

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable G. Thomas Cooper, Circuit Court Judge

JARRET GRADDICK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000448

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred in denying relief, where Petitioner was coerced into pleading guilty under Alford by plea counsel and the plea judge, where the plea judge opined that Petitioner would die in prison unless he pleaded guilty, and where his resulting plea was neither freely nor voluntarily made?

STATEMENT

Petitioner was indicted on two kidnapping charges two armed robbery charges by a Charleston County grand jury on April 9, 2012. App. 163 – 170. Petitioner maintained his innocence throughout the process. App. 20 ll. 11 – 13. On July 7, 2014, he pleaded guilty before the Honorable Roger M. Young, Sr. App. 1. Jennifer Shealy appeared on behalf of the state, and Andrew Grimes represented Petitioner. At the time of the plea, Petitioner was already incarcerated. App. 2 ll. 5 – 14. At the outset of the plea, Petitioner moved to have plea counsel relieved.¹ App. 2 ll. 5 – 17. In response, the plea judge characterized the plea offered by the state as “quite significant” and explained the three-strike concept. App. 2 l. 24 – App. 3 l. 21. Continuing to try and convince Petitioner to take the plea, the court calculated how long Petitioner had to serve and suggested that if he accepted it, he would have “a possibility of getting out and going to the movies and getting married and having a family.” App. 4 l. 17 – App. 7 l. 5.

After a break and subsequent discussion with plea counsel, Petitioner pleaded guilty under Alford.² The terms of the plea as outlined by the state were that Petitioner would receive a sentence of twenty years to be served concurrent to one another and his previous sentence. App. 11 ll. 12 – 23. Before imposing a sentence, the plea court assured Petitioner it was a “good offer” for him to accept. App. 21 ll. 15 – 20. The plea court then sentenced Petitioner to twenty years’ concurrent. Id.

¹ The plea judge never ruled on the motion. During the plea colloquy, Petitioner indicated that he was “[n]ot really” satisfied with plea counsel’s representation. App. 13 ll. 10 – 12.

² North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

Petitioner filed an application for post-conviction relief on February 2, 2017. App. 24 – 57. It contained allegations of ineffective of counsel as well as “coerced guilty plea.” App. 26. The state made its Return on or about July 6, 2017. App. 58 – 65.

An evidentiary hearing was held on December 3, 2018 before the Honorable G. Thomas Cooper, Jr. App. 66. James Falk represented Petitioner, and Kelly Oppenheimer appeared on behalf of the state. Petitioner, his two co-defendants: Preston Swinton and Kenneth Murray, and the solicitor testified at the hearing.³

The PCR court took the matter under advisement and requested proposed orders. App. 139 l. 25 – App. 140 l. 8. An Order of Dismissal was filed on March 13, 2019. App. 145 – 162.

This petition follows.

³ Plea counsel passed away prior to the hearing.

ARGUMENT

The PCR court erred in denying relief, where Petitioner was coerced into pleading guilty under Alford by plea counsel and the plea judge, where the plea judge opined that Petitioner would die in prison unless he pleaded guilty, and where his resulting plea was neither freely nor voluntarily made.

Relevant facts

At every turn, Petitioner was coerced into accepting the plea. The plea judge spoke at length about why Petitioner should plead guilty. Plea counsel strongly encouraged Petitioner to plead guilty. On the day of the plea, Petitioner felt as if he had no choice; he felt pressure from the court, his counsel, and the prosecution which resulted in an involuntary guilty plea.

The plea judge opined on Petitioner's chances on appeal and listed multiple reasons why he thought Petitioner should accept the plea:

I know you're in a place right now that you don't want to be, but I don't think you're going to be getting out of there anytime soon, because if you got a new trial, they're just going to bring you back and try you, go through all that again, and you may or may not get the same 20-year suspended, but it's going to be a few years before anything good can come out of your current situation, best case scenario.

Now, the State has said in this offer to you that they will give you, or they will ask the judge to sentence you, to 20 years and let that run concurrent with the current sentence that you're doing. All right? So that means you don't have to worry about life without parole. That means, roughly, you know, when you are around 40 years old or so, you will get out.

That means get out of jail, and as long as you don't commit any other offenses, you'll get to enjoy life just like everyone else, but if you get convicted of one of these charges that you're facing at the end of this month, getting out and going to the movies, getting married, going to see ball games, having a family, that's never going to be an option for you.

You will spend the rest of your life in jail until you are a very old man and die of old age or you get killed in prison, but going out the way normal people do, that's not going to be an option to you if you get convicted at the end of this month. So in less than 30 days, you'll know the answer. Most people don't know the answer of that they'll be doing at the end of their life, but - - how you will die, I don't know, but where you will die, I got a pretty good idea: It will be in prison.

App. 5 l. 10 – App. 6 l. 15. The plea judge then plainly asked Petitioner why he would elect to go to trial rather than proceed with the plea. App. 6 l. 16 – App. 7 l. 10. In response, Petitioner unambiguously responded that he was innocent and not involved with any of the alleged crimes. App. 7 ll. 11 – 12. His co-defendants would testify accordingly at the evidentiary hearing in his post-conviction relief matter. The plea court then broached the subject of an Alford plea while simultaneously suggesting that going to trial would be a bad decision:

Well, that's a good reason. That is a perfectly good reason, and if you didn't do it, I can't say that I blame you and go to trial. But there is a downside to making a bad decision. You can - - Mr. Grimes can tell you, you can make a plea called an Alford plea in which you stand up before the judge and say, I didn't do it. I am innocent of these charges, but the State has made me a really good offer, and I need to take that offer because the downside to not taking this offer is bad. And so even though I'm telling you, Judge, exactly what you just told me, I didn't do it, I want you to just give me that 20-year sentence anyway because I'm already doing 20. **It's a no-brainer.**

App. 7 ll. 13 – 25 (emphasis added). Petitioner noted that he had never been informed of this option. App. 8 ll. 1 – 2. Adding force to the push to get Petitioner to plea, the plea judge indicated he was unlikely to grant Petitioner's motion to relieve his attorney. App. 8 ll. 3 – 16. Soon thereafter, the plea judge found that Petitioner's plea was freely, voluntarily, and intelligently made. App. 16 ll. 19 – 21.

The court then heard the allegations as set forth by the state. App. 16 l. 23 – App. 18 l. 13. According to the solicitor, three masked men robbed the former Piggly Wiggly in Mount Pleasant on July 25, 2011. Id. The state contended Petitioner was one of those men. App. 18 ll. 14 – 18.

At the evidentiary hearing, Petitioner remarked that the plea judge's comments, among other things, led him to plead guilty. App. 90 ll. 11 – 22. When asked by the PCR court why he wanted his PCR application to be granted, Petitioner offered a simple but resounding answer: "I honestly did not do this crime." App. 93 ll. 7 – 12.

Plea counsel only met with Petitioner three or four times on these charges. App. 73 ll. 4 – 5. Although Petitioner repeatedly professed his innocence, plea counsel suggested that he plead guilty. As Petitioner plainly set forth at the evidentiary hearing and as established at his plea, he did not want to plead guilty. App. 73 ll. 15 – 19. Nonetheless, both plea counsel and the plea judge coerced him into pleading. App. 75 ll. 4 – 16; App. 78 ll. 12 – 19.

Justin Hembry, a sergeant with the Mount Pleasant Police Department, was similarly responsible for injecting coercion into Petitioner's case. App. 76 l. 13 – App. 77 l. 7. Preston Swinton was one of Petitioner's co-defendants. App. 95 l. 25 – App. 96 l. 16. At the evidentiary hearing, Swinton admitted to being present at the Piggly Wiggly and noted that Petitioner was not there. Id. Swinton's statement suggesting Petitioner was at the Piggly Wiggly was not only coerced by Hembry, it was written by him as well; Swinton only signed it. App. 96 l. 17 – App. 98 l. 22; App. 100 ll. 10 – 23. Furthermore, Swinton's statement was taken after he had requested counsel. App. 102 l. 15 – App. 103 l. 3. Swinton testified repeatedly that Petitioner was not there. App. 98 ll. 6 – 8.

Kenneth Murray was Petitioner's other co-defendant. App. 106 l. 21 – App. 107 l. 18. His charges were dismissed by the solicitor. App. 109 ll. 8 – 13. Similar to Swinton, Murray indicated that Petitioner was not there. Id. Also comparable was Hembry's coercion of Murray. Id. Murray was held at the police station for over ten hours in handcuffs until he gave an involuntary statement. Id. He was neglected and not provided food or water. App. 115 l. 18 –

App. 116 l. 3. When the solicitor was unable to coerce Murray into pleading, his charges were dismissed. App. 117 ll. 1 – 15.

The solicitor noted that she met with Petitioner and his counsel. App. 16 l. 23 – App. 17 l. 12. She refused to offer anything less than a twenty-year sentence, despite Petitioner’s request. Id. As such, Petitioner felt as if he had no other option but to plead guilty under Alford.

Discussion

A coerced plea violates a defendant’s fundamental constitutional rights. Waley v. Johnston, 316 U.S. 101, 104, 62 S.Ct. 964, 86 L.Ed. 1302 (1942). “By encouraging a particular agreement, a judge may feel personally involved and thus, resent the defendant’s rejection of his advice.” U.S. v. Cannady, 283 F.3d 641 (4th Cir. 2002) (quoting United States v. Daigle, 63 F.3d 346, 348 (5th Cir. 1995)).

“The longstanding test for determining the validity of a guilty 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, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 208 (1985) (citations omitted). The United States Supreme Court has declared that “[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.” Brady v. United States, 397 U.S. 742, 748, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747, 756 (1970). In Brady, the Court declined to hold that “a guilty plea is compelled and invalid under the Fifth Amendment whenever motivated by the defendant’s desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged.” Id. at 751, 90 S.Ct. at 1470, 25 L.Ed.2d at 758.

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. Id. Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. This Court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In addition to the requirements of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Id.

Similar to Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999), the plea judge here did not advise Petitioner of the crucial elements of the charged offenses. Coupled with the above, this renders Petitioner's plea involuntary. A conviction after a plea of guilty normally rests on the defendant's own admission in open court that he committed the acts with which he is charged. Brady, 397 U.S. 742, at 748, 90 S.Ct. 1463, at 1468, 25 L.Ed.2d 747; McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 1170—1171, 22 L.Ed.2d 418 (1969). That admission may not be compelled, and since the plea is also a waiver of trial a waiver of the right to contest the admissibility of any evidence the State might have offered against the defendant—it must be an intelligent act 'done with sufficient awareness of the relevant circumstances and likely consequences.' Brady v. United States, 397 U.S., at 748, 90 S.Ct., at 1469, 25 L.Ed.2d 747.

A trial just may participate in the plea bargaining process if he follows guidelines to minimize the fear of coercion. Those guidelines are set forth in Harden v. State of South Carolina, 276 S.C. 249, 277 S.E.2d 692 (1981). In the matter at hand, the plea judge interjected his personal opinions into the process and encouraged Petitioner to plead guilty. Petitioner was coerced by the plea judge's extraneous comments which impermissibly influenced his decision.

The plea court's participation in this case was inherently coercive. The remarks made to Petitioner from the plea court undoubtedly communicated to him that the judge desired a plea. This raised the possibility, even if only in Petitioner's mind, that a refusal to accept the plea judge's preferred disposition would be punished. Petitioner likely feared rejecting the plea, as that could have decreased his chances of obtaining a fair trial before a judge whom he has challenged. Petitioner's charges could have been dismissed like Murray's had counsel investigated his case and advised Petitioner accordingly. Because that did not take place, and because Petitioner was coerced into pleading guilty, his plea was not freely, voluntarily, or intelligently made.

CONCLUSION

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



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of October, 2019.

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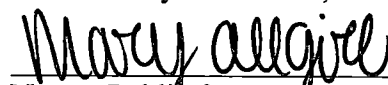
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix 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; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Jarret Graddick, #358060, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 14th day of October, 2019.



Taylor D Gilliam
Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 14th day of October, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: