

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

TONY LAMONT YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001105

JOHNSON PETITION FOR WRIT OF CERTIORARI

Taylor D Gilliam
Appellate Defender

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S.C. SUPREME COURT

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ISSUE PRESENTED

Did the PCR court err in denying Petitioner relief, where plea counsel failed to provide full discovery to Petitioner, where counsel never interviewed witnesses, and where the preceding failures resulted in an unknowing guilty plea?

STATEMENT

Petitioner was indicted by a Richland County grand jury on March 12, 2014 for murder and indicted on December 17, 2014 for armed robbery. App. 117 – 120. On August 10, 2015, Petitioner appeared before the Honorable James R. Barber, III for a negotiated guilty plea. App. 1. Anastasia Walker represented Petitioner; Meghan Walker appeared on behalf of the state. Petitioner pleaded guilty to both charges with the negotiation of a maximum sentence of forty years. App. 4 ll. 5 – 23. Petitioner pleaded guilty before the plea judge. App. 12 l. 16 – App. 13 l. 20. His plea was accepted. Id. The facts as alleged by the state were as follows:

On December 6, 2013, Petitioner allegedly stabbed Derrick Land after offering to sell him marijuana. App. 14 l. 5 – App. 17 l. 13. One of Petitioner's friends called Crime Stoppers, and Petitioner was arrested. Id. During the guilty plea, the state also played a portion of a recorded phone call Petitioner made while in the county jail.

Petitioner's only prior record was a simple assault from 2009. He was sentenced on these offenses to thirty-five years' incarceration for the murder charge and twenty years on the armed robbery charge, concurrent. App. 21 l. 24 – App. 22 l. 9.

Petitioner filed an application for post-conviction relief on June 13, 2016. App. 24 – 30. It contained allegations of ineffective assistance of counsel, including claims that plea counsel did not thoroughly go over his case with him. App. 26. The state made its Return on or about July 21, 2017. App. 31 – 36.

An evidentiary hearing was held before the Honorable Jocelyn Newman on January 25, 2018. Leah Moody represented Petitioner; Jessica Kinard appeared on behalf of the state.

Petitioner and plea counsel testified at the hearing.¹ At the conclusion of the hearing, the PCR judge denied relief. App. 104 l. 15 – App. 106 l. 1. The Order of Dismissal was signed on April 30, 2018. App. 107 – 114.

This petition follows.

¹ At the time of the hearing, plea counsel had changed employers. She was not in possession of Petitioner's physical file and therefore did not have access to handwritten notes. App. 78 ll. 7 – 16.

ARGUMENT

The PCR court erred in denying Petitioner relief, where plea counsel failed to provide full discovery to Petitioner, where counsel never interviewed witnesses, and where the preceding failures resulted in an unknowing guilty plea.

Relevant facts

Jacqueline Bambach first represented Petitioner, for a span of four to six months. App. 42 l. 21 – App. 43 l. 5. Petitioner indicated he received partial discovery from her. App. 43 ll. 6 – 17. He received his statement to law enforcement, statements from other witnesses, and some law enforcement reports. *Id.* Petitioner testified that he never received a DNA forensics report. According to Petitioner, neither his DNA nor his fingerprints were located on the knife that was supposedly used to stab the decedent. App. 46 ll. 2 – 22. Bambach ceased representing Petitioner when she moved out of state. App. 43 ll. 18 – 25. Petitioner met with Walker, who served as plea counsel, on multiple occasions. App. 44 ll. 1 – 6.

During their meetings, Petitioner asked plea counsel to look into coercion regarding his statement. App. 44 ll. 7 – 25. Petitioner suggested that his confession was a product of duress. App. 66 ll. 1 – 10. He also noted that he was inebriated at the time such that his statement was not freely given. App. 69 l. 11 – App. 72 l. 13. He repeatedly stated that he wanted to go to trial; he suggested that because there were no recordings—video or audio—that his statement would not have been admissible. However, while reviewing the discovery together, plea counsel advised Petitioner that it was in his best interest to plead guilty. App. 45 ll. 5 – 17. Petitioner testified plainly:

The main thing is the undeniable fact that if she had done solely her job ... if I would have known before we even talked about guilty pleas of - - of the evidence, there would have never been talk of a guilty plea. I would've went to trial - - given my own confession, I would've went to trial, tried to file a motion to suppress all statements, and other - - and other alignments to - - to better my chances of coming out in trial of the situation.

App. 50 l. 22 – App. 51 l. 14.

After learning that it would be difficult to suppress his statement, Petitioner began entertaining the thought of a plea. App. 54 l. 7 – App. 55 l. 25. Petitioner indicated that plea counsel met with the assistant solicitor on multiple occasions and brought back an offer of thirty to forty years. Id. He decided to plead due in part to plea counsel's failure to discuss with him possible defenses that they would have utilized at trial. App. 66 ll. 21 – 23.

Plea counsel testified that she received the case in January 2015 and represented Petitioner for eight months. App. 77 l. 21 – App. 78 l. 3. Plea counsel admitted that she did not interview any witnesses during the pendency of her representation of Petitioner. All. 78 l. 23 – App. 79 l. 1. When she inherited the file, Petitioner's case was already on the trial docket. App. 87 ll. 4 – 12.

Notably, plea counsel was without the benefit of the physical file while testifying at the evidentiary hearing. App. 78 ll. 7 – 16. She called the Richland County Public Defender's Office to obtain her file, as she was out of state. Id. According to plea counsel, they were unable to send it to her. As a result, she was unable to refer to her own handwritten notes during the hearing. App. 80 l. 1 – App. 81 l. 12.

Discussion

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish

ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Id. at 687. “[T]he court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (quoting Strickland at 690).

First, to be entitled to PCR, the applicant must show that counsel's performance was deficient. Payne v. State, 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003) (citing Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). In this regard, plea counsel failed to advise Petitioner about the extent of the state’s evidence. Petitioner’s testimony, as outlined above, indicates that counsel did not go over any defenses in his case. Such conduct falls within the gamut of deficiency.

“The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). As evident from Petitioner’s testimony, the prejudice in his case manifests itself in his plea which was made without full knowledge of possible defenses available to him. Had Petitioner been aware of the full nature of his discovery in addition to the all available defenses as well as the lack of evidence against him, he indicated that he would have decided to go to trial rather than plead guilty. He reinforced this position during the evidentiary hearing when he testified that he wanted to continue to proceed with the

post-conviction relief action even if the result was that he would be retried for murder and possibly receive a life sentence. App. 60 l. 5 – App. 61 l. 7.

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.

When a defendant is represented by counsel during the plea process and enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); Shirley v. State, 306 S.C. 241, 411 S.E.2d 215 (1991). A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing 1) that counsel's representation fell below an objective standard of reasonableness and 2) 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 at 56-57, 106 S.Ct. at 369, 88 L.Ed.2d at 208-09.

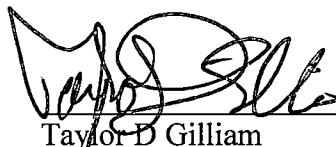
“That the plea be voluntary is not only a requirement of due process, but a premise of the defendant's meaningful participation in the plea process.” United States v. Savinon-Acosta, 232

F.3d 265, 268 (1st Cir. 2000) (citing McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969)).

Petitioner suggested plea counsel was ineffective for advising him to plead guilty. He outright stated that he would not have pleaded guilty had he known that the state did not have a cache of evidence against him. App. 56 ll. 9 – 18. Notably, he would have gone to trial if he would have known this fact. App. 56 ll. 19 – 25; App. 60 ll. 5 – 20. Petitioner plainly noted that because plea counsel did not go over the discovery in his case with him, he was not able to make an informed decision. App. 60 ll. 17 – 20.

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant his petition for writ of certiorari to allow full briefing on this issue, reverse the charges against his, and remand the case for a new trial.

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 18th day of February, 2020.

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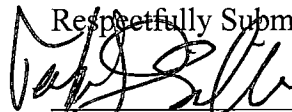
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tony Lamont Young 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 Jocelyn J. Newman, which was held on January 25, 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 Tony Lamont Young.

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 18th day of February, 2020.

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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Appellate Defender

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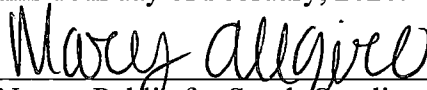
CERTIFICATE OF SERVICE

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 Lindsey McCallister, 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 Tony Lamont Young, #365002, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 18th day of February, 2020.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of February, 2020.

 (L.S)
Notary Public for South Carolina
My Commission Expires: MAY 12, 2027.