

Isaac Romell Williams 365231

September 17, 2019

Broad River C.X./WA-244

4460 Broad River Rd.

Columbia, S.C. 29210

Honorable Daniel E. Shearouse

Clerk of Court

P.O. Box 11330

Columbia, S.C. 29211

Re: Isaac Romell Williams v. State of South Carolina

Appellate Case Number: 2018-002147

Dear Mr. Shearouse,

Enclosed for your file is an original copy of Johnson Petition

for Writ of Certiorari, along with a:

1) Proof of Service

Respectfully,

s/ Isaac Romell Williams

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SEP 19 2019

S.C. SUPREME COURT

CC: Honorable Alen Wilson (Attorney General)

JAM JAGEL

State of South Carolina) In The South Carolina Supreme Court
 County of Charleston) Ninth Judicial Circuit
 Isaac Romell Williams,) Appellate Case Number: 2018-002147
 Petitioner,)
 v.) Johnson Petition for
 State of South Carolina,)
 Respondent) Writ of Certiorari

Relevant Facts

On July 10, 2015, Petitioner appeared before the Honorable Kristi Harrington and pled guilty of murder. The plea was made without negotiation or recommendation. Tr.p. 6 lines 7-12. Petitioner's co-defendant, Juan Scott, was the one who pulled the trigger. Tr.p. 10 lines 9-16. The plea judge found a factual basis for Petitioner's plea and accepted it. Tr.p. 14 line 24 - p.15 line 6. Sentencing was deferred.

On August 26, 2015, Petitioner and Juan Scott appeared before the Honorable Kristi Harrington for sentencing. At the sentencing hearing, Petitioner was sentenced to a term of forty years' imprisonment. Tr.p. 127 line 20 - p. 128 line 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). Tr.p. 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. Tr.p. 132. The State made its Return on or about February 6, 2018. Tr.p. 137.

An evidentiary hearing took place before the Honorable Michael G. Nettles on October 2, 2018. Tr.p. 146. James Falk represented Petitioner, and Benjamin Kimbrough on behalf of the State. Petitioner and plea counsel testified at the hearing.

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Argument

The PCR court erred when it denied Petitioner a continuance to subpoena favorable witnesses to testify on his behalf at PCR hearing to substantiate his allegation that plea counsel coerced him to plead guilty.

"Criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt." Pennsylvania v. Ritchie, 480 U.S. 39, 56, 107 S.Ct. 989, 92 L.Ed.2d 40 (1987); however, "the Sixth Amendment does not by its terms grant to a criminal defendant the right to secure the attendance and testimony of any and all witnesses." Rather, to demonstrate a Compulsory Process Clause violation, an appellant must make some plausible showing of how the testimony of an absent witness would have been both material and favorable to his defense.

At the out-set of the evidentiary hearing, PCR counsel moved for a continuance. Tr.p. 148 line 5 - p. 150 line 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 allegations that Petitioner's plea was involuntary. In all criminal prosecutions the accused shall have compulsory process for obtaining witnesses in his favor. S.C. Code Ann. § 19-7-60. 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." Tr.p. 150 lines 2-11. The PCR court denied the motion. Tr.p. 150 lines 12-15. Plea counsel argued that conversations took place with Roger Daniel wherein counsel implored Petitioner to plead. Tr.p. 161 lines 6-12. Counsel admitted that Roger Daniel and Tralene Bell were present when the decision was made to plead. Tr.p. 162 line 5 - p. 163 line 9. Petitioner

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testified similarly; Daniel and Bell visited him while he was in the county jail and implored him to plea. Tr.p. 170 line 13 - p. 172 line 1; Tr.p. 173 line 3 - p. 174 line 1. This conversation took place between seven and ten days before the plea. Tr.p. 179 lines 9-24.

The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a charge may be answered through the calling and interrogation of favorable witnesses... These basic rights are applicable to the states through the due process clause of the Fourteenth Amendment.

The Amendment essentially "constitutionalizes" the right to present a defense in an adversary criminal trial. Faretta v. California, 422 U.S. 806, 93 S.Ct. 2525, 45 L.Ed.2d 562 (1975). To further substantiate this allegation, 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." Tr.p. 184 line 25 - p. 185 line 25.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Capwood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). However, where the trial court refuses to allow the Petitioner to subpoena witnesses regarding the efforts plea counsel made to coerce Petitioner into pleading guilty which supported the allegation that Petitioner's plea was involuntary, this denies Petitioner the right to a full and fair hearing. All applicants are entitled to a full and fair opportunity to present claims in one PCR application. Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989). Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Moreover, due to PCR court's refusal to allow a continuance so Petitioner can subpoena favorable witnesses, Petitioner failed to present evidence that would show a reasonable probability that, the result of his trial would have been different. Aside from his testimony and his plea counsel's testimony, Petitioner did not offer any other witnesses to testify on his behalf at the PCR hearing. Therefore, it is merely speculative that these allegedly favorable witnesses would have aided in his defense. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing

State, 365 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR.")

The PCR court denied Petitioner the opportunity to subpoena witnesses favorable to him to testify at the PCR hearing corroborating the allegation that plea counsel coerced him to plea guilty against his will and consent. Without these witnesses testimony, this Court will not find prejudice. PCR counsel failed to secure affidavits from these favorable witnesses. Petitioner had no control nor was Petitioner able to subpoena witnesses on his own or obtain affidavits from witnesses.

Conclusion

Wherefore, based on the above-mentioned facts, Petitioner respectfully moves this Honorable Court to grant his petition for Writ of Certiorari and Reverse, Remand this Case for a new trial.

Respectfully,

s/ Isaac Romell Williams

Columbia, South Carolina

Dated: September 17, 2019

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State of South Carolina) In The South Carolina Supreme Court
County of Charleston) Ninth Judicial Circuit
)
Isaac Romell Williams,) Appellate Case Number: 2018-002147
Petitioner,)
v.)
State of South Carolina,)
Respondent)

Proof of Service

I certify that I have served this Johnson Petition for Writ of Certiorari on the Honorable Daniel K. Shearouse, Clerk of Court, by depositing a copy of it in the U.S. Mail, postage prepaid, on September 17, 2019, addressed to his office at, Post Office Box 11330, Columbia, South Carolina 29211.

/s/ Isaac Romell Williams
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