

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Hampton County

RECEIVED

Honorable Thomas A. Russo, Circuit Court Judge

DEC 28 2019

SEANDREA LAMONT JOHNSON,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000832

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT.....4

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL9

ISSUE PRESENTED

Whether the PCR court erred in denying relief, where Petitioner's guilty plea was not knowingly, voluntarily, or freely made, where Petitioner only elected to plead because he did not trust counsel's ability to try the case, where plea counsel had failed to interview the state's witnesses?

STATEMENT

Petitioner was indicted by a Hampton County grand jury in October 2015 for possession of cocaine base, distribution of cocaine base, two counts of pointing and presenting a firearm, attempted carjacking, unlawful carrying of a pistol, possession of a weapon during a violent crime, and in December 2015, possession of a firearm by a felon. App. 71 – App. 85. He pleaded guilty on December 15, 2015 before the Honorable G. Thomas Cooper. App. 1. Steve Plexico represented petitioner; Steve Knight appeared on behalf of the state.

The state recommended a sentence of three years on the possession charge, and five years on each of the two pointing and presenting charges, consecutive. App. 3 ll. 2 – 19. The remaining charges were dismissed. App. 4 ll. 6 – 17. The facts as alleged by the solicitor were as follows:

On March 7, 2015, Petitioner was discovered near a car in possession of a gun. App. 9 l. 18 – App. 10 l. 16. Witnesses contended that Petitioner got into the back seat and held a gun to a woman's head. Id. The state further claimed Petitioner pointed a gun at another woman. Id. Drugs were supposedly located in Petitioner's possession as well. Id.

The plea court found Petitioner's decision to plead guilty freely and voluntarily made. App. 10 l. 23 – App. 11 l. 3. The plea was accepted. Id. Judge Cooper accepted the state's recommendation and sentenced Petitioner to thirteen years' incarceration. App. 17 ll. 11 – 21.

Petitioner filed an application for post-conviction relief on June 22, 2016. App. 19 – App. 25. It contained allegations of ineffective assistance of counsel. The state made its Return on or about April 19, 2017. App. 26 – 31.

An evidentiary hearing was held before the Honorable Thomas A. Russo on October 12, 2017. App. 32. James K. Falk represented Petitioner; Ruston Neely appeared on behalf of the

state. Petitioner and plea counsel testified at the hearing. The PCR court denied relief at the conclusion of the hearing. App. 62 ll. 6 – 18. An Order of Dismissal was filed on May 2, 2019. App. 64 – 69.

This petition follows.

ARGUMENT

The PCR court erred in denying relief, where Petitioner’s guilty plea was not knowingly, voluntarily, or freely made, where Petitioner only elected to plead because he did not trust counsel’s ability to try the case, where plea counsel had failed to interview the state’s witnesses.

Relevant facts

Trial counsel was appointed to represent Petitioner. App. 37 ll. 1 – 9. Petitioner indicated that although he received his discovery, there was “no forensic [evidence] or ballistics to [prove] that [he] ... pointed and presented a firearm at the person.” App. 38 ll. 2 – 15; App. 39 ll. 11 – 18. Further, the discovery contained an assertion that at least one of the pointing and presenting charges entailed the use of a knife, not a gun. Id. Additionally, no fingerprints were located on the gun. App. 40 ll. 4 – 16. Petitioner noted that one of the state’s witnesses was unwilling to cooperate. App. 38 l. 16 – App. 39 l. 10.

On the day of his plea, Petitioner believed he was going to trial. App. 40 ll. 21 – 25. He elected to take the plea because he did not trust plea counsel’s ability to represent him at trial. App. 41 ll. 7 – 18; App. 42 ll. 13 – 15. Petitioner feared going to trial with an attorney who was unprepared. App. 44 ll. 16 – 19. Had plea counsel been relieved, Petitioner would have been able to retain other counsel. App. 44 l. 24 – App. 45 l. 6.

Plea counsel testified that he did not interview any of the state’s witnesses. App. 55 l. 20 – App. 56 l. 1. Although he was in possession of their statements, he failed to follow up or send an investigator to speak with them.

Discussion

“There is a two-prong test for evaluating claims of ineffective assistance of counsel. First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991)). “Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. (citing Strickland, 466 U.S. at 687, 104 S.Ct. 2052; Alexander, 303 S.C. at 541–42, 402 S.E.2d at 485).

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)).

When determining issues relating to guilty pleas, appellate courts will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Specifically, the 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. If there is any evidence to support the findings of the PCR judge, those findings must be upheld. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). However, where there is no evidence of probative value to support the findings of the PCR judge, the ruling will not be upheld. Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

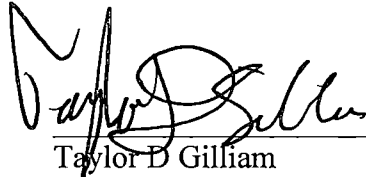
Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that defendants enter into guilty pleas voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). This Court has held that, “in 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.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A plea made in ignorance of its direct consequences is entered in ignorance and is invalid. Hazel, 275 S.C. 392, 271 S.E.2d 602.

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Id. at 434-435, 405 S.E.2d at 392. Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

Petitioner's plea was involuntary, because he did not feel as if plea counsel was able to represent him competently and zealously. On the day of trial, Petitioner was forced into an unwinnable choice: accept the plea or go to trial with counsel he distrusted and risk being found guilty on all of the indictments. Petitioner believed the latter was likely considering plea counsel's failure to interview the state's witnesses. The PCR court erred in denying him relief.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari and allow further briefing on the issue raised herein.

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of December, 2019.

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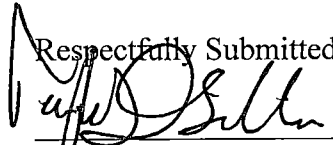
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for SeanDrea Lamont Johnson 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 Thomas A. Russo, which was held on October 12, 2017, 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 SeanDrea Lamont Johnson.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 23rd day of December, 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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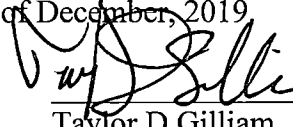
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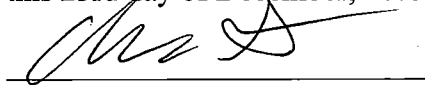
CERTIFICATE OF SERVICE

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 Sara Gunton, 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 SeanDrea Lamont Johnson, #318610, at Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 23rd day of December, 2019.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 23rd day of December, 2019.



(L.S)

Notary Public for South Carolina
My Commission Expires: September 30, 2029