

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

GUSSIE HENRY HILTON, JR.,

ORIGINAL

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001226

JOHNSON PETITION FOR WRIT OF CERTIORARI

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SC Court of Appeals

Lara M. Caudy
Appellate Defender

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether Petitioner's guilty plea was knowingly, intelligently, and voluntarily made when plea counsel failed to inform Petitioner of the evidence the state had against him before advising Petitioner to pled guilty, and where Petitioner was prejudiced by counsel's deficient performance because he would have proceeded to trial if he would have been aware of all the evidence?

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Petitioner on March 14, 2016 for first degree criminal sexual conduct (CSC) with a minor, first degree criminal sexual conduct, and three counts of kidnapping. App. 107-115. On May 18, 2017, Petitioner pled guilty as indicted before the Honorable Brooks P. Goldsmith. App. 1. Assistant Solicitor Jennifer Shealy represented the state, and John Kozelski represented Petitioner. App. 1. Judge Goldsmith ultimately sentenced Petitioner to life without parole for first degree CSC with a minor, thirty years consecutive for first degree CSC, and thirty years concurrent for each count of kidnapping. App. 25, ll. 3-16.

On May 22, 2018, Petitioner filed an application for post-conviction relief (PCR). App. 27-34. The state filed a return to this application and motion to dismiss dated August 8, 2018. App. 35-40. A conditional order of dismissal was filed on August 23, 2018. App. 41-46. Petitioner, through counsel, filed a response to the conditional order of dismissal and an amended application on August 28, 2018. App. 47-49. The state filed an amended return dated January 30, 2019. App. 50-58.

An evidentiary hearing was convened on March 19, 2019 before the Honorable Jennifer B. McCoy. App. 59. Assistant Attorney General Benjamin Limbaugh represented the state, and James Falk represented Petitioner. App. 59.

Petitioner testified at the hearing that counsel never reviewed with him the state's evidence against him. App. 84, ll. 21-22. Petitioner wanted to go to trial and told counsel so at least four times. However, counsel told him it was not in his best interest to go to trial because he was facing life without parole. App. 85, l. 22 – 86, l. 3. Moreover, Petitioner felt there was exculpatory evidence counsel could have presented if he had proceeded to trial that would have

disputed the complainant's account of what happened and the state's theory of the case. App. 86, l. 4 – 88, l. 25.

John Kozelski, Petitioner's plea counsel, testified that "there were no real plea negotiations." App. 66, ll. He tried to convince the assistant solicitor to offer a "cap of 40" years but the solicitor refused. App. 68, ll. 11-22. She merely agreed not to request a sentence of life without parole if Petitioner pled guilty. This was the only concession the solicitor was willing to make. App. 76, ll. 2-6. Kozelski maintained it was Petitioner's decision to plead guilty. App. 81, ll. 9-23. He was surprised when Petitioner said he wanted to plead since the state had refused extend any sort of offer. App. 74, ll. 18-23. However, Kozelski got the impression Petitioner just wanted to "get this over with" and put it behind him. App. 75, 14-16.

Kozelski had Petitioner evaluated for competency to stand trial and criminal responsibility. Dr. Mulbry found Petitioner was both competent and criminally responsible for his conduct. App. 66, l. 5 – 67, l. 8. Kozelski presented a report from Dr. Mulbry in mitigation during Petitioner's plea. It showed Petitioner came from an unstable home and was exposed to violence and neglect as a child. His mother suffered from drug addiction and his father was paranoid schizophrenic. App. 68, l. 25 – 69, l. 18.

By order filed July 15, 2019, the PCR judge denied Petitioner relief. The judge found Petitioner freely and voluntarily pled guilty and that plea counsel was not deficient. App. 105.

Because Petitioner did not knowingly, intelligently, and voluntarily plead guilty since plea counsel never informed Petitioner of the state's evidence against him before advising him to plead guilty, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's guilty plea was not knowingly, intelligently, and voluntarily made when plea counsel failed to inform Petitioner of the evidence the state had against him before advising Petitioner to plead guilty, and where Petitioner was prejudiced by counsel's deficient performance because he would have proceeded to trial if he would have been aware of all the evidence.

Petitioner did not knowingly, intelligently, and voluntarily plead guilty since plea counsel's failed to adequately review with Petitioner the state's evidence against him. Petitioner was prejudiced by counsel's deficient performance because he testified that but for counsel's advice to plead guilty, he would have gone to trial and presented evidence which would have challenged the complainants' statements and the state's theory of the case.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

The United States Supreme Court has established a two pronged test to evaluate allegations of ineffective assistance of counsel. In the context of a guilty plea, a petitioner must show that counsel's performance was deficient, and "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); See Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927

(2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). This Court has held that a “defendant’s undisputed testimony that he would not have pled guilty but for trial counsel’s advice is sufficient to prove that defendant would not have pled guilty.” Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000)); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

“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.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing Boykin v. Alabama, 395 U.S. 238 (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. 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.” Pittman, 337 S.C. at 599, 524 S.E.2d at 624 (citing Boykin, 395 U.S. 238). Additionally, “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. (citing Boykin, 395 U.S. 238).

“[T]he voluntariness of a guilty plea is not determined by an examination of the 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 the record of the post-conviction hearing.” Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)) (alteration in original). “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 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

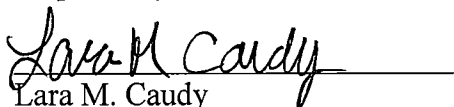
Petitioner did not knowingly, intelligently, and voluntarily plead guilty due to plea counsel’s deficient performance. Petitioner only pled guilty because counsel advised him to do so without reviewing with Petitioner all of the state’s evidence against him. Petitioner was prejudiced by counsel’s deficient performance because if he had been aware of the state’s evidence, he would have chosen to challenge it at trial instead of pleading guilty. See Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (A “defendant’s undisputed testimony that he would not have pled guilty but for trial counsel’s advice is sufficient to prove that defendant would not have pled guilty.”). Petitioner testified that he told counsel at least four times that he wanted to go to trial. However, counsel told him it was in his best interest to plead guilty because he was facing life without parole. Significantly, Petitioner also faced life without parole when he pled guilty and was in fact sentenced to life without parole.

Because Petitioner did not knowingly, intelligently, and voluntarily plead guilty, this Court should reverse his convictions and sentence and remand for a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written over a solid horizontal line.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of February, 2020.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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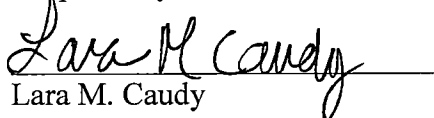
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gussie Henry Hilton states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
2. She has reviewed the record of Petitioner's post-conviction relief hearing, which was held on March 19, 2019 before the Honorable Jennifer B. McCoy, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Gussie Henry Hilton.

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of February, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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."



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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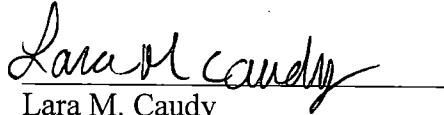
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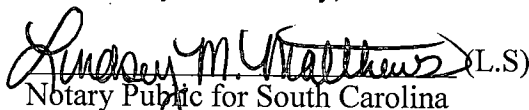
CERTIFICATE OF SERVICE

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 Benjamin Limbaugh, 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 Gussie Henry Hilton, #353945, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 3rd day of February, 2020.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 3rd day of February, 2020.

 (L.S)
Notary Public for South Carolina
My Commission Expires: October 22, 2024.