

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

RECEIVED

May 13 2020

S.C. SUPREME COURT

RAVON D. HAMER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2019-001495

JOHNSON PETITION FOR WRIT OF CERTIORARI

Sarah E. Shipe
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ISSUE PRESENTED

Did the PCR court err in finding plea counsel was not ineffective for failure to adequately convey plea offers to petitioner where plea counsel should have explained to petitioner that the state's sentencing recommendation was not binding on the court?

STATEMENT

On September 3, 2015, a Florence County grand jury indicted petitioner on four counts of burglary in the first degree. App. 129. On December 7, 2016, he pled guilty as indicted to all charges before the Honorable D. Craig Brown. App. 1. Vick Meetze represented petitioner and John Holt, assistant solicitor, represented the state. App. 1. Judge Brown sentenced petitioner to four concurrent terms of twenty years' imprisonment. App. 30-31.

Thereafter, petitioner filed an application for PCR on December 4, 2017. App. 33. On June 24, 2019, an evidentiary hearing was held before the Honorable William H. Seals, Jr. App. 81. Jonathan Waller represented petitioner and Brianna Schill, assistant attorney general, represented the state. App. 81.

At the evidentiary hearing, petitioner testified that he and plea counsel Meetze had "difficulties," and he had asked the court to relieve him as counsel. App. 87, ll. 15-17; 91, ll. 12-16. Petitioner said, on the few occasions they met, plea counsel would only discuss petitioner pleading guilty. Plea counsel suggested to petitioner that if he went to trial he would likely receive a sentence of life without parole based on his prior record because the state had his DNA at all four scenes. App. 88, l. 19-89, l. 18. The state initially offered petitioner a negotiated plea deal where petitioner would plead guilty to four counts of burglary second degree for concurrent terms of ten years' imprisonment. App. 90, ll. 8-21. After he rejected that plea offer petitioner pled guilty as indicted. However, petitioner testified that he did not understand the offer he accepted or the difference between a negotiated plea deal and a recommended sentence. Petitioner was surprised after his guilty plea when he was sentenced to twenty-years rather than fifteen-years by Judge Brown. App. 90, ll. 13-25; 92, ll. 13-15; 93, ll. 16-21; 99, ll. 7-24.

Plea counsel Meetze admitted he and petitioner had difficulty communicating. Meetze

testified, after petitioner rejected the state's ten-year offer, the solicitor offered a negotiated fifteen-year sentence which petitioner accepted. However, after the solicitor and Meetze met with multiple judges and none of them would accept the negotiated plea the offer became a recommended sentence. Meetze claimed petitioner knew that his sentence was up to the judge. App. 105, l. 1-106, l. 20.

On August 29, 2019, Judge Seals signed an order denying PCR. App. 115-26. Judge Seals found plea counsel adequately conveyed plea offers to petitioner. App. 123. Judge Seals found there was no prejudice because both petitioner and plea counsel testified petitioner rejected the ten-year plea offer on two occasions. App. 123.

This appeal follows.

ARGUMENT

The PCR court erred in finding plea counsel was not ineffective for failure to adequately convey plea offers to petitioner where plea counsel should have explained to petitioner that the state's sentencing recommendation was not binding on the court.

A guilty plea may not be accepted unless it is voluntarily and understandingly made. *Boykin v. Alabama*, 395 U.S. (1969). In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea and of the charges against him. *Simpson v. State*, 317 S.C. 506, 455 S.E.2d 175 (1995).

To determine whether a guilty plea was taken in accordance with constitutional standards, the Court will consider the entire record including facts presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984).

Petitioner did not understand the consequences of his guilty plea when he made it, rendering his guilty plea unknowing and involuntary. Petitioner testified at PCR that he believed he would receive a fifteen-year sentence and instead he received twenty years' imprisonment. Petitioner was not aware that the state's fifteen-year offer had changed from a negotiated plea to a recommended sentence. Additionally, petitioner did not understand the difference between a negotiated plea and a recommended sentence. Plea counsel Meetze testified that after petitioner rejected the state's ten year offer the solicitor offered a fifteen-year negotiated plea, but after discovering that the judge would not accept the plea as negotiated, the offer shifted to a recommended sentence.

Plea counsel was ineffective for failing to put petitioner on notice that he and solicitor had spoken to the judge and the judge was not likely to accept the recommendation of fifteen years. Plea counsel should have more carefully explained to petitioner that, unlike a negotiated

sentence, a recommendation from the state was not binding on the court and that it was probable that he would receive additional prison time.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be granted to allow full briefing on the issue.

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of May, 2020.

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Counsel for Ravon D. Hamer states:

1. She is 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 before Judge William H. Seals, which was held on June 24, 2019, 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 Ravon D. Hamer.

Respectfully Submitted,

s/ Sarah E. Shipe
Sarah E. Shipe
Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of May, 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.”

s/ Sarah E. Shipe
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