

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Honorable J. Mark Hayes, Circuit Court Judge

DAVID ALDEAN DICKERSON,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001181

JOHNSON PETITION FOR WRIT OF CERTIORARI

Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made when plea counsel improperly pressured Petitioner to plead guilty by repeatedly advising him pleading guilty was his "only option" and that if he did not plead guilty he "would leave prison in a box," and where Petitioner was prejudiced because he would not have pled guilty but for counsel's undue pressure, particularly where Petitioner was severely depressed due to the allegations and not thinking clearly?

STATEMENT OF THE CASE

The state alleged Petitioner sexually abused his daughter from 2012 until 2015 when she was between the ages of twelve and sixteen years old. The alleged abuse began as digital penetration and progressed to oral sex and eventually vaginal penetration. App. 10, l. 11 – 11, l. 5. The allegations surfaced when Petitioner’s sixteen-year-old daughter became angry because Petitioner refused to allow her to date a “transgender female, a female that wanted to be a male.” App. 98, ll. 7-18; App. 113, ll. 17-23. Petitioner took away her driver’s license and threatened to “move the family so that she could no longer have contact with this person.” App. 98, ll. 13-18. After this dispute, the daughter disclosed the alleged abuse to a teacher or counselor at her high school. App. 10, ll. 12-14.

During the investigation, law enforcement obtained a search warrant for Petitioner’s cell phone and discovered a video of Petitioner “being masturbated by his daughter” as well as a picture of “his daughter nude in her bedroom . . . mirror” and a picture “of her masturbating.” The daughter maintained Petitioner “would make her take these photos and then send them to him.” App. 11, ll. 18-25.

A York County Grand Jury indicted Petitioner on June 16, 2016 for second degree criminal sexual conduct with a minor and first degree sexual exploitation of a minor.¹ App. 148-151. On August 23, 2016, Petitioner pled guilty as indicted before the Honorable Brian M. Gibbons. App. 1. Assistant Attorney General Bethany Miles represented the state, and Nathan Sheldon represented Petitioner. App. 3, ll. 7-10.

¹ Petitioner was also indicted for third degree criminal sexual conduct, incest, assault with intent to commit third degree criminal sexual conduct, and second degree criminal sexual conduct with a minor. These charges were dismissed as part of Petitioner’s plea agreement. App. 3, l. 11 – 4, l. 4.

At the time of the plea, Petitioner was forty years old and had no prior record. He had served in the Navy and worked his entire life to support his family. App. 5, l. 22 – 6, l. 6; App. 26, ll. 10-19. Despite the state's forty year sentence recommendation, plea counsel requested the trial judge sentence Petitioner to a range of fifteen to eighteen years. App. 27, ll. 1-5. Judge Gibbons ultimately sentenced Petitioner to twenty years for second degree criminal sexual conduct with a minor and sixteen years consecutive for first degree sexual exploitation of a minor. The aggregate sentence was thirty-six years imprisonment. App. 43, ll. 19-25.

Petitioner admitted during the plea hearing that he fell in love with his daughter. App. 34, ll. 4-5. He was in a troubled marriage and his daughter was always supportive of him. After an argument with his wife about their finances one evening, his daughter called him into her bedroom. Petitioner explained, "She asked me what was wrong and I tried to tell her don't worry about it. I will be okay. She wouldn't accept it. She kept asking what's wrong? I want to help. So eventually I told her. In that conversation I looked at my daughter and I told her that she would make a better wife for me than her mother and she agreed, and she wanted to help. It didn't happen right away. It was a couple of months. We would talk about the budgets. She would help. She would make sure I had clean clothes for work. She would remind me to take my blood pressure medicine . . . And she was the one that said she wanted me around. She was the one that was there. She was the one that didn't just say I love you. She showed me she loved me." App. 39, l. 1 – 40, l. 12. Petitioner later continued, "I promise you when I looked at her I didn't see my daughter. I saw my wife and I don't understand it." App. 40, ll. 13-17.

After his arrest, Petitioner was depressed and frequently contemplated suicide. He told plea counsel he was guilty and did not ask him to conduct any sort of investigation because, as Petitioner explained, "I didn't care. I was fully planning on killing myself before any [c]ourt

date.” App. 74, ll. 9-10; App. 79, ll. 3-8. When he told counsel he was guilty, “it wasn’t out of guilt or innocence. It was because I didn’t want to fight.” App. 90, ll. 14-16. Despite Petitioner’s obvious mental health concerns, counsel never had Petitioner evaluated.

During the course of counsel’s representation, he repeatedly told Petitioner he needed to plead guilty. Petitioner testified, “I asked him what my options would be and he basically said that the plea option was the only option I had, that [if] I didn’t take this plea, that I would . . . leave prison, in his words, in a box.” App. 82, ll. 9-16. Counsel told Petitioner that the state “would put her [his daughter] on the stand, [that] a jury would believe anything she said, and I would go to prison for the max on all charges if I decided to go to trial.” App. 76, l. 19 – 77, l. 2. Counsel constantly repeated, “[T]hey’ve got you, and if you fight this, you’re going to get the max on all six charges.” App. 72, ll. 13-16.

Because of counsel’s undue pressure and his statement that Petitioner’s “only option” was to plead guilty, Petitioner accepted the state’s offer to plead guilty to second degree criminal sexual conduct with a minor and first degree sexual exploitation of a minor with the agreement that the state would dismiss the remaining four indictments. Petitioner understood the sentence recommendation was forty years. App. 94, ll. 4-16. However, Petitioner testified at the evidentiary hearing that “if I would’ve been able to talk to somebody and get help, I could have made a rational decision in what was put in front of me. I would’ve fought. I would’ve asked to see these things. I would’ve done more in my own defense. I don’t think I was given the fair opportunity to make a defense for myself . . . I feel like the fear and . . . intimidation factor from Mr. Sheldon [plea counsel] along with my emotional state - - I mean I just - - I didn’t care.” App. 99, l. 4 – 100, l. 19.

Nathan Sheldon, Petitioner's plea counsel, testified at the evidentiary hearing that his strategy from the beginning was to negotiate the most favorable plea deal he could on Petitioner's behalf. He had hoped to obtain an offer from the state for "twenty years or less," but the assistant attorney general who represented the state refused "to budge one bit off forty years." App. 118, l. 10 – 119, l. 20. Sheldon admitted he told Petitioner that if he did not plead guilty he would spend the rest of his life in prison due to the number of charges and the nature of the allegations. App. 120, l. 11 – 121, l. 2. Sheldon maintained he spent "ten months trying to mitigate this case." App. 122, ll. 4-5.

While Sheldon admitted Petitioner communicated his thoughts of suicide, Sheldon never believed at any point that Petitioner was not competent to stand trial. He explained, "I understood that he would say, you know, . . . I want to kill myself. I don't deny that conversation happening, but it wasn't in the context of me thinking that he didn't know the difference between right or wrong [or] that he was somehow not competent. It was, I'm under the stress of facing multiple CSC charges against my own child and a long, long prison sentence." App. 123, ll. 10-24. Nevertheless, Sheldon testified he did not think Petitioner's "stress level" negatively affected his decision making process. App. 124, ll. 12-19.

Lastly, Sheldon maintained Petitioner never expressed any desire to go to trial. App. 124, ll. 20-22. He testified Petitioner's "defense from day one was, I'm in love with my daughter, I don't consider this rape, I considered her to be my wife, my wife had abandoned me, basically my home life is terrible, and I fell in love with my daughter. That's . . . essentially where we were the entire time through this case." App. 121, ll. 3-18.

On April 11, 2017, Petitioner filed an application for post-conviction relief raising the claim argued in this petition. App. 50-58. The state filed a return to this application dated June

20, 2017. App. 59-65. An evidentiary hearing was convened on January 31, 2018 before the Honorable J. Mark Hayes, II. App. 66. Assistant Attorney General Justin Hunter represented the state, and Leah Moody represented Petitioner. App. 66.

By order filed May 17, 2018, the PCR judge denied Petitioner relief. App. 135-147. The judge found Petitioner knowingly and voluntarily pled guilty. App. 145-146. The judge asserted, "The plea court's thorough colloquy with [Petitioner] demonstrates that he understood the consequences of pleading guilty and the potential sentences he could receive. [Petitioner] advised the plea court that no one had promised him anything in order to get him to plead guilty. [Petitioner] also advised the plea court that he was pleading guilty freely and voluntarily. The record also reflects that [Petitioner] fully admitted his guilt to the plea court and agreed with the State's version of the facts. [Petitioner] presented no credible evidence at the PCR hearing as to why he should be able to depart from his statements at the plea hearing." App. 145. Moreover, the judge found Petitioner failed to meet his burden of proving counsel improperly coerced him to plead guilty. App. 146. Consequently, the judge dismissed Petitioner's application. App. 147.

Because Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel improperly pressured Petitioner to plead guilty by maintaining a plea was Petitioner's "only option" and threatening that if he went to trial he would be sentenced to the maximum and "leave prison in a box," and since Petitioner was prejudiced because he would not have pled guilty but for counsel's undue pressure, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel improperly pressured Petitioner to plead guilty by repeatedly advising him pleading guilty was his "only option" and that if he did not plead guilty he "would leave prison in a box," and where Petitioner was prejudiced because he would not have pled guilty but for counsel's undue pressure, particularly where Petitioner was severely depressed due to the allegations and not thinking clearly.

Petitioner did not knowingly, intelligently, and voluntarily plead guilty. He only pled guilty because plea counsel improperly pressured him to plead guilty and took advantage of his mental state. Counsel repeatedly told Petitioner, who had communicated his thoughts of suicide, that his "only option" was to plead guilty. Counsel admitted his strategy from the beginning was to negotiate the most favorable plea deal he could on Petitioner's behalf, not to investigate and prepare for a possible trial. Moreover, counsel threatened Petitioner that if he did not accept the state's offer to plead guilty, he would "leave prison in a box." Petitioner was prejudiced by counsel's deficient performance because he would not have pled guilty but for counsel's undue pressure. Petitioner testified that if he would have received help from a psychiatrist to treat his mental illness he "could have made a rational decision with what was put in front of me" and he "would've fought." App. 99, ll. 4-24.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334

S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. In the context of a guilty plea, a petitioner must show that counsel's performance was deficient, and "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). This Court has held that a "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the 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." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "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) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

Petitioner did not knowingly, intelligently, and voluntarily plead guilty. After the allegations surfaced, Petitioner was severely depressed and frequently contemplated suicide. He communicated these feelings to plea counsel, but counsel never had Petitioner evaluated nor sought any treatment for him. Instead, counsel repeatedly advised Petitioner that his “only option” was to plead guilty and that if he did not plead guilty he would spend the rest of his life in prison. He told Petitioner that if he went to trial the state would put his daughter on the stand and the jury would “believe anything she says.” App. 100, ll. 6-13. Because of Petitioner’s mental state and this undue pressure from counsel, Petitioner ultimately accepted the state’s offer and pled guilty.

Petitioner was prejudiced by counsel’s deficient performance because he testified he would not have pled guilty but for counsel’s undue pressure. See Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (A “defendant’s undisputed testimony that he would not have pled guilty but for trial counsel’s advice is sufficient to prove that defendant would not have pled guilty.”). Petitioner asserted that “the intimidation factor from Mr. Sheldon [plea counsel] along with [Petitioner’s] emotional state” led him to plead guilty instead of “fighting for [himself]” and proceeding to trial. App. 100, ll. 2-13.

Because Petitioner did not knowingly, intelligently, and voluntarily plead guilty, this Court should reverse his convictions and sentence and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and permit full briefing on the issue presented.

Respectfully Submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of December, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Honorable J. Mark Hayes, Circuit Court Judge

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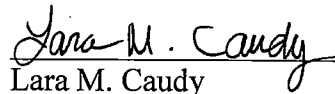
PETITION TO BE RELIEVED AS COUNSEL

Counsel for David Aldean Dickerson states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
2. She has reviewed the record of Petitioner's post-conviction relief hearing, which was held on January 31, 2018 before the Honorable J. Mark Hayes, and, in her opinion, seeking certiorari from the order of dismissal is without merit
3. She 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 her as counsel for David Aldean Dickerson.

Respectfully Submitted,

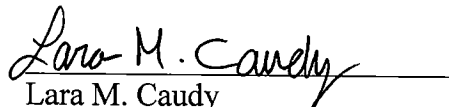

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of December, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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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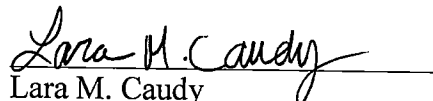
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STATE OF SOUTH CAROLINA,

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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 Janell Gregory, 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 David Aldean Dickerson, #369461, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 11th day of December, 2018.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 11th day of December, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.