

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

ISAAC ROMELL WILLIAMS,

V.

STATE OF SOUTH CAROLINA,

RECEIVED
JUL 05 2019
PETITIONER S.C. SUPREME COURT

RESPONDENT

APPELLATE CASE NO 2018-002147

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in finding that Petitioner's guilty plea was freely, voluntarily, and knowingly made, where plea counsel used two of Petitioner's confidants to coerce him into pleading guilty to murder, where Petitioner's co-defendant was the one who pulled the trigger, and where Petitioner wanted to go to trial?

STATEMENT

Petitioner was indicted by a Charleston County grand jury on the charges of murder and kidnapping on or about December 9, 2013. App. 204 – 208. On July 10, 2015, he appeared before the Honorable Kristi Harrington and pleaded guilty to the murder charge. App. 1. Scarlett Wilson served as the solicitor, and Adam Mlynarczyk represented Petitioner. The plea was made without negotiation or recommendation. App. 6 ll. 7 – 12.

The facts giving rise to the indictments revolved around the death of Alex Apps. App. 13 l. 10 – App. 14 l. 19. Petitioner's co-defendant, Jquan Scott, was the one who pulled the trigger. App. 10 ll. 9 – 16. The plea judge found a factual basis for Petitioner's plea and accepted it. App. 14 l. 24 – App. 15 l. 6. Sentencing was deferred.

On August 26, 2015, Petitioner and Scott appeared before the Honorable Kristi Harrington for sentencing. Adam Mlynarczyk represented Petitioner, James Brown represented Scott, and Scarlett Wilson and Jennifer Shealy appeared on behalf of the state. Petitioner was sentenced to a term of forty years' imprisonment. App. 127 l. 20 – App. 128 l. 2.

On December 6, 2017, Petitioner filed a timely application for post-conviction relief following the dismissal of his direct appeal pursuant to Anders v. California, 386 U.S. 738 (1967). App. 130. It contained allegations of ineffective assistance of counsel, a claim that his guilty plea was involuntary, and an assertion that the court lacked subject matter jurisdiction. App. 132. The state made its Return on or about February 6, 2018. App. 137.

An evidentiary hearing took place before the Honorable Michael G. Nettles on October 2, 2018. App. 146. James Falk represented Petitioner, and Benjamin Limbaugh appeared on behalf of the state. Petitioner and plea counsel testified at the hearing.

The PCR court denied relief at the conclusion of the hearing. App. 187 l. 5 – App. 189 l. 1. Specifically, the court found that plea counsel spent “in excess of 340 hours preparing the case.” Id. Additionally, the court found Petitioner’s plea was freely, voluntarily, and intelligently made. Id. A written Order of Dismissal was filed on November 13, 2018. App. 191.

This petition follows.

ARGUMENT

The PCR court erred in finding that Petitioner’s guilty plea was freely, voluntarily, and knowingly made, where plea counsel used two of Petitioner’s confidants to coerce him into pleading guilty to murder, where Petitioner’s co-defendant was the one who pulled the trigger, and where Petitioner wanted to go to trial.

Relevant facts

Petitioner did not have a criminal record prior to his guilty plea. App. 167 ll. 13 – 17. He chose to cooperate with law enforcement and the solicitor’s office; after he was indicted, Petitioner signed a proffer agreement “with no promise, no promise of ease on sentencing or charges, and no promise of anything.” It was “truly voluntary.” App. 110 ll. 5 – 11.

At the outset of the evidentiary hearing, PCR counsel moved for a continuance. App. 148 l. 5 – App. 150 l. 15. “For various reasons, [counsel] was unable to have a face-to-face visit with [Petitioner], which is what [Petitioner] was requesting.” *Id.* Petitioner had requested that PCR counsel compel the testimony of witnesses who could testify on his behalf. Roger Daniel and Tralene Bell could have testified regarding the efforts plea counsel made to coerce Petitioner into pleading guilty and thereby supported the allegation that Petitioner’s plea was involuntary.

The state argued against the motion based on the fact that “there was no specific allegations laid out in the application, there was just simply ineffective assistance of counsel, subject matter jurisdiction, [in]voluntary guilty plea.” App. 150 ll. 2 – 11. The PCR court denied the motion. App. 150 ll. 12 – 15.

Plea counsel agreed that conversations took place with Roger Daniel wherein counsel implored Petitioner to plead. App. 161 ll. 6 – 12. Counsel admitted that Roger Daniel and Tralene Bell were present when the decision was made to plead. App. 162 l. 5 – App. 163 l. 9.

Petitioner testified similarly: Daniel and Bell visited him while he was in the county jail and implored him to take the plea. App. 170 l. 13 – App. 172 l. 1; App. 173 l. 3 – App. 174 l. 1. This conversation took place between seven and ten days before the plea. App. 179 ll. 9 – 24.

This was counsel's first case involving a client who agreed to proffer, according to Petitioner. App. 174 l. 23 – App. 175 l. 10. In exchange for the proffer, Petitioner believed he was going to receive less than forty years. App. 175 l. 21 – App. 176 l. 1.

Discussion

As noted by PCR counsel, Petitioner “was adamant about the fact that he did not want to take responsibility for a murder that he did not feel that he committed.” App. 184 l. 25 – App. 185 l. 25. “You have a relatively young man who was not very experienced in the legal system thrown into this situation, wasn't really advised as to whether he or not he had to plead guilty or whether or not he could take this case to trial.” Id. It naturally follows that his plea was involuntary.

“There is a two-prong test for evaluating claims of ineffective assistance of counsel. First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991)). “Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. (citing Strickland, 466 U.S. at 687, 104 S.Ct. 2052; Alexander, 303 S.C. at 541–42, 402 S.E.2d at 485).

Before a defendant may plead guilty, it must be established that the defendant's decision to plead guilty is a knowing and voluntary one. Sims v. State, 313 S.C. 420, 423–24, 438 S.E.2d 253, 254–55 (1993) (citing Godinez v. Moran, 509 U.S. 389, 398–401, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993)). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving. Id. Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id.

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).

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Id. at 434-435, 405 S.E.2d at 392. Although the trial court is not required to direct defendant's attention to each right and obtain a

separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). 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 court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

First, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Lockhart, *supra*. 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, 106 S.Ct. at 370. "[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

"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, 104 S.Ct. at 2063 (quoting Adams v. United States ex. rel. McCann, 317 U.S. 269, 275, 63 S.Ct. 236, 240 (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, 755, 90 S.Ct. 1463, 1472 (1970) (emphasis added) (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (1957)).

Petitioner and plea counsel both agreed that two of Petitioner's close friends convinced him to plea guilty. The decision was not made voluntarily; counsel and the friends put pressure on Petitioner to plead guilty. However, Petitioner wanted a trial. The factual rendition by the

state, the solicitor's words, and counsel's remarks all reiterate that Petitioner was less culpable than his co-defendant. This matter was counsel's first case involving a proffer; he provided ineffective assistance of counsel in coercing Petitioner to plead guilty based upon a false understanding that Petitioner would receive the minimum sentence of thirty years. Petitioner could have gone to trial, as desired, and distanced himself from his co-defendant. It is likely that he might have received a lower sentence had counsel severed Petitioner's case from his co-defendant's. The resulting prejudice manifested itself in the forty year sentence Petitioner, a young man who cooperated with the prosecution and had no prior criminal record, received after pleading guilty based upon the advice of counsel.

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant his petition for writ of certiorari to allow full briefing on this issue, reverse the charge against him, and remand the case for a new trial.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of July, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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V.

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Isaac Romell Williams 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 Michael G. Nettles, which was held on October 2, 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 Isaac Romell Williams.

Respectfully Submitted,

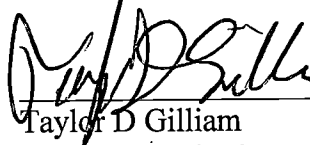


Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 5th day of July, 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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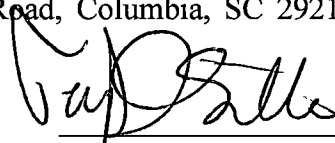
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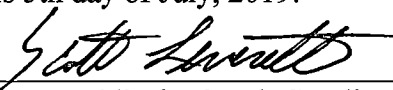
CERTIFICATE OF SERVICE

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 Isaac Romell Williams, #365231, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 5th day of July, 2019.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 5th day of July, 2019.

 (L.S)
Notary Public for South Carolina

My Commission Expires: September 27, 2028.

