

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Laurens County

Honorable Brian M. Gibbons, Circuit Court Judge

MARVIN WATSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000308

JOHNSON PETITION FOR WRIT OF CERTIORARI

Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether plea counsel provided ineffective assistance of counsel when she failed to object to the plea court's improper statements, and failed to move for proper relief, during sentencing at the guilty plea hearing?

STATEMENT

During the October 2015 term, the Laurens County Grand Jury indicted Petitioner for murder and possession of a firearm during the commission of a violent crime. App. 115 – 118.

On March 2, 2017, Petitioner pled guilty before the Honorable Frank Addy, Jr. App. 1. Chelsea McNeill represented Petitioner. Id. Warren Mowry represented the state. Id.

Judge Addy accepted Petitioner's guilty plea as freely, voluntarily, and knowingly entered. App. 24, ll. 1 – 6. Judge Addy sentenced Petitioner to forty years' imprisonment for murder and five years' imprisonment for possession of a weapon during the commission of a violent crime. App. 45, ll. 8 – 14.

On August 8, 2017, Petitioner filed an application for post-conviction relief (PCR) which argued that plea counsel provided ineffective assistance of counsel when she failed to object to the plea court's improper comments during the guilty plea hearing. App. 48 – 54. On October 16, 2017, the state filed its Return. App. 55 – 59.

On October 15, 2018, Petitioner's PCR hearing was held before the Honorable Brian M. Gibbons. App. 61. Carson M. Hederson represented Petitioner. Id. Jannell Gregory represented the state. Id.

In an order filed on January 14, 2019, Judge Gibbons denied Petitioner relief. App. 105 - 114. Judge Gibbons found Petitioner failed to show how he was prejudiced by plea counsel's failure to object to the plea court's comments during the plea hearing because Judge Addy did not exceed "the forty-year cap." App. 113

ARGUMENT

Plea counsel provided ineffective assistance of counsel when she failed to object to the plea court's improper statements, and failed to move for proper relief, during sentencing at the guilty plea hearing.

Relevant Facts

On August 16, 2015, a gunman shot and killed David Anderson, decedent, at a gas station. App. 11, ll. 3 - 13, l. 1. Surveillance footage from the gas station showed that decedent and gunman did not fight or even interact with each other before the incident. Id. The gunman fled from the scene in his car with a female passenger. Id. The state alleged that Petitioner was the gunman. Id.

During Petitioner's guilty plea hearing, the plea court stated that Petitioner was "monster" and that was a "generous characterization" of him. App. 44, l. 17 - 45, l. 7. The court also commented that if Petitioner died in prison, he deserved it. Id. Plea counsel did not object to those comments nor did he try to withdraw Petitioner's guilty plea. Judge Addy sentenced Petitioner to forty years' imprisonment for murder. App. 45, ll. 8 - 14.

Petitioner testified at his PCR hearing that plea counsel should have objected to the plea court's improper comments at the guilty plea hearing. App. 70, l. 15 - 71, l. 13. Although, Petitioner was sentenced within the negotiated sentence of a cap at forty years' imprisonment, the plea court's comments during the plea hearing exhibited the plea court's animosity towards Petitioner. App. 74, ll. 11 - 14. Thus, Petitioner's sentence was imposed on an emotional basis rather than an evidentiary one and plea counsel should have objected. Moreover, Petitioner testified that he would have preferred going to trial rather than pleading guilty. App. 74, l. 20 - 75, l. 9.

Plea counsel testified that she remembered the comments the plea court made. App. 91, ll. 15 – 17. She stated that comments were “pretty gruesome.” App. 91, l. 23 – 92, l. 5. She recollected one comment from the plea court was that “the only way to bring justice back to this family is if I could resurrect the victim from the ground and put you in the ground.” Id. She stated that plea court characterized Petitioner as a “monster” and that if he died in prison he deserved it. Id. However, plea counsel testified that she did not believe those comments were objectionable because Petitioner’s sentence fell within the negotiated cap of forty years’ imprisonment. App. 92, ll. 6 – 14.

Discussion

In the present case, the “gruesome” comments by the plea court evinced the court’s animus toward Petitioner such that the sentence imposed shortly thereafter was based on the court’s emotions rather than the evidence presented. Therefore, plea counsel provided ineffective assistance of counsel when she failed to object to the court’s comments prior to sentencing.

In French v. State, 754 N.E.2d 9 (2001) the Indiana Court of Appeals handled a similar issue. French appealed the denials of his “motion for change of judge” and for denial of time served credit. Id. at 9. The French court remanded French’s case to the lower court for resentencing because the judge’s comments about French, in a separate proceeding, showed antagonism and bias against French such that a fair judgment was not possible. Id. at 16.

In a separate proceeding for a defendant one Larry Montel Booker, where Booker had gotten into an altercation with French, the trial judge stated that he had gotten to know French and he “can’t think of anyone more disagreeable” than French. Id. at 11. French later pled guilty before that same judge to charges arising from a jail altercation and received the maximum,

three-year sentence, consecutive to his pre-existing sixty-year imprisonment sentence for “dealing cocaine.” Id. at 12.

The French court determined that the true question was whether “an objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the judge's impartiality.” Id. at 16. (quoting Thakkar v. State, 644 N.E.2d 609, 412 (Ind. Ct. App. 1994). Accordingly, the lower court's comments showed a high degree of antagonism such that fair judgement was impossible. Id. Thus, the lower court's denial of French's motion “for change of judge” and the denial of his motion for time served credit was vacated. Id. at 17.

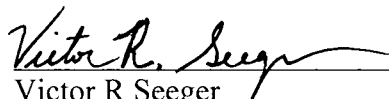
Here, Petitioner was prejudiced by plea counsel's failure to object to the plea court's “gruesome” comments because those comments showed a “high degree of antagonism” from the court to Petitioner such that the plea court was unable to impose a sentence using its “fair judgement.” App. 91, l. 23 – 92, l. 5; See French, supra. The plea court stated that Petitioner was “monster” and that was a *generous* characterization of him. App. 44, l. 17 – 45, l. 7. The court also declared that if Petitioner died in prison, he deserved it. Id.

Plea counsel did not object to those comments nor did she try to withdraw Petitioner's guilty plea. Judge Addy sentenced Petitioner to forty years' imprisonment for murder. App. 45, ll. 8 – 14. Those comments showed the animus that the plea court had for Petitioner. It was incumbent upon plea counsel, after hearing the court's comments, to object to ensure that Petitioner sentence would be based on the evidence presented and enflamed passions.

Accordingly, plea counsel provided ineffective assistance of counsel when she failed to object to those comments, and move to withdraw the plea, Petitioner was prejudiced because his forty-year prison sentence was imposed based on the emotions of the plea court.

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 3rd day of October, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Laurens County

Honorable Brian M. Gibbons, Circuit Court Judge

MARVIN WATSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

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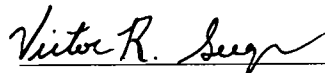
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marvin Watson 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 Brian M. Gibbons, which was held on October 15, 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 Marvin Watson.

Respectfully Submitted,



Victor R Seeger

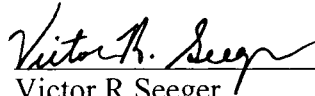
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of October, 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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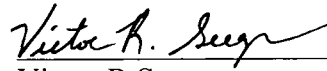
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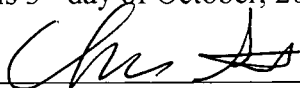
CERTIFICATE OF SERVICE

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 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 Marvin Watson, #371663, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 3rd day of October, 2019.



Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of October, 2019.

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