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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County
The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2018-001339

Saquawn Monte Lacy,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S QUESTION PRESENTED

Did the PCR court correctly find Petitioner entered into the guilty plea freely and voluntarily where Petitioner understood the potential sentencing range, the solicitor clearly stated on the record the parties had agreed to a negotiated cap of ten years, Petitioner signed a sentencing sheet indicating the plea was negotiated for a cap of ten years, and plea counsel denied any knowledge of a five-year offer or ever conveying such an offer to Petitioner?

STATEMENT OF THE CASE

Saquawn Monte Lacy (Petitioner) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Petitioner was indicted at the April 2014 term of the Florence County Grand Jury for one count of attempted murder. Petitioner was represented by B. Scott Suggs, Esquire. On September 8, 2014, Petitioner pleaded guilty as indicted. The Honorable Deadra L. Jefferson sentenced him to a term of imprisonment of nine years for attempted murder. He did not appeal this conviction or sentence

Petitioner filed an application for post-conviction Relief (PCR) on April 6, 2015, raising multiple allegations of ineffective assistance of counsel. Respondent made its return on August 18, 2016. The circuit court convened an evidentiary hearing into the matter on November 15, 2017, at the Florence County Courthouse before the Honorable Michael G. Nettles. William G. Yarborough, III, Esquire, represented Petitioner. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Petitioner argued his guilty plea was not freely and voluntarily entered because Counsel gave erroneous advice as to the details and content of the plea agreement.

Petitioner testified on his own behalf and presented testimony from his mother, Sophia Lacy. B. Scott Suggs, Esquire (Counsel) testified for the State. The PCR court found Petitioner received effective assistance of counsel, the plea was entered into freely and voluntarily, and dismissed Petitioner's application by order filed July 12, 2018.

Petitioner filed a Petition for a Writ of Certiorari to this Court, along with an Appendix, on January 28, 2019. This Return to the Petition for a Writ of Certiorari follows.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 180, 810 S.E.2d at 839 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the [proceeding] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id., 300 S.C. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

STATEMENT OF THE FACTS

On December 18, 2013, Jeremiah Park (Park) visited the pool hall and bar run by Petitioner's brother, John Lacy (John). App. p. 9. There was a Christmas celebration going on with the bar serving food and drinks. App. p. 10. Around 8:00 p.m., Park and John began shooting pool together, and Park quickly won several games. App. p. 10. When Park went to get change for a dollar bill, he and John began arguing. App. p. 10. Petitioner, who present elsewhere in the bar, pulled a gun and shot at Park. App. p. 10. When the first shot missed, Petitioner fired again, striking Park in the hip. App. p. 10. Park then crawled underneath the pool table in an attempt to escape. App. p. 10. Petitioner fired a third time, through the pool table, again missing Park. App. p. 10.

Park managed to escape the bar and went to his cousin's home nearby, where EMS responded and took him to the hospital. App. pp. 10-11. The next day, Park identified Petitioner as the shooter. App. p. 11. Park's injuries required multiple surgeries, including the placement of a colostomy bag. App. p. 11.

ARGUMENT

The PCR court correctly found Petitioner entered into the guilty plea freely and voluntarily where Petitioner understood the potential sentencing range, the solicitor clearly stated on the record the parties had agreed to a negotiated cap of ten years, Petitioner signed a sentencing sheet indicating the plea was negotiated for a cap of ten years, and plea counsel denied any knowledge of a five-year offer or ever conveying such an offer to Petitioner.

Petitioner asserts Counsel rendered ineffective assistance such that his plea was not knowingly and voluntarily entered. Specifically, Petitioner contends Counsel was ineffective because he thought he would receive a five-year sentence if he pleaded guilty, and instead he received nine years. PWC pp. 13-14. The PCR court found Counsel adequately explained the terms of the plea, and Petitioner entered into the plea agreement freely and voluntarily. The PCR court's order was proper because the record reflects the solicitor articulated a negotiated cap of ten years, Petitioner and Counsel confirmed their understanding the agreement was for a negotiated cap of ten years, and Counsel emphatically denied any knowledge of a five-year offer or every conveying such an offer to Petitioner. Thus, this Court should deny certiorari and affirm the decision of the PCR court.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999) (citing State v. Armstrong, 263 S.C. 594, 597, 211 S.E.2d 889, 890 (1975)). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) 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. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases."

Hill, 474 U.S. at 56. Further, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)). "A guilty plea is a solemn, judicial admission of the truth of the charges" against the defendant; thus, an applicant's right to contest the validity of such a plea is generally foreclosed. Dalton, 376 S.C. at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

At the evidentiary hearing, Petitioner testified he understood the plea agreement was to a negotiated sentence cap of ten years, but he nonetheless believed he would only receive five years. App. pp. 46-48. Petitioner testified he and Counsel met with the solicitor "before court... before [he] went up" to negotiate the ten-year cap, but Counsel told him he would only be sentenced to five years. App. pp. 45-46. In support of this allegation, Petitioner's mother

testified[1] Counsel told her about the five-year sentence after the meeting and showed her a piece of paper with "zero to five" written on it. App. p. 67. Petitioner did not introduce this paper or note at the evidentiary hearing.

However, the sentencing sheet contained a handwritten note directly above Petitioner's signature stating "cap of ten (10) years." App. p. 107. Furthermore, the solicitor clearly stated the negotiation "[was] that there would be a cap of ten years," and Counsel agreed. App. p. 4. Importantly, the plea judge asked Petitioner if there had been any plea negotiations other than what had already been stated on the record, and Petitioner answered, "No, ma'am." App. p. 13. He further affirmed he was entering the guilty plea freely and voluntarily. App. pp. 13-14. During mitigation, Counsel again referred to the sentencing cap of ten years and asked the plea judge to consider "something less." App. pp. 19-20. Both Petitioner and his mother then spoke to the plea judge on the record, and neither of them informed the plea court of Petitioner's belief he would receive a five-year sentence. App. pp. 20-21. At the evidentiary hearing, Petitioner offered no explanation for why he did not inform the plea judge of the alleged negotiation for a five-year sentence or his belief that was the sentence he was to receive other than that he was "intimidated" in court. App. pp. 54-55.

Counsel agreed he, Petitioner, and the deputy solicitor had an in-person meeting to discuss the case and engage in negotiations, but according to Counsel this meeting took place several weeks before the plea. App. p. 76. Counsel did not recall Petitioner's mother being present for that meeting. App. pp. 76-77. Counsel unequivocally testified he did not remember any negotiation or agreement for a five-year sentence, and the first time he heard of such a claim

[1] Respondent objected to this testimony as inadmissible hearsay, as Petitioner's mother admitted she was not present for the meeting and did not have any firsthand knowledge of what was said. However, the PCR court overruled Respondent's objection. App. pp. 62, 67.

was at the evidentiary hearing. App. pp. 74-75. Counsel also denied ever writing down "five years" and showing it to Petitioner's mother. App. pp. 75-76.

Accordingly, the PCR court correctly found Counsel was not deficient as Petitioner was clearly informed the plea agreement was for a negotiated cap of ten years, both he and Counsel agreed this was the negotiation on the record at the guilty plea, the sentencing sheet signed by Petitioner reflects a ten-year negotiated cap, and Petitioner presented no evidence other than his and his mother's self-serving testimony as to a five-year plea offer. Furthermore, "[w]ishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made," as Petitioner did here. Wolfe, 326 S.C. at 165, 485 S.E.2d at 371; see also State v. Cantrell, 250 S.C. 376, 380, 158 S.E.2d 189, 191-92 (1967) ("The accused and his counsel were presumed to know that probation was a matter wholly within the discretion of the court, and they had no right to assume the result of the exercise of that discretion. An accused is not permitted to speculate on the supposed clemency of the judge and enter a plea of guilty with the right to retract it if he finds that his expectation was not realized.").

As detailed above, there is abundant probative evidence in the record, including Petitioner's own testimony, Counsel's testimony, and the record of the plea hearing, to support the PCR court's finding Counsel was not deficient in his advice or explanation of the agreement to the Petitioner, and the plea was entered into knowingly and voluntarily.

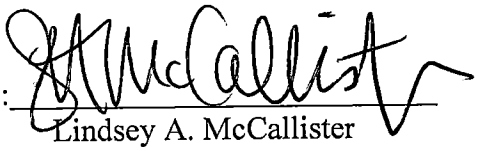
CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR court's finding Counsel was not ineffective and Petitioner's guilty plea was freely and voluntarily given. Should this Court grant Certiorari, Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

BY: 
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ATTORNEYS FOR RESPONDENT

June 28, 2019

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO FLORENCE COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2018-001339

SAQUWAN MONTE LACY,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

William G. Yarborough, III, Esquire
William G. Yarborough III, Attorney at Law, LLC
522 North Church Street
Greenville, South Carolina 29601

This 28th day of June, 2019

Carmen A. Nord
Legal Assistant for Respondent

ALAN WILSON
ATTORNEY GENERAL

June 28, 2019

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

Re: **Saquwan Monte Lacy v. State of South Carolina**
Appellate Case No. 2018-001339
Lower Court Case No. 2015-CP-21-00997

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General
SC Bar No. 79054

LAM/kk
Enclosures

cc: William G. Yarborough, III, Esquire (2 copies)