

MAR 14 2019

Issue Presented

S.C. SUPREME COURT

Whether Petitioner's guilty plea was knowingly, intelligently and voluntarily made when plea counsel improperly advised Petitioner to give confession and ultimately to plead guilty of charge he's not guilty of, and where Petitioner was prejudiced because he would not have pled guilty but for counsel's undue pressure and advice to do so, particularly where Petitioner initially invoked his constitutional right to remain silent upon his arrest and insisted for over two years that he wanted to exercise his right to a jury trial? Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made when plea counsel advised Petitioner he could receive life sentence if convicted at trial, and where Petitioner was prejudiced where a conflict of interest during guilt phase and prior to guilty plea adversely affected plea counsel's representation and plea counsel failed to file motion of reconsideration and to appeal sentence after Petitioner advised him to do so? Whether Petitioner's guilty plea was knowing, intelligently, and voluntarily made when 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 and where petitioner was prejudiced because plea did not represent a voluntary and intelligent choice among the alternate courses of action open to the defendant?

LEGAL

SIMMONS-366048

Argument

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel improperly advised petitioner to give complaint false confession and ultimately to plead guilty of charge he's not guilty of, and where Petitioner was prejudiced because he would not have pled guilty but for counsel's undue pressure and advice to do so, particularly where petitioner initially invoked his constitutional right to remain silent upon arrest and insisted for over two years that he wanted to exercise his right to a jury trial.

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel advised petitioner he would receive a life sentence if he goes to trial, and where Petitioner was prejudiced where a conflict of interest during guilt phase and prior to plea of guilt adversely affected plea counsel's representation and plea counsel failed to file motion of reconsideration and appeal sentence after Petitioner advised him to do so. Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when counsel's performance was deficient, and "there was a reasonable probability" that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial and where Petitioner was prejudiced because plea did not represent a voluntarily and intelligent choice among the alternate courses of action open to petitioner.

Petitioner did not knowingly, intelligently, and voluntarily plead guilty. He only pled guilty because plea counsel misled him to believe co-defendant "Brian Morton" has given statements implicating him consequently leading him to give a false complaint confession and ultimately to plead guilty due to what counsel advised petitioner as "damning evidence" against Petitioner. Petitioner initially invoked his constitutional right to remain silent upon his arrest and insisted for over two years that he wanted to exercise his right to a jury trial. Petitioner was prejudiced by counsel's deficient performance because he testified he would have not pled guilty but for counsel's advice to do so.

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Petitioner was prejudiced by counsel's deficient performance and ineffectiveness because plea counsel didn't file timely motion for reconsideration and direct appeal after being instructed causing petitioner to be prejudiced because it resulted in the "forfeiture" of the appellate proceeding.

Petitioner did not knowingly, intelligently, and voluntarily plead guilty. Petitioner testified he insisted on having a trial and had to be proven guilty amongst a jury and every meeting with plea counsel he insisted on that. Petitioner testified plea counsel consistently advised him to cooperate with investigators and to plead guilty. App. 89, 11. 1-25

Petitioner was presented with a negotiated guilty plea of 30 years of charges as indicted involving him to cooperate with investigators and confess about events that took place on May 28th, 2013. Petitioner declined plea and insisted on trial. Petitioner's testimony that he did not want to cooperate with investigators and insisted on trial is supported by plea counsel's testimony. App. 137, 11. 2-16 Even after declining the plea and insisting on trial months later petitioner was presented with a letter typed by plea counsel addressed to co-defendant Brian Morton indicating that petitioner intended to cooperate with investigators and was doing so with the understanding co-defendant "Brian Morton" was doing the same thing. App. 146 Brian Morton testified he never gave any statements indicating petitioner and he never intended to. App. 120, 11. 1-24

Petitioner testified he didn't ask plea counsel to put letter together and that was something of plea counsel's own doing. Petitioner testified that prior to any testimonies be given by either, if there even would be any, that he meet with Mr. Morton along with his attorney to discuss trial and what would be said or pled to. That meeting never happened. App. 95, 11. 1-18 Brian Morton testified he was under impression a meeting with petitioner along with plea counsel would take place prior to any testimonies being given, if there would be any, to discuss trial and meeting never happened. App. 119, 11. 1-14 Petitioner testified he was under impression Mr. Morton was cooperating with investigators as letter stated which was presented by plea counsel. App. 140 Petitioner's testimony that he insisted on trial the entire time is supported by plea counsel's testimony. App. 137, 11. 2-16 Petitioner along with co-defendant's testimony a meeting was supposed to happen for them to discuss things prior to any testimonies and only is supported by plea counsel's testimony. App. 138, 11. 3-4

Petitioner's testimony that he was under impression Brian Morton was cooperating is supported by plea counsel's testimony. App. 138, 11. 11-25 & App. 139, 11. 1-3 as mentioned above Brian Morton never intended on doing so. Plea counsel testified petitioner wasn't interested if Morton wasn't. App. 139, 11. 1-3

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petitioner testified he insisted on trial upon which plea counsel told him to plea, he insisted on trial. App. 90, 11. 3-25 Petitioner testified he never intended on giving any kind of statements or testimonies. App. 91, 11. 8-13 & App. 94, 11. 4-10
Petitioner testified he insisted on a trial even after false complaint confession. App. 104, 11. 12-13
Petitioner testified evidence showed in his rule 5 discovery, showed he wasn't guilty of a murder charge with its requirements and statute. Evidence such as witness statement from the crime scene (Heather Arthur) stated the victim tried to take gun from one who possessed it and they struggled over weapon during discharge of the firearms. Petitioner testified physical evidence such as the autopsy report which showed the trajectory angle of bullets traveled at a downward angle along with victim testing positive for gun shot residue on the palms of each hand. Understanding the corpus delicti of murder (and other criminal killings) requires two elements: the death of the victim and the criminal agency of the defendant causing the death. As in any criminal matter, corpus delicti requires more than the defendant's extrajudicial confession to the killing. For a defendant to be convicted of murder, his act must be the proximate cause of the victim's death. Proximate cause is defined as "that cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." Hence the struggle over the weapon during the discharge; if there was mitigation, justification or excuse for the killing no malice exist. Petitioner's testimony that he wasn't guilty of an intentional killing with malice aforethought and it would've shown at trial is supported by plea counsel's testimony during plea hearing. App. 36, 1. 19-24 Petitioner was presented with text messages from Brian Norton's phone considered as "damning evidence" by plea counsel. Petitioner testified even with such evidence he still insisted on trial because he would file motions to have text messages suppressed due to the unlawful way of it being obtained. App. 117, 11. 14-24 & App. 113, 11. 2-18 Understanding petitioner's constitutional right and invasion of privacy doesn't cover someone else and someone else's property but evidence obtained due to illegal searches and seizures and used against petitioner is in violation of his due process and right to a fair trial. Plea counsel testified that text messages led to petitioner's best choice was to plead guilty. App. 131, 11. 19-24 Petitioner's testimony that he would have filed motions to suppress such evidence and evidence wasn't "damning" because it stated no one's name and wasn't/didn't directly reveal any guilt of anyone is supported by plea counsel's objection once plea counsel attempted to submit it as state's exhibit 2 discovery evidence and the court sustaining the objection with the messages not being authenticated and doesn't mention any names or direct guilt and tabled hearsay. App. 131, 11. 9-16 Petitioner was prejudiced by counsel's deficient performance because he testified he would not have pled guilty but for plea counsel's inadequate advice and unprofessionalism he would have insisted and went to trial. App. 109, 11. 2-23; 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.) (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))

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Plea counsel advised petitioner to plead guilty to an intentional killing and testified to the court that it would be shown at trial and the state would be along with evidence that it wasn't an intentional killing, App. 36, 1.19-24

Petitioner asks that because of these circumstances he be allowed to depart from testimony during guilty plea. See Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) Edmonds v. Lewis, 546 F.2d 500 (4th Cir. 1976) Petitioner showed there was a reasonable probability that, but for counsel's unprofessional errors, he would not have pled guilty and would have insisted on jury trial. See Hill v. Lockhart, 474 U.S. 52 (1985)

Petitioner testified he instructed plea counsel to file motion of reconsideration and file a direct appeal. App. 107, 11.13-22 (see attached letter to clerk of court also)

Plea counsel testified that petitioner wasn't excited or thrilled about pleading to 30 years. App. 37, 1.8-9 later plea counsel contradicted himself by stating petitioner was "happy as somebody could be" during PCB hearing. App. 143, 11.18-20 Plea counsel's testimony in PCB hearing is not credible nor reliable. Wiz Goddard (clerk of court of Illinois, etc) wrote ~~me~~ petitioner and notified him she forwarded his letter pertaining to motion of reconsideration to plea counsel. (See attachment) In U.S. vs. Poindexter, Poindexter contended that his attorney rendered constitutionally ineffective assistance when he failed to file a timely notice of appeal after being unequivocally instructed to do so. Court found an attorney renders constitutionally ineffective assistance of counsel if he fails to follow his client's unambiguous instruction to file a timely notice of appeal even though the defendant may have waived his right to challenge his conviction and sentence in the plea agreement. In Howe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000) the Supreme Court applied Strickland to an ineffective claim assistance claim involving a defendant who did not give his attorney instructions to on whether to file a timely notice of appeal. Id. at 476-81, 120 S. Ct. 1029

The defendant in that case neither asked his lawyer to file a timely notice of appeal nor consented to her not filing one. Id. at 475, 120 S. Ct. 1029, On appeal from the denial of relief under 28 U.S.C. § 2254, the Ninth Circuit held that the defendant was deprived of the effective assistance of counsel, holding that an attorney must file a timely notice of appeal unless the defendant specifically instructs otherwise. Flores-Ortega, 528 U.S. at 476, 120 S. Ct. 1029

Petitioner's assertion that he would not have pled guilty is supported by plea counsel's testimony that petitioner repeatedly insisted on a jury trial during the course of counsel's ~~testimony~~ representation.

Because petitioner did not knowingly, intelligently, and voluntarily plead guilty and was deprived of effective assistance of counsel, this court should reverse his conviction and sentence and remand for a new trial.

LEGAL

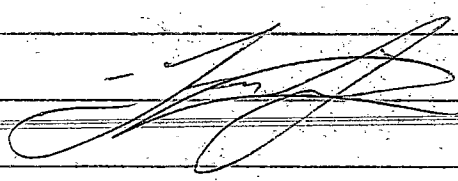
SIMMONS-366048

Charges: murder, Armed robbery,
Burglary 1st

Warrant #'s: 2013A0220100526
2013A0220100527, 2013A0220100528

Dear Mrs. Goddard,

I hope this letter finds you well and in good spirits. However, I'm writing on the behalf of receiving my latest rule 5 discovery and my PCB application paper. My last rule 5 discovery should obtain interviews of me and all my co-defendants (Brian Morton, Trevon Butler, Nathawn Issac, and Mathese East). All of them gave 2nd statements and I need their interview narrative. I need mines also. Do I have a certain time limit after I receive my PCB application to fill it out and turn it in or do I have the option to turn it in as I please without a time limit after I receive it. What is the process of filing a motion for reconsideration? If you're able to I ask that you send my whole case file. This information is critical and is ~~needed~~ need at your fastest convient. God Bless.



2013-GS-02-01727

FILED February 24 2016

Liz Godard
C.C.P. & G.S.

Kate J. Williams
Deputy Clerk

1 copy to Kenni Motony



**Aiken County Clerk of Court
Criminal Division
P. O. Box 583
Aiken, S.C. 29802-0583
Phone: 803-642-1715**

February 24, 2016

Leon Simmons SCDC #366048
Lee Correctional Institute F6A-2124
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Simmons,

I've enclosed a PCR application you requested. Your other inquiries will need to be addressed by your attorney. I'm sending a copy of your letter to Kevin Malony, you're attorney at the time of your plea. Please let us know if we are able to help you with anything further.

Thank you,

A handwritten signature in cursive script that reads "Katie Williams". The signature is written in black ink and is positioned above a horizontal line.

Katie Williams, Deputy Clerk

2013-65-02-01727

Leon Simmons, SCDC # 366048
Lee Correctional Institute, #6A-2124
990 Wisacahy Highway
Bishopville, SC 29010

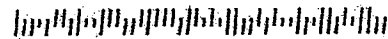
2013-6S-02-01727

COLUMBIA SC 29901

22 FEB 2016 PM 4:1

Liz Goddard
Clerk of Court
P.O. Box 583
Aiken, SC 29802


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SC DEPARTMENT OF CORRECTIONS

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Hershaw-CI BHU 38
Hershaw, SC 29007

The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
Post Office Box 11330
Columbia, SC 29211

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WARDEN
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S.C. DEPARTMENT OF CORRECTIONS

MAR 08 2019

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