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APR 24 2019

S.C. SUPREME COURT

Oriental J. Charley

Petitioner

v.

State of South Carolina

Respondent

Appellate Case No. 2018-001223

Pro Se

Issue Presented

Whether Petitioner had detrimental reliance, specifically that the state reneged on the agreement and counsel's failure to force the state to uphold their end of agreement rendered counsel's performance deficient.

Petitioner was prejudiced by counsel deficient performance because he would not have pled guilty if he would have known the state was no longer in agreement after initially agreeing to an eight year sentence of imprisonment.

Argument

Petitioner entered a plea that was unknowingly, involuntarily, and unintelligent when plea counsel advised Petitioner to plea guilty without properly informing Petitioner of the terms of the agreement, specifically that Petitioner was pleading guilty without any negotiations or recommendations from the state. Petitioner is ~~pre~~^{oc} prejudiced by plea counsel's deficient performance because he would not have pled guilty if he had known that the state had changed their stance for an eight year negotiated sentence. The state's position is that there was no negotiation or recommendation due to plea transcript. Petitioner is asking the Court to consider the sentencing sheet and forfeiture documents in this case whereas Honorable William A. McKinnon did not in PCR hearing (PCR trans. pg. 111 lines 4-7). As *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 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. The sentencing sheet is a document that has clearly been altered without anyone taking responsibility. The testimonies of Petitioner and plea counsel contradict each other for one reason. That reason is ~~is~~^{is} because plea counsel's testimony does not coincide with the facts in its entirety.

In regards to the eight year sentence agreement, plea counsel testifies in direct from Mr. Salter that he informs Petitioner that he would have to do eight years off of a minimum 10 year sentence (PCR trans. pg. 69 lines 2-12). However, in cross by Ms. Goldberg plea counsel testifies that the number eight did come out (PCR trans. pg. 81 lines 13-25). Plea counsel reiterates this fact of an eight year sentence in cross by Ms. Goldberg shortly after (PCR trans. pg. 82 lines 12-15). Plea counsel's testimony is that Petitioner didn't have a negotiated sentence in spite of him admitting that there were negotiations as to what sentencing should be and that there was no sign off (PCR trans. pgs. 85-86 lines 25-12). However, the sentencing sheet shows otherwise

with the negotiated sentence box completely missing along with what looks like an ~~8~~ "8 years" written by the solicitor himself. This fact alone is proof that there were negotiations between the state and plea counsel that were agreed upon due to the fact that both parties signatures are on the sheet along with Petitioner's. Plea counsel denies seeing the eight year negotiated sentence when signing it (PCR trans. pg. 83 lines 15-20).

This can't be true based on the process of signatures being signed on the sheet. Specifically, Petitioner and plea counsel are always together when signing and signatures are next to each other. This is the process for every sentencing sheet signing in the state of South Carolina.

Plea counsel testified that he thought Petitioner's co-defendant was going to plea guilty (PCR trans. pg. 84 lines 22-24). Therefore, negotiations could not have been based on cooperation from Petitioner. The reason for that is it would be impossible to negotiate with something that is unknown. The fact that Petitioner's co-defendant was also transported to McCormick County Courthouse on June 11,

2012 along with Petitioner and other inmates is proof that the state didn't have knowledge that Petitioner's co-defendant wasn't going to plea guilty. Had ~~Petitioner~~ Petitioner's co-defendant not pleading guilty was known, there would be no reason to transport him to McCormick County Courthouse from Saluda County Jail along with Petitioner and other inmates. Saluda County Jail records will show that Petitioner, co-defendant, and other inmates were transported to McCormick County Courthouse on June 11, 2012. In hindsight the state could not have wanted cooperation from Petitioner for a trial that was unknown to them. After the state reneged on the negotiated sentence for eight years of imprisonment, the state never called on Petitioner to testify at co-defendant's trial as the state alleged Petitioner intended to do. The state's position is that the Petitioner recanted his statement. The facts of this case does not show this due to the fact that all of Petitioner's statements are consistent and none of them ever implicated

Petitioner's co-defendant. As a result of this, Petitioner was subpoenaed by the defense for Petitioner's co-defendant trial. The reason that testimony by Petitioner for the state in Petitioner's co-defendant trial for a recommendation or negotiation could not be true is because none of the statements written by Petitioner implicated Petitioner's co-defendant for the state to use.

In regards to the "voluntary assignment of funds," it is not a civil forfeiture document. This document has Petitioner's warrant number and is accordingly a document directly related to this case and not separate and distinct as a civil forfeiture proceeding would be. This document was not filed with the Court in civil or criminal records, but located only after extensive investigation by Ms. Goldberg. Plea counsel testified that he didn't know who drew up the document (PCR trans. pg. 95 lines 8-9). This isn't logical due to the facts that plea counsel testified that he was negotiating the funds with Saluda County Sheriff's Department (PCR trans.

pg. 96 lines 9-10) and presented the document to Petitioner on the same day as the guilty plea (June 11, 2012). Petitioner couldn't have access to this document otherwise. The "Voluntary assignment of funds" was signed at McCormick County Courthouse on June 11, 2012 before Petitioner and plea counsel stood before Honorable Keesley.

Plea counsel admits that everything isn't captured about a plea agreement on record (PCR trans. pg. 98 lines 11-18). The facts in regards to the sentencing sheet and "voluntary assignment of funds" clearly show that there was a negotiated sentence. Although neither of these documents are on record, they are records of their own. Petitioner is asking for consideration of these two documents because they are the to credibility for truth in regards as to what happened prior to going before Honorable Keesley. On this road it is very easy to see that Petitioner had a detrimental reliance that the state had agreed to an eight year sentence of imprisonment after "voluntary assignment of

funds" and guilty plea to one count of attempted murder. Because of this detrimental reliance and counsel deficient performance, Petitioner is asking this Court to enforce state to uphold its end of the deal or reverse conviction and sentence and remand for a new trial.

Conclusion

Petitioner respectfully requests this Court grant the petition for pro se and permit full briefing on the issue presented.

Respectfully Submitted,
Quiental J. Chenley

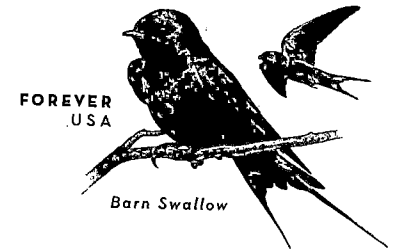
This 19th of April, 2019

Certificate of Service

I, Oriental J. Charley, certify that I placed a prose in the U.S. Postal Service to the South Carolina Supreme Court, P.O. Box 11330 Columbia, SC 29211

April 19, 2019

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