

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 21 2020

S.C. SUPREME COURT

Certiorari to Chesterfield County

Honorable Brooks P. Goldsmith, Circuit Court Judge

WILLIAM S. PEGUES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-002007

JOHNSON PETITION FOR WRIT OF CERTIORARI

Robert M. Dudek
Chief Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred by finding petitioner was effectively represented where he pled guilty because he was erroneously led to believe by defense counsel that he would be sentenced to life imprisonment if he was convicted of burglary in the first degree where the probability of that sentence was almost non-existent given the facts of this case?

STATEMENT

Petitioner was indicted at the March 15, 2016 term of the Chesterfield County Grand Jury for the offense of burglary in the first degree, and assault and battery of a high and aggravated nature (ABHAN) for hitting someone inside the house during that same incident. Petitioner finally was indicted for possession of a weapon during the commission of a violent crime for that incident as well. App. 88-93.

Petitioner testified at PCR that he wanted to go to trial because he entered the home with permission and was only defending himself once he was attacked inside. Petitioner's lawyer, Ashley McIntyre, told the judge at his guilty plea proceeding that the "victims" were drug dealers facing charges at the time came by their house. Petitioner also testified at the PCR hearing that he wanted to go to trial and he turned down a twelve-year initial offer. App. 47, l. 13 – 51, l. 1.

Petitioner remembered Ms. McIntyre, his lawyer, telling him: "Boy, you better take this. You better take this. You know you're facing a life sentence." App. 48, ll. 3-8. Petitioner said he did not think he had any choice other than to plead guilty because McIntyre repeatedly told him that he could plead guilty and likely get a fifteen-year mandatory minimum sentence. The alternative was to go to trial, in which case he would receive a life-sentence if convicted. App. 50, ll. 9-22; app. 55, ll. 3-22.

Petitioner appeared on January 10, 2017 before the Honorable Paul M. Burch to plead guilty as indicted. Ashley McIntyre, of the Chesterfield County Public Defender's Office, represented petitioner. Mary Thomas-Johnson Lee was the assistant solicitor. App. 1.

In calling the guilty plea proceeding to order, Solicitor Lee told the judge petitioner was facing a sentence of between fifteen years to life imprisonment for burglary in the first degree.

App. 3, ll. 4-23. The solicitor asserted that after petitioner allegedly entered the house without permission, and he was knocked unconscious by one of the men inside. App. 8, l. 1 – 9, l. 13.

The homeowner or tenant, Ricky Bullock, told the judge: “The thing I would like to say to William is that I forgive him for what he did. And I guess the court will lay a judgement on you. You know you [are] still family and you know your brother is family. He’d call me on the phone and asked me what happened. I can’t give him no answer. From my heart, I tell you that I forgive you and I’m just glad judgement is on them. That’s all I’ve got to say.” App. 9, l. 21 – 10, l. 3.

Defense counsel McIntyre told the plea judge that petitioner merely went to the house that night “to smoke a joint.” Petitioner was knocked unconscious with a baseball bat, and the other people in the house tried to “hide any drugs or any other incriminating evidence that might be on the scene.” McIntyre added that she believed that the men inside the house would have killed petitioner and “the only thing that saved his life is the other victim in this case who said, hey I’ve already called the cops, they’re on the way.” App. 10, l. 12 – 12, l. 13.

McIntyre offered: “I don’t think the whole truth will ever come out in the story and I don’t think everyone else’s criminal activity will ever, you know, see the light of day to have justice towards it but that’s neither here nor there. We just hope that you go along with the recommendation.” App. 12, ll. 7-13.

Petitioner informed the plea judge that “a lot of other stuff” went on that evening and that “maybe later on in the future maybe things will work out. It will work itself out.” App. 12, ll. 19-25. Judge Burch sentenced appellant to seven years’ imprisonment for ABHAN, five years’ imprisonment concurrent on the gun charge, and the mandatory minimum fifteen-year sentence, concurrent for burglary in the first degree. App. 16, ll. 2-16; app. 16, ll. 15-16.

Petitioner filed an application for post-conviction relief on April 28, 2017. ¹ App. 25-29. The state filed a return and motion for a more definite statement on December 6, 2017. App. 30-36.

An evidentiary hearing was convened on August 21, 2019 before the Honorable Brooks P. Goldsmith. L. Sherril Alford now represented petitioner. The assistant attorney general was Jacob A. Isenberg. App. 37.

As stated, petitioner testified that defense counsel McIntyre repeatedly told him that he would be sentenced to life imprisonment if he did not accept the plea offer. If he went to trial and was convicted a life sentence was going to be the consequence of going to trial. App. 48, ll. 9-14; app. 50, ll. 9-22; app. 55, ll. 3-22.

Defense counsel McIntyre testified that she told petitioner “multiple times that burg first carries a mandatory minimum 15 years and up to life. And sometimes I tell my clients, you know, that if you exercise your right to a jury trial, you might expect for it to be something more than the mandatory minimum.” However, she denied she ever told petitioner that the life sentence would be “automatic” if he was convicted. App. 62, l. 16 – 63, l. 4. Defense counsel said she told petitioner he was facing a life sentence if convicted after a trial, but she maintained she never “guaranteed” that petitioner would get a life sentence if convicted. App. 71, ll. 5-8.

PCR counsel then argued that post-conviction relief should be granted because petitioner reasonably thought “if he went to trial and was found guilty, he would automatically receive a life sentence, which was his testimony, not that he would be exposed to a life sentence.” App. 75, ll. 8-23. The judge orally denied post-conviction relief. App. 75, l. 25 – 76, l. 9.

¹ The post-conviction relief application that appears in the appendix was not signed. Undersigned counsel has not been able to locate a signed copy from either the Clerk of Court for Chesterfield County or from the Attorney General’s Office.

A written order of dismissal was filed on September 30, 2019. App. 78-87. This order noted that petitioner testified as to his belief he would be sentenced to life imprisonment if he went to trial and was convicted of burglary in the first degree. The order noted, “Burglary in the first degree is a felony punishable by life imprisonment. S.C. Code Ann. § 16-11-311 (B).” App. 85. The PCR judge reasoned that it believed petitioner was only advised he “[c]ould receive a life sentence if a jury found him guilty.” App. 85-86.

From this order, petitioner is seeking a writ of certiorari pursuant to Rule 243 of the SCACR.

ARGUMENT

The PCR court erred by finding petitioner was effectively represented where he pled guilty because he was erroneously led to believe by defense counsel that he would be sentenced to life imprisonment if he was convicted of burglary in the first degree where the probability of that sentence was almost non-existent given the facts of this case

In Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991), this Court held that Alexander was entitled to post-conviction relief where he testified he would not have pled guilty if trial counsel had not misinformed him that he would have faced a potential life sentence if he proceeded to trial. Alexander was indicted for trafficking in cocaine. He received a fifteen-year prison term following his guilty plea, just as the petitioner in this case did after his guilty plea to burglary in the first degree.

In Alexander, this Court noted that the same two-part analysis of deficiency and prejudice formulated in Strickland v. Washington, 466 U.S. 668 (1984), a capital sentencing proceeding, which was premised in part on the similarity between that proceeding and a criminal trial, also applied to guilty plea proceedings and ineffectiveness plea claims, pursuant to Hill v. Lockhart, 474 U.S. 52 (1985).

In this case, petitioner proved by a preponderance of the evidence that his attorney's sentencing advice was deficient. This record shows petitioner legitimately, but erroneously, believed he would be sentenced to life imprisonment if he went to trial and was found guilty. The victims in this case were drug dealers, and petitioner was beaten unconscious when he went to the drug dealers' home merely to "smoke a joint" or purchase a small amount of marijuana.

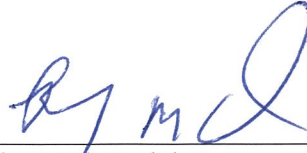
As seen above, the victim was apologetic to petitioner at the guilty plea proceeding for what occurred that night. The probability petitioner would have received a sentence of life

without parole if he had been convicted of burglary in this case following a jury trial was negligible. Illegal drug activity was flourishing that night in the crack house, and this was not a home invasion of an innocent party.

A fair reading of the present record shows trial counsel's improper sentencing advice induced petitioner's guilty plea. See Hinson, 297 S.C. 456, 377 S.E.2d 338 (1989). Further, the PCR court should have focused on what petitioner was reasonably led to believe rather than on exactly what words defense counsel imparted about a possible life sentence. Post-conviction relief should be granted given the unusual facts of this case, and petitioner's guilty plea should be vacated. See Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991).

CONCLUSION

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

A handwritten signature in blue ink, appearing to read 'R M D', is written above a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of August, 2020.

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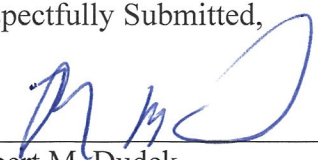
PETITION TO BE RELIEVED AS COUNSEL

Counsel for William S. Pegues states:

1. He is Chief 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 Brooks P. Goldsmith, which was held on August 21, 2019, 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 William S. Pegues.

Respectfully Submitted,

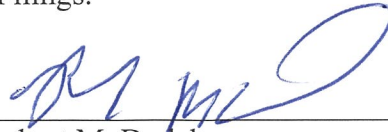


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 21st day of August, 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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