as far as legally." (App. p. 45, lines 5-6). Due to the language barrier and the fact that Counsel did not provide an interpreter at meetings, Counsel was ineffective.

Lastly, the Petitioner testified that he did not feel that trial counsel was prepared to try the case. In fact, when the Petitioner went to Court, he did not know that the case was up for trial. He testified that the trial date was for him to report to go over the discovery and evidence and to come up with a trial strategy. (App. p. 27, lines 8-21)

CONCLUSION

Therefore, based upon the foregoing the Lower Court erred in not granting Post Conviction Relief on the basis that the Petitioner did not freely, voluntarily, knowingly or intelligently entered into his guilty plea.



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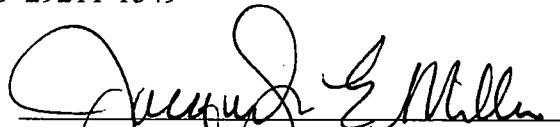
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I placed in the United States Mail, a copy of a Motion for Extension, with postage prepaid and the return address clearly shown on said envelope to:

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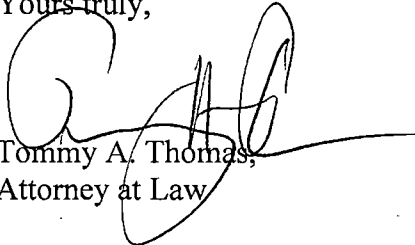
RE: Hector Cases-Carreras #363117 v. State of South Carolina
Appellate Case No.: 2018-000214

Dear Sir or Madam:

Enclosed please find for filing an original and seven copies of a Petition for Writ of Certiorari, and an unbound and two bound Appendix, as well as an original and a copy of a Certificate of Service in the above referenced matter.

Kindly return the clocked copies to me in the enclosed envelope. Please feel free to contact me should you have any questions.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Johnny Ellis James, Jr., Esq.
Hector Cases-Carreras #363117

TY®



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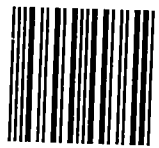
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