

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

ALEXANDER MALDONADO COREANO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000609

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err when it found Petitioner knowingly, voluntarily, and intelligently pled guilty where Petitioner was induced to plead guilty because plea counsel failed to investigate Petitioner's case prior to the guilty plea hearing?

STATEMENT

During the November 2011 term, the Greenville County Grand Jury indicted Petitioner for possession of cocaine, trafficking cocaine, and possession of a weapon during a violent crime. App. 83 – 86.

Petitioner pled guilty as indicted on August 14, 2013, before the Honorable J. Mark Hayes, II. App. 1; App. 3, ll. 8 – 18. Michael Pinckney represented Petitioner. App. 1. Joyce Monts represented the state. Id.

Judge Hayes accepted Petitioner's guilty plea as made freely, voluntarily, and knowingly made. App. 14, l. 22 – 15, l. 1. Judge Hayes sentenced Petitioner to twelve years' imprisonment for trafficking cocaine, five years' imprisonment for possession of a weapon during a violent crime, and three years' imprisonment for possession of cocaine. App. 15, ll. 2 – 12. All of Petitioner's sentences ran concurrently. Id.

Petitioner filed an application for post-conviction relief (PCR) on August 5, 2014. App. 17 – 30. Petitioner alleged that he pled guilty involuntarily and that his guilty plea was induced by plea counsel's failure to properly investigate his case. Id. The state made its return on January 8, 2015. App. 31 – 36.

Petitioner's evidentiary hearing was held on December 15, 2017 before the Honorable Robin B. Stillwell. App. 38. Richard Warder represented Petitioner. Id. DeShawn H. Mitchell represented the state. Id.

Judge Stillwell filed an order of dismissal on March 21, 2018. App. 73 – 82. Judge Stillwell found that Petitioner's plea was, "freely, voluntarily, knowingly, and intelligently made." App. 79.

This Petition for Writ of Certiorari follows.

ARGUMENT

The PCR court erred when it found Petitioner knowingly, voluntarily, and intelligently pled guilty where Petitioner was induced to plead guilty because plea counsel failed to investigate Petitioner's case prior to the guilty plea hearing.

Relevant Facts

On April 29, 2011, law enforcement executed a search warrant for Petitioner's home based on information provided by a confidential informant, that said Petitioner agreed to sell him or her drugs. App. 55, ll. 4 – 15; App. 67, l. 24 – 68, l. 4. Police found a handgun during the execution of the search warrant. Id. Police also found over two hundred grams of cocaine in a red cooler beneath Petitioner's bed, as well as in various other areas around his home. Id.

Petitioner pled guilty on August 14, 2013. App. 1. Judge Hayes accepted Petitioner's guilty plea. App. 14, l. 22 – 15, l. 1.

Petitioner filed a PCR application alleging that his guilty plea was involuntary because Petitioner was induced to plead guilty where his plea counsel failed to conduct an adequate investigation into his case. App. 17 – 30.

At Petitioner's evidentiary hearing, Petitioner testified that his plea attorney told him he had to, "go to a mission to Afghanistan and that he would be gone for a year." App. 44, ll. 11 – 14. However, plea counsel was gone for almost twenty-eight months. App. 43, ll. 13 – 19.

According to Petitioner, when plea counsel came back he pressured Petitioner into signing the guilty plea for twelve years' imprisonment because if Petitioner did not, he would get forty-five years' imprisonment. App. 44, ll. 20 – 23. Petitioner felt as though plea counsel was threatening him into pleading guilty. App. 45, ll. 1 – 3.

Petitioner testified that he did not get an adequate opportunity to discuss his case with plea counsel because the first time they met plea counsel informed Petitioner, “that he was going to Afghanistan.” App. 45, ll. 4 – 9. The next time they met was when plea counsel informed Petitioner of the plea offer for twelve years’ imprisonment. Id. Petitioner testified regarding the second meeting with plea counsel as, “[h]e came to me, it was on August 13, 2013. A day before the hearing to say that I needed to sign the [plea] for the 12 years.” App. 46, ll. 12 – 21.

When asked by PCR counsel if Petitioner had ever heard, “the tape recordings” of the confidential informant allegedly buying drugs from him, Petitioner responded that he, “never heard anything.” App. 45, ll. 10 – 12. Petitioner stated that he never saw any of the police reports, “of the officer saying why they came and what they did.” App. 45, ll. 13 – 16.

Petitioner testified that plea counsel did not familiarize himself with the facts of Petitioner’s case because plea counsel never came and discussed the case with him. App. 48, ll. 19 – 24. The entirety of their discussion regarding Petitioner’s case took place in a three-hour period just prior to the guilty plea hearing. App. 49, ll. 5 – 7. On cross-examination at the PCR hearing, Petitioner testified that he did not remember his answers during the plea colloquy because the pressure placed on him by plea counsel to plead guilty was, “so tremendous.” App. 53, ll. 2 – 7. Therefore, Petitioner’s answers during the colloquy were not reliable.

Plea counsel testified at the PCR hearing as well. App. 54, l. 16. Plea counsel stated that he met with Petitioner and talked to him about his case. App. 55, ll. 17 – 22. Plea counsel claimed that he met with Petitioner numerous times. App. 57, ll. 12 – 21. Plea counsel stated there was no issue of a language barrier between he and Petitioner because plea counsel spoke fluent Spanish. App. 60, ll. 7 – 9.

On cross-examination during the PCR hearing, PCR counsel asked if plea counsel ever acquired the tape recordings of the confidential informant allegedly making drug buys from Petitioner, and plea counsel responded, “I did not. We asked for them, [the state] said they didn’t exist.” App. 66, ll. 20 – 25. Plea counsel testified that he did not go, “to the evidence room and look at the bags, the box [where the tapes] were supposed to be.” App. 67, ll. 1 – 3. Plea counsel testified that the confidential informant was still available at the time of the guilty plea hearing; however, plea counsel did not try to meet with or interview the confidential informant.

Judge Stillwell issued an order of dismissal on March 21, 2018. App. 73 – 82. Judge Stillwell found that Petitioner’s guilty plea was voluntarily made, and that plea counsel did not provide ineffective assistance. Id.

Discussion

In order to provide effective assistance of counsel, an attorney must conduct a reasonable investigation into “all reasonably available mitigation evidence and reasonably available evidence tending to rebut any aggravating evidence introduced by the State,” when plea counsel failed to acquire the tape recordings of the confidential informant’s alleged drug buys and failed to interview the confidential informant, even though counsel knew he was available plea counsel failed to conduct a reasonable investigation. App. 69, ll. 7 – 13; McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

To establish ineffective assistance of counsel, Petitioner must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984). “First, a defendant must show that counsel’s performance was deficient.” Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Then Petitioner must show trial counsel’s ineffective assistance prejudiced Petitioner case because, “but for counsel’s unprofessional errors, the result of the proceeding would have been

different.” Id. at 118, 386 S.E.2d at 625. Therefore, where ineffective assistance of counsel is alleged, 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.” Strickland, 466 U.S. at 692.

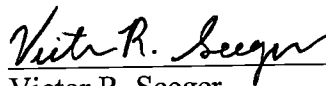
In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) this Court held that Lounds’ attorney provided ineffective assistance when he failed to adequately prepare for trial. Lounds, at 463, 670 S.E.2d at 463. Lounds’ trial attorney failed to call witnesses that would have testified in support of Lounds’ own testimony. Id. The Lounds Court held that trial counsel had a duty to, “at a minimum... interview potential witnesses.” Id.; quoting Ard v. Catoe, 372 S.C. 318, 321, 642 S.E.2d 590, 597 (2007).

In the present case, Plea counsel failed to locate the tape recordings of the criminal informant allegedly buying drugs from Petitioner. App. 66, l. 20 – 67, l. 3. Plea counsel failed to conduct any investigation into the facts of Petitioner’s before putting “tremendous” pressure on him to plead guilty. App. 53, ll. 2 – 7. Plea counsel failed to seek out and question the confidential informant regarding Petitioner’s case. App. 69, ll. 12 – 13.

Although Petitioner pled, prior to the guilty plea, plea counsel was aware that the state had the confidential informant available and “had no problem going forward with this.” App. 69, ll. 7 – 11. Therefore, plea counsel knew the confidential informant was going to testify at trial and failed to interview that potential witness. That failure constituted deficient performance that induced Petitioner to plead guilty. Therefore, Petitioner’s guilty plea could not be voluntarily made and should be vacated.

CONCLUSION

By reason of the foregoing arguments Petitioner respectfully requests that this Court grant certiorari and allow for a full briefing on this issue.



Victor R. Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of December, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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ALEXANDER MALDONADO COREANO,

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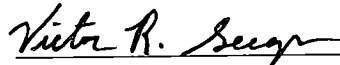
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Alexander Maldonado Coreano 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 Robin B. Stilwell, which was held on December 15, 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 Alexander Maldonado Coreano.

Respectfully Submitted,

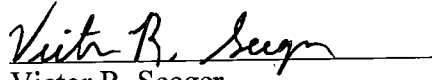


Victor R. Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of December, 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."



Victor R. Seeger
Appellate Defender

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This 17th day of December, 2018.

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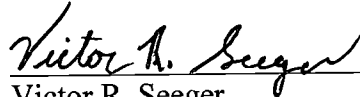
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RESPONDENT

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 Megan Harrigan Jameson, 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 Alexander Maldonado Coreano, #356641, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936; this 17th day of December, 2018.

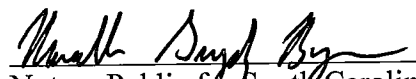


Victor R. Seeger

Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of December, 2018.

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