

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 08 2020

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Michael G. Nettles, Circuit Court Judge

RASHAWN TREMAYNE CARSON,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000084

JOHNSON PETITION FOR WRIT OF CERTIORARI

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in finding defense counsel was not ineffective for recommending petitioner plead guilty to criminal sexual conduct, second degree where it is not clear petitioner waived presentment because, although petitioner initialed the sentencing sheet, the plea hearing and the face of the indictment were silent as to waiver?

STATEMENT

Procedural history

On January 20, 2016 a Spartanburg County grand jury indicted petitioner for two counts of contributing to the delinquency of a minor. App. 104-107.

On October 17, 2016, petitioner pled guilty to two counts of contributing to the delinquency of a minor and one count of criminal sexual conduct (CSC) with a minor, second degree before the Honorable Mark Hayes, II. App. 1. James Cheek represented petitioner, and Hillary Welborn, assistant solicitor, represented the state. Judge Hayes sentenced petitioner to concurrent terms of three years' imprisonment for contributing to the delinquency of a minor, three years' imprisonment for contributing to the delinquency of a minor, and twenty years' imprisonment for CSC with a minor, second degree. App. 29, ll. 11-24.

Thereafter, petitioner filed an application for PCR on October 12, 2017. App. 32-42. On February 20, 2018, an evidentiary hearing was held before the Honorable Michael G. Nettles. App. 53. Rodney Richey represented petitioner, and Valerie Giovanoli, assistant attorney general, represented the state. App. 53.

On June 13, 2018, Judge Nettles signed an order denying PCR. App. 92-100. After reviewing petitioner's indictments, the judge found there was no defects in the indictments and found the fundamental purpose of the indictments, to give petitioner notice of the accusations being made against him, was served. App. 99.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in finding defense counsel was not ineffective for recommending petitioner plead guilty to criminal sexual conduct, second degree where it is not clear petitioner waived presentment because, although petitioner initialed the sentencing sheet, the plea hearing and the face of the indictment were silent as to waiver.

Relevant facts

At petitioner's guilty plea hearing the state alleged petitioner purchased alcohol for his fourteen-year-old daughter and her thirteen-year-old friend. App. 13, l. 18-14, l. 7. The state also alleged petitioner's minor daughter told police petitioner was molesting her and she later gave birth to his child. App. 14, l. 8-15, l. 24.

At the evidentiary hearing, petitioner testified that Andrea Price was his first attorney and then James Cheek represented him at his guilty plea. App. 59, ll. 15-19. Petitioner testified he did not believe his indictments were valid and one of his attorneys should have objected to them. Petitioner said no one ever explained to him why the indictments were valid and that he did not understand. App. 64, ll. 8-18.

Counsel Price testified that petitioner's two indictments for contributing to the delinquency of a minor were true billed and she did not see any defect in the indictment. Price said petitioner waived presentment on the CSC charge but gave no explanation regarding why. Price claimed she reviewed petitioner's indictments and did not notice any defects in the indictments. App. 70, l. 20-71, l. 7.

Discussion

To establish a claim of ineffective assistance of counsel, a PCR applicant must show counsel's representation fell below an objective standard of reasonableness and he was

prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668 (1984); *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). Where there has been a guilty plea, the applicant must prove counsel's representation fell below the standard of reasonableness and, but for counsel's unprofessional errors, there is a reasonable probability he would not have pled guilty but would have insisted upon going to trial. *Hill v. Lockhart*, 474 U.S. 52, (1985); *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991).

Where counsel articulates a valid reason for employing certain trial strategy, the conduct will not be deemed ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992). If there is any evidence to support the findings of the PCR judge, those findings must be upheld. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). The Court will not uphold the findings of the PCR judge if there is no probative evidence to support them. *Holland v. State*, 322 S.C. 111, 470 S.E.2d 378 (1996).


“Although an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment.” *State v. Smalls*, 364 S.C. 343, 346-47, 613 S.E.2d 754, 756 (2005). “The indictment is a notice document that is required by our state constitution and statutes.” *Id.* “The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to appraise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial.” *Id.*

Defense counsel Price's representation fell below the standard of reasonableness where petitioner was advised to plead guilty to CSC with a minor, second degree, where it is not clear whether petitioner waived presentment. Counsel did not ensure the state had presented the charge to the grand jury and instead allowed petitioner to go forward with a guilty plea. At the evidentiary hearing, Price did not articulate any reason regarding why petitioner would have

waived presentment on the charge of CSC with a minor second degree. The face of the indictment was silent as to waiver, and there was no verbal confirmation given by petitioner at the guilty plea proceeding. The only evidence that petitioner waived presentment was on the sentence sheet where petitioner initialed beside a checked box. There was no benefit to petitioner that would explain why he would have chosen to waive presentment on the charge of CSC with a minor. In fact, petitioner received the maximum sentence for this charge, twenty years' imprisonment.

CONCLUSION

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



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of September, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rashawn Tremayne Carson 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 Michael G. Nettles, which was held on February 20, 2018, 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 Rashawn Tremayne Carson.

Respectfully Submitted,



Sarah E. Shipe

Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of September, 2020.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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."



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This 8th day of September, 2020.