

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable J. Cordell Maddox, Circuit Court Judge

JALEN T. BADGER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001183

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

The PCR judge erred in denying petitioner's allegation that he pled guilty involuntarily where petitioner claimed he was coerced into pleading guilty to avoid a possible mandatory LWOP sentence because counsel failed to explain to petitioner, who was sixteen years old when he pled guilty, the law on LWOP sentencing for juveniles.

STATEMENT

Petitioner Jalen T. Badger pled guilty to carjacking and armed robbery, and two counts of first degree burglary during November 2016 term of the Aiken County General Sessions Court before Judge R. Lawton McIntosh, and was sentenced to imprisonment for an aggregate period of seventeen years. App. 1-23. Charles David Hayes represented petitioner at the plea proceeding, and Assistant Solicitor Robert Wilder Harte appeared on behalf of the state. Petitioner appealed, but the case was dismissed on January 27, 2017, by the South Carolina Court of Appeals per Rule 203(d)(1)(B)(iv), SCACR.

On October 30, 2017, petitioner filed a PCR application with the Aiken County Office of the Clerk of Court. App. 26-32. The respondent filed a Return dated July 6, 2018, requesting that a hearing be held in the case. App. 33-38. An Amended PCR application was filed on petitioner's behalf on August 13, 2018. App. 39-40.

A PCR hearing was convened on May 14, 2019, at the Aiken County Courthouse before J. Cordell Maddox. App. 42-68. Petitioner was present at the hearing and represented by Art Aiken, and Assistant Attorney General Janell Gregory appeared on behalf of the state. On June 12, 2019, Judge Maddox signed an Order of Dismissal denying petitioner's claims of ineffective assistance of counsel in the case. App. 70-80.

Petitioner appealed Judge Maddox's Order of Dismissal. This petition follows.

ARGUMENT

The PCR judge erred in denying petitioner's allegation that he pled guilty involuntarily where petitioner claimed he was coerced into pleading guilty to avoid a possible mandatory LWOP sentence because counsel failed to explain to petitioner, who was sixteen years old when he pled guilty, the law on LWOP sentencing for juveniles.

Petitioner was placed at the scene of two houses that were burglarized via his GPS tracking monitor and was then charged with two counts of first degree burglary. Also, petitioner was charged in connection with a marijuana drug purchase gone wrong with drug seller Meagan Williams and the car she drove on that date. App. 11, 1.15-p. 17, 1.7.

During the PCR hearing held in the case, petitioner testified that he was sixteen when he pled guilty and that the only advice his attorney gave him was that he was going to get a mandatory LWOP sentence if he did not take the negotiated seventeen-year plea bargain offer from the solicitor. Petitioner stated that he was not told by counsel that he would get a mitigation hearing to show why he should not get a life sentence if convicted of burglary in the event he opted for a jury trial in the case. App. 51, 1.15-p.52, 1.13. Petitioner added that he believed that a jury trial was not an option for him and that he was in effect forced to plead guilty as charged because he did not want a possible mandatory LWOP sentence. App. 52, 1.14-p. 53, 1.19.

Trial counsel testified at the hearing and stated that he was trying to save petitioner from receiving a life sentence and that he explained this to petitioner. App. 64, 1.18-p.65, 1.1. Counsel stated that he was afraid that the solicitor would try the cases consecutively and increase his sentence time and in effect expose him to what would actually turn out to be a life sentence. App. 61, 1.14-25.

The PCR judge ruled that counsel explained the charges and potential sentences petitioner faced, and that petitioner failed to meet his burden of proving ineffective assistance of counsel, and that he did not prove that his guilty pleas were given involuntarily. App. 74-80.

Clearly, petitioner was not properly advised by counsel of the sentencing consequences on the charges as petitioner mistakenly believed that he faced a possible mandatory LWOP sentence had he gone to trial and been convicted by a jury. To the contrary, petitioner faced a possible life sentence (maximum) on the burglary charges and a possible maximum thirty-year sentence on the carjacking charge and a possible thirty-year maximum on the armed robbery charge. Petitioner pled guilty thinking that his charges exposed him to a possible mandatory LWOP sentence, but this assumption was incorrect. In Aiken v. Byers, 410 S.C. 534, 765 S.E.2d 572 (2014), the Court held that the rule in Miller v. Alabama, 132 S.Ct. 2455 (2012) applied retroactively to the extent that the mandatory imposition of LWOP sentences for juveniles violated the Eighth Amendment, and that even if a juvenile faced a life sentence under a non-mandatory or discretionary scheme, then there were certain factors to be analyzed in a mitigation hearing before that could occur. Therefore, petitioner was protected from a mandatory LWOP sentence and by a mitigation hearing for a life sentence if convicted of burglary at trial.

In order for a defendant to plead guilty, he must have a full understanding of the sentencing consequences of his plea. Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Here, counsel erred in not explaining to petitioner the maximum penalties attached to the offenses charged against him in the case. Therefore, counsel's error in this regard violated petitioner's right to effective assistance of counsel during the plea process as guaranteed under the Sixth Amendment. See Hill v. Lockhart, 484 U.S.

52 (1985). But for this error by counsel, a reasonable probability exists that petitioner would have pled not guilty and exercised his right to a trial by jury in the case.

Also, petitioner's pleas were coerced. The question to be answered in resolving a complaint of claimed coercion in pleading guilty is whether under all of the facts and circumstances one's guilty plea was voluntarily and understandingly entered. State v. Smith, 255 S.C. 417, 179 S.E.2d 210 (1971), citing to Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971). Even though a guilty plea may not be held invalid if the defendant was motivated to plead in order to receive a lesser penalty; nonetheless, the long standing test for determining the validity of a guilty plea is whether the plea is a voluntary plea among the alternate courses of action open to the defendant because some circumstances indeed present intrinsically coercive situations. Gustine v. State, 325 S.C. 123, 480 S.E.2d 444 (1997), citing to Hill v. Lockhart, 474 U.S. 52 (1985) and Brady v. United States, 397 U.S. 742 (1970). Therefore, "the better approach is to determine on a case-by-case basis whether a defendant knowingly and voluntarily enter[ed] a plea of guilty." See Gustine v. State, supra. In the case at bar, petitioner felt pressured to plead guilty to avoid a mandatory LWOP sentence, which was not a possible sentence he faced in the case. Per these circumstances in the instant case, petitioner did not plead guilty voluntarily within the meaning of Boykin v. Alabama, 395 U.S. 268 (1964).

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant petitioner's petition and allow full briefing on the above-raised issue.

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of June, 2020.