

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

EDWARD L. MORRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000520

JOHNSON PETITION FOR WRIT OF CERTIORARI

Victor R. Seeger
Appellate Defender

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

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel provided ineffective assistance when he failed to move to suppress Petitioner's statements to police, where that failure wrongfully induced Petitioner to plead guilty and where there was a reasonable likelihood that Petitioner's statements would have been suppressed and Petitioner would have then gone to trial?

STATEMENT

During the January 2015 term, the Horry County Grand Jury indicted Petitioner for murder, armed robbery, and possession of a weapon during the commission of a violent crime. App. 79 – 84.

Petitioner pled guilty on April 4, 2016, in front of the Honorable Kirsti L. Harrington. App. 1. J.M. “Buddy” Long, III represented Petitioner. Id.; App. 33, ll. 12 – 13. L. Richardson represented the state. Id.

Although the alleged incident occurred in Horry County, Petitioner waived jurisdiction and requested to plead guilty in Georgetown. App. 2, l. 21 – 3, l. 13.

The state alleged the facts as follows. On February 25, 2015 in Horry County, Petitioner and decedent had been “hanging out.” App. 8, ll. 1 – 6. At some point in the night in a Denny’s parking lot Petitioner and decedent got into an altercation. App. 8, ll. 6 – 8. During that altercation, Petitioner shot and killed decedent. Id.

The court found that Petitioner’s guilty plea was freely, voluntarily, knowingly, and intelligently made and accepted it. App. 8, l. 20 – 9, l. 1. Plea counsel requested that the court sentence Petitioner to thirty years’ imprisonment pursuant to the “recommendation for the negotiated sentence.” App. 11, ll. 13 – 19. Petitioner’s armed robbery and his possession of a weapon during the commission of a violent crime charges were dismissed.

Judge Harrington sentence Petitioner to thirty years’ imprisonment. App. 11, ll. 23 – 25.

Petitioner filed an application for post-conviction relief (PCR) on September 7, 2016. App. 14 – 22. The state filed its Return on August 3, 2017. App. 23 – 29.

Petitioner's PCR hearing was held on November 30, 2017, in front of the Honorable William H. Seals. App. 31. Steven W. Fowler represented Petitioner. Id. Johnny E. James represented the state. Id.

During his PCR hearing, Petitioner alleged that plea counsel provided ineffective assistance of counsel when he failed to file any pretrial motions to suppress evidence in Petitioner's case. App. 34, l. 24 – 35, l. 4.

In an order filed on March 6, 2018, Judge Seals denied Petitioner's PCR claims. App. 67 – 78. Judge Seals "was satisfied" with plea counsel's testimony at the PCR hearing that he would have filed motions to suppress evidence had Petitioner decided to go to trial. App. 76.

This Petition for Writ of Certiorari follows.

ARGUMENT

Plea counsel provided ineffective assistance when he failed to move to suppress Petitioner's statements to police, where that failure wrongfully induced Petitioner to plead guilty and where there was a reasonable likelihood that Petitioner's statements would have been suppressed and Petitioner would have then gone to trial.

Discussion

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made because plea counsel improperly induced Petitioner guilty plea when he failed to move to suppress Petitioner's statements to police. App. 48, l. 21 – 49, l. 2.

During his PCR hearing, Petitioner stated that had plea counsel made the motions to suppress he, “would have took it to trial instead of pleading.” App. 49, ll. 1 – 2. Petitioner perceived plea counsel's assurances that they would lose at trial and that he would receive a life sentence when they lost at trial, as a threat to plead guilty. App. 49, ll. 10 – 15. Accordingly, Petitioner reluctantly pled guilty to the aforementioned charges. Id.

At Petitioner's PCR hearing plea counsel also testified. App. 52, l. 5. He stated that he never considered making any preliminary motions to suppress any evidence prior to the plea, but that “there certainly would have been motions filed prior to or at trial, but not prior to the plea.” App. 59, ll. 14 – 17.

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 (1985) (internal quotations omitted) (applying the two-part test for

claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (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).

To establish ineffective assistance of counsel, the Petitioner must satisfy the two-prong test set forth in Strickland, 466 U.S. 668 (1984). “First, a defendant must show that counsel’s performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). “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. The defendant is required to overcome the presumption that counsel was effective in order to receive relief.” Id. at 118, 386 S.E.2d at 625 (internal citations omitted). Therefore, where ineffective assistance of counsel is alleged as a ground for PCR relief, the applicant must prove that “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 v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland,

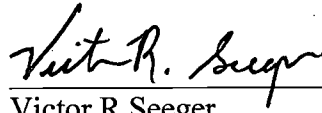
466 U.S. at 692).

In this case, plea counsel's performance was deficient, as it fell below an objective standard of reasonableness. See Strickland, 466 U.S. at 687 – 88. Due to plea counsel's failure to move to suppress the statements Petitioner made to police, Petitioner involuntarily pled guilty. App. 48, l. 21 – 49, l. 2. Petitioner felt as though plea counsel threatened him into pleading guilty because plea counsel assured him he would lose if they went to trial and that he would get a life sentence when they lost. App. 49, ll. 11 – 21.

Plea counsel's failure to move to suppress Petitioner's statements to police Petitioner coupled with the forceful assurances that Petitioner would receive a life sentence if he went to trial made Petitioner feel as though he had no other choice than to plead guilty. If counsel had moved to suppress Petitioner's statements to police, there was a reasonable likelihood of the suppression motion being successful, and Petitioner would have then gone to trial. Therefore, plea counsel provided ineffective assistance that induced Petitioner to plead guilty involuntarily.

CONCLUSION

By reason of the foregoing arguments, Petitioner respectfully requests that this court grant Certiorari for full briefing on this issue.



Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of November, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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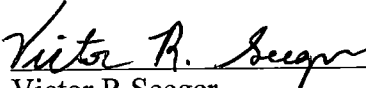
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Edward Leon Morris 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 William H. Seals, which was held on November 30, 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 Edward Leon Morris.

Respectfully Submitted,

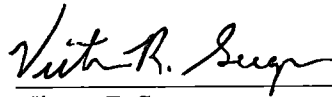


Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

This 9th day of November, 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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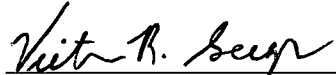
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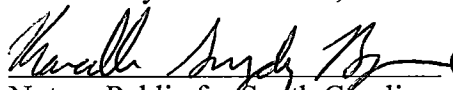
CERTIFICATE OF SERVICE

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 Johnny Ellis James, Jr., 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 Edward Leon Morris, #280698, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 9th day of November, 2018.



Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 9th day of November, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028