

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Fairfield County

Honorable R. Knox McMahon, Circuit Court Judge

BOYD WILLIAM ROWE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000437

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

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

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S.C. SUPREME COURT

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT.....4

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL.....8

ISSUE PRESENTED

Did the PCR Court err in denying Petitioner relief where plea counsel provided ineffective assistance of counsel which resulted in an involuntary guilty plea where counsel failed to thoroughly explain the evidence in the case, sentencing ranges, and trial and plea processes with Petitioner?

STATEMENT

On September 4, 2014, a Fairfield County grand jury indicted Petitioner for entering a financial institution with the intent to steal. App. 1119 – 120. Petitioner pled guilty to strong armed robbery before the Honorable Roger Young on or about May 21, 2015. App. 1; App. 3 ll. 3 – 10; App. 121 – 122. Derrick Chiarenza represented Petitioner, and Riley Maxwell served as the assistant solicitor.

The facts presented at the guilty plea for the prosecution were as follows:

On May 8, 2014, a man entered the First Citizen Bank near Ridgeway in Fairfield County. App. 18 l. 8 – App. 20 l. 20. The man approached a teller and asked for money, specifically requesting “[n]o die pack or funny money.” Id. The teller provided the man with the money, and he drove off in a white Chevrolet S-10 truck. Id. After broadcasting the man’s face from the surveillance video, law enforcement received information that Petitioner matched the description of the man who had taken the money. Id. Law enforcement received consent to search Petitioner’s house but did not find any of the \$1,934 which was taken. Id.

Nonetheless, Petitioner was arrested. From jail, he made a call to an informant with the sheriff’s department who told law enforcement that Petitioner provided the whereabouts of some of the money. Id. According to the State, Petitioner spoke with an investigator and admitted to going into the bank and asking for money. Id.

Judge Young accepted Petitioner’s guilty plea as freely and voluntarily made. App. 18 ll. 6 – 7. Following the State’s recommendation, Judge Young sentenced Petitioner to fifteen years’ imprisonment. App. 33 ll. 14 – 16.

Petitioner did not file an appeal following the entry of his guilty plea. He filed a timely application for post-conviction relief on March 7, 2016. App. 35 – 46. It contained allegations

of ineffective assistance of counsel, including claims that counsel failed to investigate and that Petitioner was coerced into a guilty plea. Id.

The State made its Return on or about November 22, 2016. App. 48 – 53. An evidentiary hearing was conducted on July 17, 2017 before the Honorable R. Knox McMahon. App. 54. Beth Faulkner represented Petitioner, and DeShawn Mitchell appeared on behalf of the State. Petitioner and plea counsel testified at the hearing.

On February 14, 2018, Judge McMahon issued his order denying Petitioner relief. App. 109 – 118. In particular, he found that Petitioner failed to carry his burden regarding any of his allegations and failed to prove he was prejudiced by any of the claimed deficiencies. App. 115.

This Petition follows.

ARGUMENT

The PCR Court erred in denying Petitioner relief where plea counsel provided ineffective assistance of counsel which resulted in an involuntary guilty plea where counsel failed to thoroughly explain the evidence in the case, sentencing ranges, and trial and plea processes with Petitioner.

Petitioner answered in the negative when asked at his guilty plea whether he was satisfied with plea counsel's representation. App. 9 l. 23 – App. 12 l. 20. He testified at the evidentiary hearing that the two met twice. App. 62 ll. 8 – 14. Petitioner averred that plea counsel never went over the evidence with him. App. 63 ll. 7 – 9. Petitioner also testified that plea counsel told him if he did not take the plea then “he was going to make sure that [Petitioner] got the thirty years that the solicitor want[ed] to give [him].” App. 71 l. 14 – App. 72 l. 4.

Plea counsel advised the circuit court that Petitioner had “numerous health issues” but suggested that none “rise to the level that would present him from understanding what he is doing today.” App. 16 l. 20 – App. 17 l. 8. At the evidentiary hearing, counsel noted that he was court appointed. App. 85 ll. 12 – 18. Counsel admitted that he advised Petitioner not to go to trial. App. 87 ll. 15 – 21.

At the conclusion of the post-conviction relief evidentiary hearing, PCR counsel offered a final argument in favor of granting relief, including the failure to discuss the sentencing range with Petitioner; Petitioner believed he was going to receive between eight and ten years. App. 100 l. 18 – App. 101 l. 12.

Petitioner correctly asserted that Counsel was ineffective, because he did not provide sufficient information regarding Petitioner's guilty plea prior to it being accepted by the court. 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. Id. at 687. “[T]he court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (quoting Strickland at 690).

Before a defendant may plead guilty, it must be established that the defendant is competent and that the defendant's decision to plead guilty is a knowing and voluntary one. Sims v. State, 313 S.C. 420, 423–24, 438 S.E.2d 253, 254–55 (1993) (citing Godinez v. Moran, 509 U.S. 389, 398–401, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993)). The test for competency is the same whether a defendant pleads guilty or goes to trial—namely, “whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding” and the requirement that the defendant “have a rational as well as a factual understanding of the proceedings against him.” Id. at 422–23, 438 S.E.2d at 254.

If a PCR applicant claims his guilty plea was involuntary due to the influence of medication, he must show “that his mental faculties were so impaired by drugs when he pleaded that he was incapable of full understanding and appreciation of the charges against him, of comprehending his constitutional rights, and of realizing the consequences of his plea.” United States v. Truglio, 493 F.2d 574, 578 (4th Cir. 1974) (quotation marks and citation omitted). A PCR court must consider “objective data” about the nature and effect of the medication the defendant had taken and evaluate whether such medication “had the capability to produce a sufficient effect on his mental faculties to render him incompetent to enter a guilty plea.” United

States v. Damon, 191 F.3d 561, 565 (4th Cir. 1999) (recognizing that not all medication will influence a defendant's mental state to the point that the guilty plea must be invalidated) (citation omitted). “The dispositive feature of this inquiry is whether the medication is in fact causing such an impairment.” United States v. Caramadre, 807 F.3d 359, 368 (1st Cir. 2015).

First, to be entitled to PCR, the applicant must show that counsel's performance was deficient. Payne v. State, 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003) (citing Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

In this regard, Counsel failed to consult with Petitioner regarding the logistics behind the recommendations attached to the plea as well as the procedure behind a jury trial. Counsel advised Petitioner that he would not go to trial. App. 87 ll. 15 – 17. As a result, counsel never spoke with Petitioner regarding the intricacies of the trial; there was no need for a discussion because plea counsel foreclosed the possibility of a jury trial. Such conduct falls within the gamut of deficiency especially considering Petitioner wanted another attorney. App. 94 l. 17 – App. 95 l. 9. Petitioner was also under the impression that he was going to receive between eight and ten years imprisonment. App. 64 ll. 10 – 16.

“The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). As evident from Petitioner’s testimony, the prejudice in his case manifested itself in his unknowing and involuntary plea which was made without full knowledge of either the sentencing range or the evidence which could have been

used against him and would not have been entered had Petitioner been provided that information.
App. 94 l. 17 – App. 95 l. 9.

Petitioner's guilty plea is replete with references to Petitioner's medications and mental health. App. 5 l. 14 – App. 9 l. 19; App. 16 l. 12 – App. 18 l. 5. Plea counsel, who was in favor of a guilty plea, advised the circuit court that although Petitioner had "numerous health issues," none rose to the level of preventing him from understanding what was occurring at the guilty plea. Id. The PCR court failed to consider objective data about the nature and effect of the medications which Petitioner was taking at the time of the plea, as required by United States v. Truglio, 493 F.2d 574, 578 (4th Cir. 1974).

As a result of counsel's failure to advise Petitioner of all the facts and law surrounding his case, counsel's assistance was deficient and Petitioner's guilty plea was not entered knowingly or voluntarily.

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant his petition for writ of certiorari to allow full briefing on this issue, reverse the charges against him, and remand the case for a new trial.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of October, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Fairfield County

Honorable R. Knox McMahon, Circuit Court Judge

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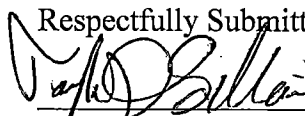
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Boyd William Rowe states:

1. He is 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 post-conviction relief hearing before Judge R. Knox McMahon, which was held on July 17, 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 Boyd William Rowe.

Respectfully Submitted,



Taylor D Gilliam

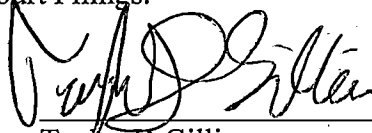
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of October, 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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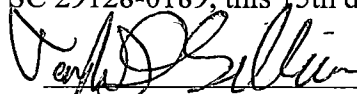
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RESPONDENT

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 DeShawn H. Mitchell, 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 Boyd William Rowe, #273284, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 15th day of October, 2018.



Taylor D Gilliam

Appellate Defender

ATTORNEY FOR PETITIONER

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

 (L.S)

Notary Public for South Carolina

My Commission Expires: 05/12/2027