

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Newberry County

Honorable J. Mark Hayes, Circuit Court Judge

TYLER ELKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002184

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Appellate Defender

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty when plea counsel pressured Petitioner into pleading guilty by failing to procure a reasonable plea agreement during negotiations with the state where Petitioner's codefendants all received significantly lesser prison sentences?

STATEMENT

During the October 2015 term, the Newberry Grand Jury indicted Petitioner for murder, two counts of attempted murder, armed robbery, possession of a weapon during the commission of a violent crime, and burglary in the first degree. App. 130 – 141.

On October 31, 2016, Petitioner pled guilty to voluntary manslaughter before the Honorable L. Casey Manning. App. 1. A. Bea Hightower represented Petitioner. Id. C. Dale Scott represented the state. Id.

Judge Manning accepted Petitioner's guilty plea as freely, voluntarily, knowingly, and intelligently made. App. 37, l. 22 – 38, l. 3. Judge Manning sentenced Petitioner, pursuant to the negotiated sentence, to twenty-five years' imprisonment. App. 44, l. 22 – 45, l. 8.

On March 1, 2017, Petitioner filed a post-conviction relief (PCR) application. App. 47 – 53. The state filed its return on July 21, 2017. App. 54 – 60. On September 27, 2017, Petitioner filed an amended PCR application alleging his attorney provided, "ineffective assistance during plea bargain negotiations." App. 61 – 62.

Petitioner's PCR hearing was held on June 22, 2018 before the Honorable Mark Hayes. App. 63. Ashley McMahan represented Petitioner. Id. Julie A. Coleman represented the state. Id.

In an order filed on October 29, 2018, Judge Hayes denied Petitioner relief. App. 117 – 129. Judge Hayes found that Petitioner failed to provide "valid reasons" why his statements made during the plea colloquy should not be "conclusive." App. 126 – 127.

ARGUMENT

The PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty when plea counsel pressured Petitioner into pleading guilty by failing to procure a reasonable plea agreement during negotiations with the state where Petitioner's codefendants all received significantly lesser prison sentences.

Relevant Facts

The state alleged the facts as follows: On July 29, 2015, Petitioner and three codefendants killed Ronnion Barron, the decedent, during the commission of a burglary of the decedent's home. App. 34, l. 14 – 36, l. 23; App. 130 – 141. The codefendant Keon Kelly¹ killed decedent. App. 34, l. 14 – 36, l. 23. Petitioner allegedly shot into the home but did not hit anyone. Id.

A separate car arrived during the incident with two passengers inside and Keon Kelly attacked them too. Id. Petitioner allegedly shot at the car as the car fled to prevent them from firing back at him. Id. The fleeing passengers called law enforcement and Petitioner was arrested. Id.

While in custody Petitioner made inculpatory statements to police and admitted his involvement in the incident. App. 42, ll. 6 – 13. Petitioner was fully cooperative with investigators. App. 89, l. 11 – 91, l. 14. However, he was unwilling to testify against his codefendant Saterwhite because Petitioner feared for his safety in prison if he testified. App. 91, l. 15 – 93, l. 8.

At his PCR hearing, Petitioner testified that he was the only one of the codefendants to be charged with murder. App. 74, l. 22 – 75, l. 7. Petitioner stated that he “felt like” plea counsel forced him into pleading guilty. App. 79, ll. 4 – 15. Petitioner believed that plea counsel should have helped Petitioner prepare for trial or work for a better plea deal, rather than rushing him into a guilty plea. Id.

¹ Keon Kelly committed suicide while law enforcement tried to arrest him. App. 83, ll. 10 – 21.

Petitioner's sentence was "a whole decade more" than what his codefendants received. App. 75, l. 24 – 76, l. 5. He testified that he wanted plea counsel to work to get a plea agreement for him like his codefendants' plea agreements because they were all a part of the same incident. Id. However, Petitioner no longer wanted a better plea offer, but wanted to go to trial. App. 77, ll. 11 – 21.

Plea counsel Hightower testified that there were no other plea offers given by the state. App. 89, l. 21 – 93, l. 8. Hightower said that Petitioner would not testify against codefendant Saterwhite for fear of his own safety while incarcerated. App. 91, l. 15 – 93, l. 8. She recalled that once Saterwhite pled guilty, the best offer the state would give was a "cap of twenty-five [years' imprisonment]." Id.

The PCR court found Petitioner, "failed to prove he was coerced into pleading guilty and would have gone to trial otherwise." App. 127. Judge Hayes stated, "it was clearly [Petitioner's] decision to plead guilty based on the high likelihood he would receive a life sentence if convicted at trial." App. 126.

Discussion

Petitioner pled guilty involuntarily because he was pressured to plead guilty when plea counsel Hightower failed to procure a reasonable plea agreement for Petitioner, where Petitioner's co-defendants all received substantially lighter sentences than he did. App. 79, ll. 4 – 15; App. 75, l. 24 – 76, l. 5.

"Guilty pleas are no more foolproof than full trials to the court or jury... [therefore], we take great precautions against unsound results." Brady v. United States, 397 U.S. 742, 758 (1970). "It is elementary that in order for a defendant to knowingly and voluntarily plead guilty he must have a full understanding of the consequences of his plea." State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d

602, 603 (1980). 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 evidence presented at the PCR hearing can refute the answers given at the plea colloquy. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “[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.” Id.

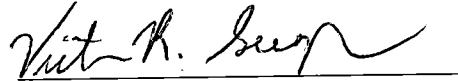
In State v. Hazel, this Court held that Hazel’s plea was involuntary where she was provided incorrect sentencing advice by her plea counsel. Hazel, at 393-94, 271 S.E.2d at 603. Prior to the plea hearing, plea counsel told Petitioner that the judge “could” impose a life sentence. Id. It was only until after Hazel’s guilty plea was accepted that she found out the sentence of life in prison was mandatory and that the judge had no discretion to impose a lesser sentence. Id. Therefore, this Court vacated Hazel’s guilty plea because it was entered, “in ignorance of its direct consequence.” Id. at 394, 271 S.E.2d at 603.

In this case, the record does not reflect that Petitioner freely and intelligently waived his constitutional trial rights because he was pressured into pleading guilty by plea counsel. App. 79, ll. 4 – 15. Petitioner was the only one of the codefendants to be charged with murder and plea counsel failed to correct that discrepancy during plea negotiations with the state. App. 74, l. 22 – 75, l. 16. As a result, Petitioner legitimately thought he had no choice but to plead guilty. App. 79, ll. 4 – 15.

Therefore, the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty. App. 117 – 129; See Boykin v. Alabama, 395 U.S. 238 (finding a defendant’s decision to plead guilty must be knowingly, voluntarily, and intelligently made).

CONCLUSION

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



Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of August, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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TYLER ELKINS,

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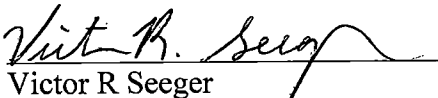
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyler Elkins 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 J. Mark Hayes, which was held on June 22, 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 Tyler Elkins.

Respectfully Submitted,

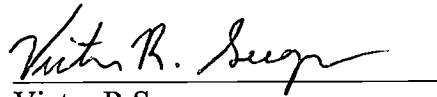


Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

This 7th day of August, 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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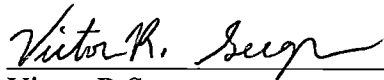
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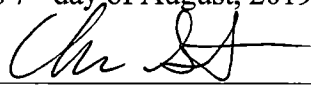
RESPONDENT

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 Janell Gregory, 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 Tyler Elkins, #370294, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of August, 2019.


Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 7th day of August, 2019.

 (L.S)

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