

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable J. Derham Cole, Circuit Court Judge

RYAIS RYCHE RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000346

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Did Petitioner enter into his guilty plea involuntarily where he was coerced into pleading guilty by plea counsel when she used her boss to pressure Petitioner into pleading guilty where plea counsel's boss had no knowledge of the facts of Petitioner's case and was brought in with the specific purpose of convincing Petitioner to plead guilty?

STATEMENT

During the March 2013 term the Richland County Grand Jury indicted Petitioner for two counts of armed robbery and two counts of kidnapping. App. 453 – 460.

On September 5, 2013, Petitioner pled guilty before the Honorable Deandra G. Benjamin. App. 1. Kris Hines represented Petitioner. Id. Luck Campbell and Megan Walker represented the state. Id.

Judge Benjamin accepted Petitioner's guilty plea as voluntarily, knowingly, and intelligently made. App. 22, ll. 4 – 10. Petitioner was sentenced to twenty years' imprisonment. App. 40, ll. 12 – 18.

On December 1, 2014, Petitioner filed an application for post-conviction relief (PCR) arguing, among other allegations, that plea counsel provided ineffective assistance of counsel by having her boss coerce him into pleading guilty. App. 43 – 377. On June 5, 2015, the state filed its Return. App. 378 – 385.

On February 5, 2016, Petitioner's PCR hearing was held before the Honorable J. Durham Cole. App. 386. Jonathon D. Waller represented Petitioner. Id. J. Clayton Mitchell, III, represented the state. Id.

In an order filed on February 12, 2015, Judge Cole denied Petitioner relief. App. 434 – 452. The court found that Petitioner's answers during the plea colloquy were controlling. App. 449-451. Additionally, based on plea counsel's testimony at PCR, the court found that neither plea counsel nor her boss coerced Petitioner into pleading guilty. Id.

ARGUMENT

Petitioner entered into his guilty plea involuntarily where he was coerced into pleading guilty by plea counsel when she used her boss to pressure Petitioner into pleading guilty where plea counsel's boss had no knowledge of the facts of Petitioner's case and was brought in with the specific purpose of convincing Petitioner to plead guilty.

Relevant Facts

On December 4, 2012, "Nancy's Nook" on Broad River Road was allegedly robbed by two armed men. App. 6, l. 22 - 8, l. 10. According to the complaining witnesses, two males wearing masks and gloves entered the store armed with guns. Id. The two gunmen took a patron's purse, Kelly, and had the employees fill a "black bag" with money from the register. Id.

After the incident, an anonymous tipster told police the names of the two gunmen were, "Carol Phillips and Ryias." App. 8, ll. 11 - 23. The tipster did not know Petitioner's last name. Id. Police did a Facebook search of the names the tipster gave. App. 8, l. 24 - 9, l. 14. The police found pictures on Facebook allegedly of Petitioner and Phillips with the same type of firearms the complaining witnesses said the gunmen used. Id.

A search warrant was executed on the apartment where Petitioner and co-defendant lived. Id. Police discovered items purported to be those stolen from Kelly. They also found clothes similar to those that the gunmen wore during the robbery. Id. Co-defendant Phillips was arrested on separate charges, and the motel room he was staying at was searched. App. 9, ll. 15 - 23. The search discovered more items belonging to the complaining witnesses of the alleged armed robbery. Id.

At his PCR hearing, Petitioner testified that plea counsel's boss, Strickler, told him there was "no chance" of winning at trial. App. 397, ll. 10 - 13. Petitioner was reluctant to plead

guilty, despite plea counsel's strong opinion that he should plead guilty. App. 394, ll. 8 – 16. Petitioner explained that he was pressured by plea counsel and Strickler into pleading guilty and that his answers at the plea colloquy to the contrary were untrue. App. 398, l. 24 – 438, l. 3.

Plea counsel testified at Petitioner's PCR hearing as well. App. 410, l. 9. Plea counsel stated that Petitioner did not want to plead guilty. App. 420, l. 1 – 421, l. 16. Plea counsel then brought Strickler to talk to Petitioner. Id. Strickler allegedly asked Petitioner what he thought the result of the trial would be and Petitioner responded that he would be convicted. Id. Mr. Strickler then told Petitioner to plead guilty instead of going to trial. Id. Plea counsel also testified that she did not coach Petitioner's answers at the plea colloquy. App. 421, l. 17 – 422, l. 3.

However, Plea counsel admitted she thought Petitioner should plead guilty. App. 418, ll. 3 – 25. She also admitted that Petitioner did not want to plead guilty and that it was only after Strickler's convincing that he decided to plead. App. 426, l. 25 – 427, l. 4. Moreover, she testified "the purpose" of bringing Strickler to see Petitioner was to convince Petitioner to plead guilty. App. 420, l. 1 – 421, l. 16.

Discussion

Plea counsel provided ineffective assistance of counsel when she wrongfully involved her boss in Petitioner's case where Strickler's only "purpose" was to convince Petitioner to plead guilty, which improperly coerced Petitioner into entering a guilty plea against his will. App. 426, l. 25 – 427, l. 4.

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury... Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S.

238 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him); accord State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) (finding the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea);

“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. Concerning prejudice, “[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. at 694.

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, 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.”

Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000)

In this case, an “unsound result” occurred as Petitioner did not freely and intelligently plead guilty because his guilty plea was caused by plea counsel’s coercion. App. 398, l. 24 – 399, l. 3.

The record showed that plea counsel wanted Petitioner to plead guilty. App. 394, ll. 8 – 16; App. 418, ll. 3 – 25. Furthermore, despite plea counsel’s opinion, Petitioner still wanted to proceed to trial. App. 394, ll. 8 – 16. Plea counsel testified she involved her boss to convince Petitioner to plead guilty. App. 424, l. 3 – 425, l. 19. It was only after plea counsel brought in her boss to speak to Petitioner that he decided to plead guilty. App. 426, l. 25 – 427, l. 4. Plea counsel’s boss had no prior involvement in Petitioner’s case and did not have independent knowledge of the facts of the case. App. 420, l. 1 – 421, l. 16.

Accordingly, when plea counsel brought her boss to Petitioner to pressure him into entering a guilty plea, she coerced Petitioner into pleading guilty when he would have rather proceeded to trial. Hill, at 56 – 57. Therefore, Petitioner’s guilty plea was entered involuntarily and should be vacated.

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 27th day of August, 2019.

STATE OF SOUTH CAROLINA

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Certiorari to Richland County

Honorable J. Derham Cole, Circuit Court Judge

RYAIS RYCHE RIVERS,

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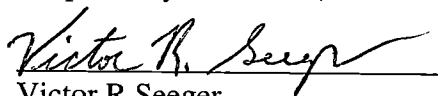
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ryais Ryche Rivers 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. Derham Cole, which was held on February 5, 2016, 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 Ryais Ryche Rivers.

Respectfully Submitted,



Victor R Seeger

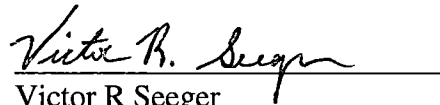
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th 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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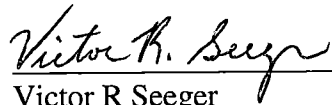
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CERTIFICATE OF SERVICE
—————

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 Lindsey McCallister, 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 Ryais Ryche Rivers, #356951, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 27th day of August, 2019.



Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2019.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 26, 2019