

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

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Honorable Deadra L. Jefferson, Circuit Court Judge

JUN 17 2019

S.C. SUPREME COURT

FELICIA N. COOPER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002181

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Petitioner's guilty plea was not freely, intelligently, and voluntarily made when plea counsel promised Petitioner that she would receive a time served and probationary sentence if she pled guilty, where plea counsel also instructed Petitioner's family to bring Petitioner's clothes to the plea hearing for her to be ready to go home after she pled guilty, and where Petitioner instead was sentenced to a twenty-year concurrent sentence, suspended upon the service of twelve years and three years-probation?

STATEMENT

During the July 2015 term the Berkeley County Grand Jury indicted Petitioner for three counts of attempted murder, possession of a handgun with serial number obliterated, and possession of a weapon during the commission of a violent crime. App. 115 – 124.

Since plea counsel promised Petitioner that she would receive a time served and probationary sentence if she pled guilty, Petitioner pled guilty to all three charges on June 15, 2016 before the Honorable G. Thomas Cooper. App. 1. William Runyon represented Petitioner. Id. Anne Williams represented the state. Id.

Judge Cooper accepted Petitioner's guilty plea as, freely, voluntarily, and intelligently made. App. 11, ll. 11 – 17. Petitioner was sentenced to five years' imprisonment, "as to the gun charges," and twenty years' imprisonment, suspended upon the service of twelve years' imprisonment and three years' probation, for attempted murder. App. 20, ll. 14 – 24.

Petitioner filed a post-conviction relief (PCR) application on September 12, 2016. App. 22 – 32. Petitioner alleged plea counsel Runyon promised she would receive a sentence of six years' probation and fifteen months' time served. App. 27. The state filed its Return on June 21, 2017. App. 33 – 37.

Petitioner's PCR hearing was held on July 23, 2018 before the Honorable Deadra L. Jefferson. App. 39. Rodney D. Davis represented Petitioner. Id. Kelly Oppenheimer represented the state. Id.

In an order filed on November 8, 2018, Judge Jefferson denied relief. App. 99 – 114. Judge Jefferson found that Petitioner's allegation was refuted by plea counsel Runyon's testimony at the PCR hearing where counsel was, "adamant he never promised [Petitioner] a probationary sentence." Id. This petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not freely, intelligently, and voluntarily made when plea counsel promised Petitioner that she would receive a time served and probationary sentence if she pled guilty, where plea counsel also instructed Petitioner's family to bring Petitioner's clothes to the plea hearing for her to be ready to go home after she pled guilty, and where Petitioner instead was sentenced to a twenty-year concurrent sentence, suspended upon the service of twelve years and three years-probation.

Relevant Facts

The complaining witness Mr. Sierra Shivers, a North Charleston police officer, was having an affair with Petitioner. App. 8, ll. 3 – 4; App. 14, l. 19 – 15, l. 2. Petitioner accused Mr. Shivers of domestic violence; however, the North Charleston police officer who investigated the claim against his fellow officer, “determined that the [accusation] was actually fabricated by [Petitioner].” App. 8, ll. 5 – 11.

The next night Petitioner allegedly went to Shivers' home and fired a hand gun into the home. App. 8, ll. 23 – 25; App. 34. Shivers recognized Petitioner as the woman he was having an affair with and ran outside, where Petitioner purportedly fired another shot at him. App. 9, ll. 1 – 7. Petitioner dropped the gun and ran. App. 10, ll. 19 – 21. The gun was retrieved and found to have the serial number scratched off. Id.

Petitioner pled guilty to the aforementioned charges because plea counsel promised her that she would receive a sentence of fifteen months of time served and six years of probation. App. 49, ll. 7 – 15; App. 55, ll. 15 – 22; App. 85, ll. 11 – 15. After being sentenced far more severely than what plea counsel promised, Petitioner filed an application for post-conviction relief. App. 20, ll. 14 – 24; App. 22 – 32.

At the PCR hearing, Petitioner testified that plea counsel Runyon did not review any of the elements of the charges against her or what the state would have to prove. App. 46, ll. 4 – 22. Petitioner stated that plea counsel told her when she was going to court, “[she] was going to get fifteen month[s]’ time served, six years’ probation and community service and that was it.” App. 49, ll. 7 – 15. Most importantly, Petitioner testified that she only pled guilty because she thought she was going to receive a time served sentence and would be going home the same day of the plea hearing. App. 55, ll. 15 – 22.

At the PCR hearing, Petitioner explained that her answer during the plea colloquy that she was satisfied with plea counsel’s representation was prior to sentencing. App. 61, ll. 3 – 12. Thus, her answer at that time reflected the fact that she still believed she was getting a time served and probationary sentence. Id. Petitioner thought the Judge knew about the deal Runyon promised her and that the Judge would go along with it. Id.

Petitioner’s father Edward Cooper testified at the PCR hearing as well. App. 62, l. 24. Edward testified that he brought Petitioner’s clothes to the plea hearing because he believed she would be coming home that day. App. 63, ll. 17 – 23.

Plea counsel Runyon also testified at the PCR hearing. App. 65, l. 12. He denied promising Petitioner any sentence. App. 71, ll. 9 – 24. However, Runyon admitted that he retained no paperwork for this case. App. 74, ll. 14 – 17. Runyon claimed that he told Petitioner’s father to bring Petitioner’s clothes to the plea hearing not because he promised her she would be going home after the plea hearing, but in the hope that the court would let her “dress out.” App. 81, l. 24 – 82, l. 7.

At Petitioner’s evidentiary hearing, PCR counsel made closing arguments. App. 85, l. 1. PCR counsel pointed out that Petitioner only pled guilty because of, “the promises and

statements from [plea counsel] about what [her] sentence would be.” App. 85, ll. 11 – 15. PCR counsel further argued that Petitioner’s father bringing her clothes to the plea hearing added credibility to Petitioner’s claim that plea counsel promised her a sentence of time served and probation because it showed they believed she would be going home after the plea hearing. App. 85, ll. 15 – 22. The state responded by saying that the plea colloquy refuted Petitioner’s allegations. App. 87, ll. 1 – 24.

Discussion

Petitioner would not have pled guilty but for the promise from plea counsel that she would receive a sentence of six years’ probation and fifteen months’ time served. App. 55, ll. 15 – 22; App. 56, ll. 9 – 15. Had Runyon not induced Petitioner’s guilty plea by promising her a a time served sentence had been arranged, Petitioner would have proceeded to trial. Id.

In Missouri v. Frye, 566 U.S. 134 (2012), the United States Supreme Court noted that the, “Sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of the criminal proceedings[, which] . . . include arraignments, postindictment interrogations, postindictment line ups, and the entry of a guilty plea.” Id. at 141 (citations and internal quotation omitted). The Court further emphasized that “[i]n today’s criminal justice system, . . . the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.” Id. (emphasis added). Accordingly, “[a]nything less [than effective counsel during plea negotiations]... might deny a defendant ‘effective representation by counsel at the only stage when legal aid and advice would help him.’” Id. at 1408 (citing Massiah v. United States, 377 U.S. 201 (1964) (quotation citation omitted).

“The benchmark for judging any claim of ineffectiveness must be whether 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.” Strickland v. Washington, 466 U.S. 668, 686 (1984). To prove ineffective assistance of counsel, “the defendant must show that counsel’s performance was deficient” and “that the deficient performance prejudiced the defense.” Id. “When a convicted defendant complains of the ineffectiveness of counsel’s assistance, the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” Id. at 687-688.

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.” Hill, 474 U.S. at 56. On the other hand, 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. “[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, 572-74, 713 S.E.2d 611, 615-12 (2011).

“The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the

‘ample opportunity to meet the case of the prosecution’ to which they are entitled.” Strickland, 466 U.S. at 685 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269 (1942)). Additionally, a guilty plea that was entered by one fully aware of the direct consequences “must stand *unless induced by . . . misrepresentation.*” Brady v. United States, 397 U.S. 742 (1970) (emphasis added) (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (1957)).

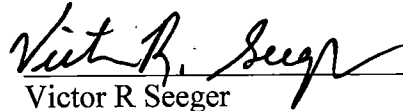
Concerning prejudice, “a defendant need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” Strickland, 466 U.S. at 694. Rather, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

In the instant case Petitioner’s guilty plea was induced by misrepresentation and, but for that misrepresentation, Petitioner would not have pled guilty and insisted on going to trial. App. 55, ll. 15 – 22. Petitioner pled guilty to the current charges because Runyon deficiently promised her that she would receive a time served and probationary sentence. App. 49, ll. 7 – 15.

Therefore, plea counsel provided ineffective assistance of counsel when he erroneously promised Petitioner that she would receive a sentence of fifteen months’ time served with six years’ probation. Id. That ineffective assistance prejudiced Petitioner because she received twenty years’ imprisonment suspended on the service of twelve years’ imprisonment with three years’ probation after she pled guilty, and she would not have pled guilty but for the much more lenient sentence promised to her by plea counsel. App. 20, ll. 14 – 24; App. 55, ll. 15 – 22.

CONCLUSION

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



Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of June, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

FELICIA N. COOPER,

PETITIONER

V.

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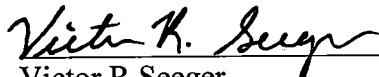
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Felicia N Cooper 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 Deadra L. Jefferson, which was held on July 23, 2018, 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 Felicia N Cooper.

Respectfully Submitted,

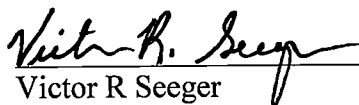


Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of June, 2019.

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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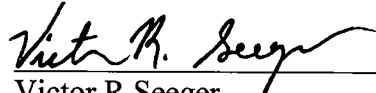
V.

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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 Benjamin Limbaugh, 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 Felicia N Cooper, #366402, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 17th day of June, 2019.



Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of June, 2019.

 (L.S)

Notary Public for South Carolina
My Commission Expires: October 26, 2019