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S.C. SUPREME COURT

State of South Carolina
In The Supreme Court

Certiorari to Berkeley County
Honorable Roger M. Young Cir.Court Judge

Julie L. Gordon - Gookins
Petitioner

v.
State Of South Carolina
Respondent

Appellate Case No.2018-001409

ANSWER to Johnson Petition for Writ of Certiorari

Julie L. Gordon
-Gookins
Pro'se

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Issues Presented

I Wether the plea was coerced or obtained involuntarily where plea counsel, a large male that the petitioner already had a sever break down in communications with yelled, screamed, and cursed at in the conference room just prior to entering the ~~the~~ court room for a plea agreement, intimidating, setting off the petitioner's PTSD by counsel's treatment and traumatizing her. In addition to using these tactics the petitioners counsel told her that if she (the petitioner) did not take this plea on this day (I never had any advance notice I was told about court #3 hours prior to court on October 28, 2016) there would be no other offers, and he promised me instead of 30 years I would recieve life without parole if I went to trial. Then my counsel went out to my 17 year old daughter in the court room and had her to ~~me~~ write me a note telling me to plea guilty so I wouldn't get a life sentence. I have always thought and was later told by my daughter that David schwacke told my daughter Meagan the same thing that he had told me about going to jail for life if I did not take the plea agreement.

II If defense counsel voided his promise that he assured me as part of my plea agreement that he would see to it that I ~~did~~ didn't have to register on the sex offenders registry since my crime wasn't against a child but he never did that he lied the by voiding one of the points he and I had agreed to.

III Wether the court had a responsibility under the law to ensure that the plea was voluntary since when the defendant was pleading guilty because her counsel hasd continually told her she was guilty the acceptance of the plea should have been rejected by the courtr.

IV Wether trial counsel was ineffective in failing to advise the petitioner that she had a right to file for a reconsideration of sentencing.

V Wether trial council failed or was ineffective to subpoena records from defendandants GYN who had treated her for at least 15 + years for various medical and mental health issues in ~~which~~ which he could have used the information he had to help my ~~counsel~~ counsel in the sentencing and psychological wellbing as his patient.

V₁ If since defense counse counsel submitted work/case file to petitioner and she only recieved a partial motion of discovery

no work notes from counsel therefore petitioner is lead to believe since counsel was ordered by the supreme court to turn over the totalfile and all I RECIEVEDWAS A partial motion of discovery with mental evaluation missing I am lead to believe that one of two things has happened here. 1) Mr. Schwacke is as he has several times previously times before trying to hender my discovery for my appeal of 2) did no investigation, had no correspondandance with anyone not even the solicitor in my case, did no research on my case, subpeoneaed no records, did nothing meaning he was grossly ineffective.

VII Did defense counsel fail to act in petitioners best in interest by failing to have own test run on shevelto prove it had been used previously and experts to testify to the commonalentyo of Diphenhydramine as an over the counter sleep aide?

VIII Was counsel ineffective for not asking for a change of venue as requested by petitioner and/or investigating further into the victims work history to verify wether she was employed with either the Berkeley County Sheriffs Office or Berkeley/Charleston County Prosicutors Office as a Victim Advocate which would constitute a bias on the case.

STATEMENT

During the December 2014 term, the Berkeley County Grand Jury indicated the petitioner for attempted murder, possession of a weapon during the commission of a violent crime and burglary in the first degree. App.189-196

After her arrest petitioner was appointed plea counsel Schwacke. Their relationship began poorly and got worse as the representation continued. App.104,11.2-22. Prior to the plea hearing, the petitioner complained to anyone who would hear her that she wanted a new attorney. App.105,12-107,1.4. Petitioner wrote multiple letters to the public defender's office and to plea counsel himself where she requested that plea counsel be relieved and a new attorney be appointed. Id.; 152,1.25-153, 1.4. Petitioner did not know that she could have filed a motion to the trial court to have her attorney relieved. App.107,11.5-10; App.153,15-10.

At the plea hearing, petitioner tried once more to get her complaints about plea counsel heard by giving a letter outlining her problems with plea counsel to Judge Harrington App.10,1.22--11.4; App.123,1.174-124 1-7. Petitioner would later testify that she was so intimidated by and fearful of plea counsel that she could not bring herself to relay her complaints out loud at the plea hearing because he was standing right next to her. App. 124, 11.14-20

On October 28, 2016, Petitioner pled guilty to burglary in the first degree, kidnapping and assault and battery of a high and aggravated nature (ABHAN) before the Honorable Kristai Harrington App.1. David Schwacke represented petitioner App.2. Anne Williams represented the state. Id. In spite of her desire to go to trial, as seen infra, petitioner pled guilty at the behest of plea counsel who intimidated petitioner into pleading guilty to these offenses App.4,11.6-18; App. 123,11. 9-16.

Judge Harrington sentenced petitioner to concurrent terms of thirty years' imprisonment for burglary in the first degree, twenty years' imprisonment for kidnapping, and twenty years' imprisonment for ABHAN. App.38,11.6-18.

Petitioner filed an application for post-conviction relief (PCR) on October 6, 2017. App.43-86. Petitioner added an amendment to the PCR application on November 21, 2017. Id. The state filed it return on March 7, 2018. App.87-92. Petitioner then added a subsequent amendment to the PCR application that alleged her relationship with plea counsel deteriorated to the extent that plea counsel should have requested to be relieved so that new counsel can be appointed and his failure to do so induced petitioners to plead guilty involuntarily. App.94-95

On May 25, 2018 petitioner's PCR hearing was held in Charleston County in front of the Honorable Roger M. Young. App.96. Lane Boozer represented petitioner. Id. Kelly Oppenheimer represented the state. Id.

In an order filed on July 23, 2018, Judge Young rejected petitioner's PCR allegation that her plea was involuntarily made because plea counsel, the man who intimidated petitioner into pleading guilty testified that he fully informed the petitioner of the

circumstances of her case such that she made her own decision to
plead guilty.App.165-188; App.187

Argument

I The plea was coerced and obtained involuntarily where plea counsel a large male that the petitioner already had a sever break down in communications with being yelled, screamed and cursed at in the conference room just prior to entering the court room for a plea agreement intimidating, setting of the petitioners PTSD by counsels treatment and traumatizing her. In addition to using these tactics the petitioner's counsel told her that if she (the petitioner) did not take this plea on this day (I never had any advance notice I was going to court, I was told 3 hours prior to going) there would be no other offers and he, my counsel promised me instead of 30 years I would receive life without parole if I went to trial.

Then my counsel went out to my 17 year year old daughter in the court room and had her to write me a note telling me to plea guilty so that I wouldn't get a life sentence .I thought for a while that david Schwacke had told my daughter the same thing he had told me but once I got to talk to her in R&E at the prison my daughter told mr that David Schwacke had in fact told her that if I didn't take the plea he would promise her I would get a life sentence.

Relevant Facts

The state alleged the facts as follows: On September 8, 2014 Petitioner, Julie Gordon-Gookins arrived at the complaining witness house. App.12, 11.22-25. While the complaining witness was unloading items from her car, the petitioner allegedly approached her with a firearm and threatened her App.12, 1.25-13, 1.5

On October 28, 2016 petitioner pled guilty to ABHIAN , burglary in the first degree and kidnapping. App.1. On October 6, 2017 petitioner then filed a PCR application. APP.43-86

Petitioner testified at her PCR hearing that she did not want to plead guilty. App.111, 11.2-11 Petitioner stated that plea counsel intimidated her by yelling and cursing at her. App.115, 11.12-22 Petitioner explained, "I just kind of shut down and didn't know what else to do...I was scared if I didn't do what he had to told me that I was going to prison for the rest of my life." Id. Petitioner believed that since their relationship had deteriorated to the extent it had petitioner did not trust plea counsel to represent her and feared he would harm her if she did not cooperate, plea counsel should have moved to relieve himself and have and have anew attorney appointed. App.152, 1.16

On cross-examination, petitioner's said she could not tell the plea judge her complaints about plea counsel because she was, "intimidated beyond belief by [plea Counsel]. [She] never had a good working relationship with counsel and there was nothing I could do for myself." App 124, 11.14-20 Petitioner waived her right at the plea colloquy because plea counsel told her to wave them. App.125, 11.1-7. Furthermore, plea counsel instructed petitioner to tell the judge that she was not threatened or coerced into pleading guilty and instructed petitioner to, "say yes to everything". App.125, 11.9

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As far as the petitioner having faith in her counsel , see evaluation order, ordered by Judge Kristi Harrington dated November 18, 2015 App.76(Order) Diagnosis App.80

Feelings on court proceedings App.81 Underlined
Feelings on counsel App82 Top half of page underlined
Found in Appellate Case mailed with Johnson Brief Appendix
Counsel on the morning of the 28th of October 2016 approached the
petitioner's 17 year old daughter and had her to write a note to the
petitioner telling her that he had told her if I didn't take the
offered plea that morning I was going to prison for the rest of my
life, that I needed to take the deal.

The note that my counsel had my 17 year old daughter to write
satisfies the test for coercion/intimidation thereby satisfying
the prejudice requirement or the ineffective assistance of counsel
claim which also is a violation of the petitioner's 6th amendment
right, and affords her grounds for a new trial.
Strickland v. Washington 466 U.S. 668 (1984). The right to the effective
assistance of counsel extends to the plea bargaining process.
Hill v. Lockhart 474 U.S. 52, 57-59 (1985)

Judge v. State 321 S.C. 554, 471 S.e.2d 146 (1996)

McMann v. Richardson 397 U.S. 759, 90 S.Ct. 1441 25 (coerced Plea)

Petitioner doesn't have the written statement because her daughter
doesn't want to give her a written statement that could ultimately
send her to prison for life but has said if it is my wish to
do this and this honorable court sends her a subpoena she will
write a statement to the court about what happened while David
Schwacke was my attorney and on October 28, 2016 the morning of my
plea hearing. Her name and address is as follows;

Meagan p. Warden

1202 - B Boone Hill Road

Summerville, South Carolina 29483

II On October 28, 2016 during our pre-plea meeting in the confer-
ence room the petitioner's counsel told her that he would talk to
the prosecutor and be sure she didn't have to register on the sex
offenders registry since her crime was not perpetrated upon a
child, but he never addressed that during the plea as he said he
was going to. According to Machibroda v. U.S. 368 U.S. 487, 82 S.Ct.
510, 7 L.Ed.2d 473 Promises made to effect a plea or agreement but
aren't kept void that agreement. In South Carolina verbal agreements
are upheld as well as written agreements so just because counsel
didn't write it down doesn't mean that he didn't enter into this
verbal agreement that he shouldn't be required to uphold.

III The court had a responsibility under the law to ensure
that the plea and when the defendant said she was pleading
guilty because her counsel had continually told her she was guilty
the acceptance of the plea should have been rejected by the court
Boykin v. Alabama 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d 274
Reversible error defendant has to knowingly and voluntarily enter
plea if not then the questionable plea leaves grounds for reversal
error where the plea is open to be overturned on appeal.

The court has a responsibility under rule 11(d) to ensure
that any plea is voluntary (see Santobello v. New York, 404 U.S.
257, 261-262, 92 S.Ct. 495, 30 L.Ed. 2d 427 (1971))
and when the defendant said she was pleading guilty because her
counsel said she was guilty the acceptance of the plea should
have been rejected.

Also when the court heard from David Schwacke that there was an issue between the petitioner and himself, the petitioner should have been requestioned and the plea rejected knowing there was an issue between the client and attorney. I was not afforded adequate counsel by my counsel or the court.

IV Trial counsel was ineffective in failing to advise petitioner that she had a right to file for a reconsideration of sentencing. Strickland v. Washington addresses the right to address and prepare reports to present to sentencing judges, and judges who are reconsidering sentencing.

V Trial Counsel failed and was ineffective to subpoena records from defendant's general practitioner and Gyn who had treated her for various medical and mental issues in which he could have used the information in the sentencing as far as psychological well being to obtain a more merciful sentence." When (applicant) asked her attorney to investigate the evidence the solicitor planned to use and to have medical records subpoenaed he told (applicant) no his investigator was on medical leave. Every time petitioner asked about having something investigated she was told that Mr. Schwacke's investigator was out on medical leave over the entire 26 months she was incarcerated awaiting trial there was never any investigation done. Council v. State 380 S.C.159 Counsel's failure to adequately investigate and present evidence during plea constitute ineffective counsel. Smith v. State 386 S.C.562,566,689 S.E.2d 629 631 (2010) Trial counsel's deficient performance prejudiced the applicant to the extent that there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different.

VI Since Defence counsel submitted work/case file to petitioner and she only received a partial motion of discovery, with no work notes from counsel. Therefore petitioner is lead to believe since counsel was ordered by the supreme court to turn over the total case/work file and I received a partial motion of discovery with mental evaluation missing and no work notes I am lead to believe that Mr. Schwacke did no investigating of his own on his behalf had no correspondance with anyone including but not limited to the prosecutor, conducted no research on my case, made no notes on my case, subpoenaed no records in the case, did nothing meaning meaning he was grossly negligent and grossly ineffective as counsel in this case. Counsel's performance was deficient, Cherry, 300 S.C. at 117,386 S.E.2d at 625 Counsel's performance fell below an objective standard of reasonableness.

Franklin v. Catoe 346 S.C.563, 70-571, 552, S.E.2d 718,722 (2001)

Woodard V. Collins, 898 F.2d 1027,1029 (5th Cir 1990)

When a lawyer advises his client to plea bargain to an offense which the attorney does not investigate such conduct is always unreasonable. This is exactly what David Schwacke did in my case!

VII Defense counsel failed to act in the petitioners best interest by failing to have the defense's own test run on the ~~sho~~ shovel to prove it had been used previously to refute the states claims and experts to testify to the commonality of Diphenhydramine as an over the counter sleep aide commonly used. Had defense acted in petitioners favor as her counsel instead of acting as an agent of the prosicutors office to effect a guilty plea then he would ~~have~~ have had these simple test run to refute the prosicutors arguement to have grounds to argue for a lesser sentence based on the severity and truthfulness of the evidence offered by the prosicutor. Had Mr. Schwacke taken the time to have the shovel tested he would have found that the shovel had dirt on it it hav been used within 72 hours at our family cemetary. and had he tested the substance in the car him self he ~~would~~ would have found it contained a combination of Diphenhydramine and Magnesium that I had been using for migraines since I had worked for Dr. James Schere with Alpha Care State v. Barnett 1998-NMCA-105,730, 125N.M.739,965,P.2d323 Nelson v. Hargett,989 F2d 847,850 (5th Cir 1993)

VIII Counsel was ineffective for not asking for a change of venue as requested by petitioner and/or investigatong further into the victims work history to verify wether she was employed by either the Berkeley County Sheriff's Office or the Berkeley/CharlestonCounty Prosicutor's Office as a victim's Advocate which would constitute a bias on the case.

United States v. Mooney 497 F. 3d 404 (4th Cir 2007) Counsel in criminal cases are charged with the responsibility of conducting appropriate investigations, both factual and legal to determine if matters of defense can be developed.

Woodard v. Collins, 898 F.2d1027,1029 (5th Cir1990) When a lawyer advises his client to plea bargain to an offense which the attorney has not investigated such conduct is always unreasonable.

Crisp v. Duckworth 743 F.2d 580,583 (7th Cir 1984)

Though there may may be unusual cases when an attorney can make a rational decision that investigation is unnecessary, as a general rule an attorney must investigate a case in order to provide minimally competent representation. David Schwacke provided less than adiquate assistance of counsel.

In this case an "unsound result" occurred because petitioner did not freely and intelligently plead guilty because her plea was caused by her plea counsel intimidation. Moreover plea counsel was aware for months that petitioner wanted a new attorney appointed but failed to bring that to the plea court's attention. App.105,1.12-1071.4; App.152 1.25-153,1.4.

Petitioner did not send a formal motion to the court to have plea counsel relieved because she did not know that was what was required of her, she thought only her attorney could do that and obviously he was unwilling to do it when she asked him, directly to do so. Petitioner had told Mr. Schwacke the morning of the plea hearing that she was going to tell the plea judge that morning that she wanted new counsel to which Mr. Schwacke had a temper tantrum with the petitioner, screaming cursing and yelling at her. He told her to just enter the court room say yes ma'am to everything or "I was going to piss of the judge even more with me than she already was with me". I was instructed "I had to give a little to get a little" by David Schwacke but what did I get? I got nothing I still got life at 44 a 30 year sentence at 85% is a life sentence Ineffective Assistance of counsel who never had my interest in mind is what I got frome the beginning.

AT my plea hearing I tried to tell Judge Harrington about the letter I had written to the court asking for new counsel but was unable to tell her in person that morning because I suffer from PTSD App.80(Appendix) Diagnoses from being sexually molested as a small child and physically beaten by my husband and other significant others in my life time and when Mr. Schwacke acted the way he did on the morning of October 28,2016 it triggered my PTSD and my trauma and I couldn't react, I was terrified that I'd face harm if I tried to help myself with him standing there and I even voiced in my evaluation dated November 18,2015 faced with certain situations I was afraid that may happen see page 82 (app) (appendix) right above clinical impressions regarding competency to stand trial.

I plead guilty because I was intimidated and coerced to do so. Mr. Schwacke used the threat that I would go to prison for life without parole if I went to trial but I feel had he fought for me had he researched my mental history, medical history, abuse history like they have here in prison he may have found he could have found information he could have used to fight for a reduced sentence. Since I have been here and gotten on the proper medication I have been doing and felt so much better, better than I have in 25 year All David Schwacke did was stand there and continually tell me I was guilty, well people can be guilty but there be more than just guilt or innocence to look at when it comes to a crime and had he done his job he may have discovered that there were those types of issues at play, but he was too bust intimidating me and coercing me into pleading guilty to care that he was committing an injustice He is an attorney with many years experience and I've heard from many of his other clients at the same jail where I was how they were dissatisfied with him as well i'm not the only one to have a problem with him I'm just the one to plead my case, I have to it's my life I'm fighting for. He's an attorney he knows hen no where near provided adequate counsel he knows he fell short as my attorney and I am entitled to to a new hearing based on ineffective assistance of counsel I have listed here several cases that apply to my case to show where he fell short. Please do not let this in justice continue, please understand I have an emotional issue that kept me from speaking out because of his traumatizing behavior on October 28,2016 and I just shut down down because of that. But I have while I have been here taken a group to help me with this issue it was called " PTSD -Overcoming The Past" and it greatly has helped me deal with my ptsd. I still have it I now have tools to use to get my way around an episode though.

-Conclusion

BY the reason or the foregoing arguments, Petitioner respectfully requests this court vacate her guilty plea and remand the case to the circuit court for a new trial, or in the alternative grant certiorari to allow for full briefing on this issue.

Julie L. Gordon-Gookins

Julie L. Gordon-Gookins

Pro Se'

This 18th day of July 2019

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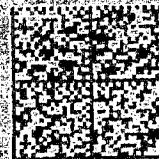
Certificate of Service

The undersigned hereby certifies that a true copy of the petition for Writ of Certiorari 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.

Julie L. Gookins

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