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Robert M. Dudek, Chief Appellate Defender
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January 2, 2020

RECEIVED
JAN 02 2020
S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: Sequoia McKinnon v. State of South Carolina
Appellate Case No. 2019-000398

Dear Mr. Shearouse,

Enclosed please find a copy of the Sequoia McKinnon's *Pro Se* petition for writ of certiorari.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/sl

Enclosure

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JAN 02 2020
S.C. SUPREME COURT

Certiorari to Charleston County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

SEQUOIA MCKINNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2019-000398

PRO SE PETITION
FOR WRIT OF CERTIORARI

SEQUOIA MCKINNON
#369688
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

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ISSUE(S) PRESENTED

- I. Trial Counsel erred in failing to investigate co-defendants statements concerning Petitioners innocence.
- II. Trial Counsel erred in coercing Petitioner to plea.
- III. Trial Counsel erred in failing to advise and explain plea process to Petitioner.

STATEMENT OF THE CASE

Petitioner, Sequoia McKinnon, pled guilty to voluntary manslaughter and possession of a weapon during the commission of a violent crime during the June 2016 term of the Charleston County General Sessions Court before judge Deadra L. Jefferson and was sentenced to an aggregate thirty-year prison sentence [App. 1-22]. C. Andrew Carroll represented Petitioner at the plea proceeding and Solicitor Stephanie Linder appeared on behalf of the State. Petitioner did not enjoy the benefit of a direct appeal in the case. On March 9, 2016 Petitioner filed a PCR application with the Charleston County Office of the Clerk of Court [App. 24-35]. The respondent filed a return requesting that a hearing be held in response to Petitioner's PCR action [App. 36-40]. An amended PCR application was filed on May 11, 2018 [App. 42-43]. A PCR hearing was convened on December 4, 2018, at the Charleston County Courthouse before Judge G. Thomas Cooper [App 44-105]. Petitioner was present at hearing and represented by Rodney D. Davis, and Assistant Attorney General Benjamin H. Limbaugh appeared on behalf of the State. On February 8, 2019. Judge Cooper issued an Order of Dismissal in the case [App. 107-117. Petitioner appealed Judge Coopers Order of Dismissal. The Petition follows.

ARGUMENT

Under Rule 11(a)(1) of the Federal Rules of Criminal Procedure, a defendant may plead not guilty, guilty, or, with the Court's consent, nolo contendere. The Court must enter a plea of not guilty if a defendant refuses to enter a plea. Alternatively, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to appeal specified pretrial Motions. Conditional pleas require the consent of the Court and the government. A defendant prevailing on appeal may later withdraw the conditional plea. The Constitution requires that a defendant's plea be made voluntarily, knowingly, and intelligently.

I.

Trial Counsel erred in failing to investigate co-defendants statements concerning Petitioners innocences.

Petitioner informed Counsel that his co-defendant sent him letters explaining why Petitioner was not the shooter. However, Counsel did not make an effort to interview co-defendant.

Cross-examination by Mr. Davis of Calvin Carroll.

Q. And, therefore, you did not have contact with him--- forgive me if it was already answered. Did you request to speak with him through Mr. McCoy?

A. I did not. I asked whether he was cooperating, because I had gotten information that somebody else may have been the shooter.

Counsel had an obligation to confront co-defendant on Petitioners behalf, Counsel failed to do this on Petitioners behalf. Counsel failed to investigate co-defendant. Counsel established his own theory before confronting co-defendant, also learning exactly what co-defendant had to say in regard to his clients innocence. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a clients decision whether to make or accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the clients decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Here we have Counsel failing to interview co-defendant who had information concerning Petitioners innocence. (State v. Taylor, 535 N.E.2d 16 Ind.Ct.App. 1989).

II.

Trial Counsel was ~~derelect~~ in his duty when Counsel coerced Petitioner to plea.

Counsel had another attorney speak with Petitioner regarding the plea, cross-examination.

Cross-examination by Mr. Davis of Calvin Carroll.

Appx. Pg. 91, l. 2:

Q. You felt so strongly about him taking this offer that you asked another attorney to step in and speak with him; that was Mr. Pennington, right?

A. That's correct. I was talking to Mr. Pennington during the break. And at that point I was prepared to tell the Judge when we reconvened and tell the solicitor that it was not going to be a plea, it was going to be a trial. And Mr. Pennington said do you want me to go in and talk to him and give him my perspective on trials and how they play out? And so I said, sure; it can't hurt. This is in your face coercion. It is unclear why it was necessary to have Mr. Pennington talking to his client, [simple] to coerce Petitioner into a plea deal.

Appx. Pg. 92, ll. 7-10:

Q. But the goal of that discussion was in hopes that the two of you speaking with Mr. McKinnon he would return to the courtroom and accept this offer?

A. Correct.

This is clear violation, Petitioner was prejudiced, and denied his one fair bite of the apple.

It is at this stage of the plea that Counsel abandoned his client, by allowing Mr. Pennington to talk to his client who had no interest whatsoever, can only be interpreted as coercion. Again Petitioner did not get his one fair bite of the apple. it should also be noted that Petitioner was 17 years old at the time of the offence, and was not well educated. We have two well seasoned attorneys talking him out of going to trial. "Coercion".

III.

Trial Counsel was derelict and deficient in his duty, in that Counsel failed to explain differences in the plea process which prejudiced Applicant.

Trail Counsel did not explain the Applicant the nature of his plea nor did Counsel advise Petitioner that he could possibly plead under "Alford" or "Nolo contendere". Counsel has a duty to explain the full process.

had Counsel explained to Petitioner the possibility of an appeal, Petitioner may have changed his plea had he had this knowledge. Counsel failed in his duty as Counsel. Counsel must explain ever aspect of a plea.

CONCLUSION

The Order of Dismissal does not set forth relevant findings of fact and conclusion of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003), 17-27-45(a), 17-27-80 Marvla v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). The operative-language in § 17-27-80 states the court shall make specific finding of facts and state expressly its conclusion of law, relating to each issue presented, failure to specifically rule on each issue in a PCR order effectively violates PCR Applicants' right to have the denial of relief on grounds not contained in order reviewed on appeal.

Based on the foregoing arguments pro-se Petitioner would request that the petition on the above raised issue(s) be granted in the case.

I declare under penalty of perjury the foregoing is true and correct.

/s/

SEQUOIA MCKINNON
990 Wisacky Highway
Bishopville, SC 29010
Petitioner

Executed December 30, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JAN 02 2020
S.C. SUPREME COURT

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Certiorari to Charleston County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

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SEQUOIA MCKINNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

-
Appellate Case No. 2019-000398

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that true and correct copies of the PRO SE PETITION FOR WRIT OF CERTIORARI and APPENDIX in the above referenced case has been served by placing the same in the institutions mail system U.S. Mail postage prepaid addressed to the following addresses on December 30, 2019:

Benjamin Limbaugh
Rembert Dennis Bldg.
1000 Assembly St., Room 519
Columbia, SC 29201

Clerk, S.C. Supreme Court
PO Box 11330
Columbia, SC 29211

/s/

SEQUOIA MCKINNON
#368688
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010