

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Alex Kinlaw, Circuit Court Judge

JOHN DAVID SARTIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001606

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

ORIGINAL

RECEIVED

APR 10 2020

S.C. SUPREME COURT

INDEX

INDEX..... i

ISSUES PRESENTED.....1

STATEMENT.....2

ARGUMENT.....4

CONCLUSION.....9

ISSUES PRESENTED

I. Did the PCR court correctly grant Petitioner a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), where the evidence showed he requested a direct appeal, and where he never knowingly and voluntarily waived his right to a direct appeal, and where the State conceded to allow a belated direct appeal for Petitioner?

II. Did the PCR court err in denying relief, where plea counsel failed to fully investigate Petitioner's case fully after being notified that he wanted to plead guilty?

STATEMENT

Petitioner was indicted for assault and battery of a high and aggravated nature on August 21, 2018 by a Pickens County grand jury. App. 116 – 117. He appeared before the Honorable Perry Gravely on August 29, 2018 for a plea. App. 8. Dorothy Manigault represented Petitioner; Brandi Hinton appeared on behalf of the state. App. 1.

Petitioner pleaded to assault and battery in the first degree. App. 10 ll. 8 – 14. He indicated that he was told he would receive a three-year sentence. Id. In response, the plea judge explained the concept of a negotiated sentence. App. 10 ll. 15 – 24. The assistant solicitor advised the court that the negotiated sentence was ten years suspended to three years followed by probation and restitution. App. 10 l. 25 – App. 11 l. 2. The plea judge told Petitioner that he had discretion in determining the length of probation. App. 13 ll. 12 – 25. As an additional term of the plea agreement, the state agreed to dismiss other charges Petitioner was facing. App. 11 ll. 18 – 24.

The facts as alleged by the state were as follows: Petitioner was incarcerated at the Pickens County Law Enforcement Center on March 26, 2018. App. 14 l. 19 – App. 15 l. 2. He supposedly punched a man named Adam Griggs in the face, resulting in a broken orbital bone. Id. Petitioner clarified to the plea judge that he was defending himself after Griggs spit on him and destroyed his personal property. App. 15 ll. 6 – 13. The plea judge accepted Petitioner's plea, noted that there was a substantial and factual basis for the plea, and found that it was knowingly, intelligently, and voluntarily made. App. 15 ll. 17 – 21.

Plea counsel asked that the court follow the negotiated sentence and requested two years of probation. App. 17 ll. 13 – 17. The plea judge adopted the negotiated sentence and handed down a sentence of ten years suspended following the service of three years, followed by five

years' probation. App. 18 l. 16 – App. 19 l. 2. The probation was terminable following the payment of twenty thousand dollars in restitution. App. 17 l. 13 – App. 19 l. 2.

Petitioner filed an application for post-conviction relief on December 11, 2018. App. 21. It contained allegations of ineffective assistance of counsel, including failure to file a direct appeal following his plea. The state filed a Return, Partial Motion to Dismiss, and Motion for More Definite Statement on February 26, 2019. App. 30 – 37. Through counsel, an Amended Application for Post-Conviction Relief was filed on April 4, 2019. App. 28 – 29.

An evidentiary hearing was held on April 17, 2019 before the Honorable Alex Kinlaw, Jr. App. 38. Don Thompson represented Petitioner; Taylor Smith appeared on behalf of the state. Petitioner and plea counsel testified at the hearing. Two exhibits, both letters, were admitted. App. 97 – 98. The state conceded the belated direct appeal matter. App. 94 ll. 4 – 10. The PCR judge took the matter under advisement and requested proposed orders from both parties. App. 94 ll. 24 – 25. An Order Granting Belated Appellate Review and Dismissing All Other Allegations was filed on July 25, 2019. App. 99 – 115.

Petitioner now files this petition simultaneously with a brief addressing the direct appeal issue(s), as required by Rule 243, SCACR.

ARGUMENT

I. The PCR court correctly granted Petitioner a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), where the evidence showed he requested a direct appeal, and where he never knowingly and voluntarily waived his right to a direct appeal, and where the State conceded to allow a belated direct appeal for Petitioner.

Relevant facts

Immediately following his plea, Petitioner contacted counsel's office and requested a direct appeal. App. 53 l. 25 – App. 54 l. 8. He even went so far as to contact the plea judge. Id.; App. 65 ll. 5 – 19; App. 97 – 98. Plea counsel informed the PCR court that she received the letter, forwarded to her by the plea judge, within the ten-day time frame for an appeal under Rule 203, SCACR. App. 83 ll. 13 – 20. Counsel advised the court that she did not file an appeal or move to reconsider the sentence because the plea was negotiated and Petitioner participated throughout the process. App. 85 ll. 8 – 24. Although plea counsel was unable to locate any letters from Petitioner requesting a plea, she was unable to refute that he wrote them. Id.

As such, the state conceded the belated direct appeal matter. App. 94 ll. 4 – 10.

Discussion

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-740 (2010). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in [Anders].” Id. (quoting Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)). Following a guilty plea, when there is reason to think a defendant would want to appeal or when the

defendant reasonably demonstrated an interest in appealing, there is a constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995).

“The appropriate scope of review of this Court is that any evidence of probative value is sufficient to uphold the PCR judge’s findings.” Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). The Order of Dismissal contained a finding that Petitioner did not knowingly and voluntarily waive his right to appeal his guilty plea. App. 113. Accordingly, the PCR court found Petitioner was entitled for belated appellate review of his guilty plea under White v. State, *supra*. As Judge Kinlaw found, there was no evidence of an intelligent and voluntary waiver of Wilson’s right to an appeal. The evidence supports the PCR judge’s conclusion that Petitioner is entitled to a belated appeal pursuant to White, *supra*.

II. The PCR court erred in denying relief, where plea counsel failed to fully investigate Petitioner case fully after being notified that he wanted to plead guilty.

Relevant facts

Petitioner was represented by three different attorneys during the pendency of his assault charge. App. 44 ll. 20 – 24. He was in the county jail for approximately ten months. App. 44 l. 25 – App. 45 l. 2. During the time he was represented by plea counsel Manigault, Petitioner received discovery from her. App. 45 ll. 2 – 12. However, she never discussed it with him; she only dropped it off. *Id.*; App. 46 l. 21 – App. 47 l. 1.; App. 57 ll. 11 – 23. Further, she never discussed any applicable defenses with him. App. 47 ll. 2 – 6; App. 49 ll. 8 – 19.

Petitioner stated that plea counsel only spoke with him once about his case. App. 56 ll. 18 – 21. Because counsel never spoke with him in detail about his case, he was unable to provide her with the name of a witness until the day he was supposed to be tried. App. 48 ll. 4 – 17. He had attempted to provide her the names each time she dropped off discovery. App. 48 ll. 21 – 25. Instead of investigating the witnesses in advance of trial, counsel delayed and told Petitioner that they could discuss witnesses in court. Id.

The witnesses had observed the alleged assault in the county jail cell at the time. App. 48 ll. 4 – 10. Petitioner informed plea counsel that she needed to speak with the witnesses. Id. When asked why he waited so long to provide the names, Petitioner explained that in addition to giving plea counsel the names when she dropped off discovery, he had also provided the names to his previous attorney, Jennifer Coyle. App. 48 ll. 11 – 17.

Plea counsel testified that she was appointed to represent Petitioner in July 2018, approximately one month before his plea. App. 68 ll. 5 – 12. She claimed to have spoken with his prior counsel, Jennifer Coyle, about the case and the discovery. App. 68 ll. 19 – 25. She contended that she met with Petitioner three times, plus a fourth on the day of the plea. App. 71 ll. 11 – 21. She claimed to have sat down with Petitioner and gone over the discovery with him. App. 71 ll. 2 – 10.

Regarding the witnesses, plea counsel confirmed that Petitioner provided her the name of a witness on the date of the plea, August 29, 2018. App. 81 ll. 11 – 18. The witness was a former cellmate named Casey Foreman. App. 82 ll. 11 – 18. Other than calling the jail, counsel took no steps to contact the witness. App. 81 ll. 19 – 21; App. 90 ll. 16 – 22. Additionally, she did not request a continuance in order to investigate the witness. App. 91 ll. 14 – 24.

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).

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. Boykin v. Alabama, 395 U.S. 238, 241, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000).

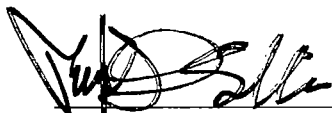
“A criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.” Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. 2052.

Petitioner pleaded guilty without the full knowledge of the potential evidence in his case. Counsel moved for a continuance on August 28, 2018, the day before Petitioner's plea, following receipt of a jail call. App. 3 ll. 7 – 16. She did not, however, seek a continuance to investigate the witness. The witness could have corroborated Petitioner's self-defense contention. However, because that was not done, Petitioner's guilty plea was unknowing. But for counsel's ineffectiveness, the outcome would have been different. Petitioner never believed he was guilty of

first degree assault. App. 49 ll. 1 – 16. Without the witness testimony, it was impossible to refute the state's contentions. Had counsel investigated the eyewitness, Petitioner could have made an informed decision—whether to plead or go to trial—as well as explored additional defenses. Accordingly, there is a reasonable probability that the outcome would have been different had plea counsel interviewed the witness.

CONCLUSION

Petitioner respectfully requests this Court affirm the PCR court's decision that he is entitled to a belated direct appeal. Petitioner likewise requests that this Court grant his petition for writ of certiorari and allow full briefing on this issues, reverse the charges against him, and remand the case for a new trial.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of April, 2020.