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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Spartanburg County

G. Thomas Cooper, Jr., Post-Conviction Relief Judge
J. Mark Hayes, II, Plea Judge

Appellate Case No. 2020-000460

HOLLIS BROCK, JR.,

Respondent,

v.

THE STATE OF SOUTH CAROLINA,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON PETITION FOR CERTIORARI

Did the post-conviction relief court err in finding that Brock established plea counsel was constitutionally ineffective, thereby rendering his guilty plea involuntary, where the lower court's findings are premised on errors of law and fact and the record conclusively establishes Brock knowingly, voluntarily, and intelligently entered a guilty plea with the advice of competent counsel who properly advised him of the sentencing range prior to his guilty plea?

STATEMENT OF THE CASE

On the evening of December 23, 2016, Respondent Hollis Brock, Jr. patronized the Carolina Ale House in Boiling Springs, South Carolina, where he consumed alcoholic beverages. (App. 15). Shortly before midnight, an intoxicated Brock left the ale house and began to drive north on Highway 9. (App. 15). Despite the late hour, Brock did not have his headlights on. (App. 15). He drove his vehicle across the highway, where it collided with a southbound Toyota Corolla carrying three young women. (App. 15) The driver and rear passenger sustained fatal injuries, with one young woman perishing at the scene and the other succumbing to her injuries at the hospital. (App. 15-16). The third young woman sustained serious injuries requiring significant medical attention and leaving her with lasting medical issues. (App. 15-16). Brock failed a field sobriety test at the scene. (App. 16). He consented to a blood draw, which revealed a blood alcohol content (BAC) of .245, well over the legal limit for intoxication. (App. 16).

Brock was arrested and retained Matthew J. Kappel, Esquire, shortly thereafter to represent him in bond proceedings. (App. 56-58). Thereafter, Brock was represented by Assistant Public Defender Beverly D. Jones of the Seventh Circuit Public Defender's Office, before he eventually retained Albert V. Smith, Esquire, who represented Brock through the resolution of his criminal charges. (App. 82, 87)

In February 2017, the Spartanburg County Grand Jury indicted Brock for two counts of felony driving under the influence (DUI) resulting in death, two counts of leaving the scene of an accident with death, one count of felony DUI resulting in great bodily injury, and one count of leaving the scene of an accident with great bodily injury. (App. 3, 40-48). Seventh Circuit Solicitor Barry Barnette prosecuted the case. (App. 1).

On August 24, 2017, Brock, alongside counsel Smith, appeared before the Honorable J. Mark Hayes, II, circuit court judge, and entered guilty pleas as indicted to two counts of felony DUI resulting in death and one count of felony DUI resulting in great bodily injury. (App. 1-39). The plea was entered “straight up” without any negotiation or recommendation as to sentence; however, the State dismissed all three counts of leaving the scene of an accident in exchange for Brock’s guilty plea. (App. 7-8; 40-48).

Brock freely admitted his guilt, his desire to plead guilty, and acknowledged he had not been promised anything or threatened in any way to induce the plea. (App. 10-11; 16-18). He also acknowledged he was satisfied with the services of his lawyer, who had fully explained “legal elements of the charges that you’re pleading to, the facts behind these cases, and any possible defenses you might have” and that he decision to plead guilty was a free and voluntary decision he had made. (App. 10-11). Brock also acknowledged he understood he could be sentenced to up to twenty-five years’ imprisonment for each count of felony DUI resulting in death and up to fifteen years’ imprisonment for felony DUI resulting in great bodily injury, and with this knowledge, affirmed he wanted to plead guilty. (App. 16-18).

In mitigation, Brock’s counsel highlighted to the court that Brock wanted to take responsibility for his actions and had consistently acknowledged his guilt. (App. 30-34). Counsel discussed the investigation he had done, including the numerous bartenders and other witnesses he had talked to and the reports and evidence he had reviewed, and informed the court of concerns that Brock’s diabetes, high blood pressure, and other medical concerns may have impacted his BAC to result in such a high reading despite numerous witnesses reporting they did not recall Brock being heavily intoxicated. (App. 32-33). Brock’s fiancée also spoke in mitigation on Brock’s behalf. (App. 34-35). Brock’s counsel then argued again that Brock should

receive a sentence of twenty-five years or less because of his age and medical concerns. (App. 35-36). Brock then addressed the court, during which he acknowledged drinking and blacking out before the fatal accident. (App. 36-38).

Judge Hayes sentenced Brock to twenty-five years' imprisonment for one count of felony DUI resulting in death and a concurrent fifteen years' imprisonment for felony DUI resulting in great bodily injury, and a consecutive twenty-five years' imprisonment for the remaining count of felony DUI resulting in death. (App. 38, 40-48). Brock did not file a direct appeal challenging his guilty pleas or sentences.

On June 28, 2018, Brock filed an application for post-conviction relief, asserting he was being held in custody unlawfully based on ineffective assistance of counsel for advising him he had a "deal for 25 y[ea]rs and [he] ended up with 50 y[ea]rs." (App. 111-117). He then filed a pro se amendment on July 16, 2018, setting forth more grounds of ineffective assistance of counsel. (App. 118-121). The State filed a return and requested an evidentiary hearing to resolve the claims. (App. 122-129). Thereafter, Brock, through counsel Susannah Ross, filed an amended application, setting forth additional claims of ineffective assistance of counsel, as well as a general claim of "due process violations because the plea was not knowingly and voluntarily made because the Applicant was not advised that the guilty plea amount of time he could receive." (App. 131-132).

An evidentiary hearing was convened October 9, 2019, before the Honorable G. Thomas Cooper, Jr., circuit court judge. Brock was present and represented by Counsel Ross. The State was represented by Jacob Isenberg of the South Carolina Attorney General's Office. Brock testified and presented his sister Tina O'Sullivan and friend Tonya Pander. Plea counsel Albert

V. Smith also testified. Following the hearing, Judge Cooper requested proposed orders from both parties. (App. 134-217).

Both parties submitted proposed orders pursuant to Judge Cooper's instructions. (App. 218-225; 226-252). After review, Judge Cooper corresponded with both parties and requested Brock's PCR counsel revise the proposed order granting relief to include specific findings. (App. 253-54). Brock then submitted a revised proposed order granting relief. (App. 255-64). By order signed January 28, 2020, and filed February 3, 2020, Judge Cooper granted relief, finding Brock was entitled to post-conviction relief because he did not have an understanding of the potential sentence he could receive when pleading guilty, believed the maximum sentence he could receive would be twenty-five years, and entered his plea under duress because counsel moved to be relieved shortly before the plea. (App. 265-73). The State filed a motion to reconsider, alter, or amend the order, which was summarily denied. (App. 275-313). This appeal follows.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). On appellate review, courts defer to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. Id. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court's erroneous finding that Brock established plea counsel was constitutionally ineffective, thereby rendering his guilty plea involuntary, requires this Court to grant certiorari and ultimately reverse the grant of relief, where the lower court's findings are premised on errors of law and fact and the record conclusively establishes Brock knowingly, voluntarily, and intelligently entered a guilty plea with the advice of competent counsel who properly advised him of the sentencing range prior to his guilty plea.

In granting relief, the post-conviction relief court erroneously found Brock “did not have a clear understanding of the potential sentence he could, and did in fact receive,” which the court attributed to erroneous advice from counsel that he would receive concurrent sentences. (App. 270-73). The court further found counsel “moved to be relieved at a critical moment in the plea process,” which it found to be coercive and deprived him effective representation. The court found Brock was prejudiced by counsel’s performance because his plea was not knowingly and voluntarily made based on the undue pressure from counsel and the purportedly erroneous advice as to the sentence he could receive. (App. 270-73). The court concluded the plea colloquy did not cure any of these deficiencies because it was “ambiguous” as to the sentence Brock could receive and granted Brock post-conviction relief. (App. 270-273). Certiorari is proper to review these findings, where the post-conviction relief court failed to properly review and weigh the record in its entirety as required and erroneously determined Brock’s plea was involuntary. When properly considered in its entirety, the record conclusively establishes Brock knowingly, voluntarily, and intelligently entered a guilty plea with the advice of competent counsel who properly advised him prior to his guilty plea. The record clearly refutes any assertion Brock was not aware he could receive consecutive sentences, as he informed the court prior to his plea he did not want to plead without assurances as to what type of sentence he would receive, which supports counsel’s testimony that he properly advised Brock of the possible sentences he could receive. The record

also established Brock was aware he had the right to proceed to trial, could have another attorney appointed to represent him in the event counsel Smith ceased being his lawyer, and informed the plea court he was satisfied with counsel and wished to plead guilty rather than proceed to trial on all six indictments. This Court should grant certiorari and ultimately reverse the post-conviction relief court's grant of relief.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Brock, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct “was so ineffective as to require reversal” of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686.

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives

several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999).

To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him or her and the consequences of his or her plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. Id. at 755.

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman, 337 S.C. at 599, 524 S.E.2d at 624.

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see also Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his or her guilty plea, the trial judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392

(1991). However, the trial judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” Harres, 282 S.C. at 133, 318 S.E.2d at 361. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 485 S.E.2d at 370; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977); see also Jamison v. State, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137–38, 654 S.E.2d at 874 (internal citations and quotation

marks omitted); cf. Blackledge, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

In the present case, the record establishes Brock knew he was entering his plea without any sentencing recommendations or promises and was properly apprised of the potential sentence he faced for each charge for which he pled guilty. Prior to his plea and, critically, **after** signing the sentencing sheets, Brock appeared before Judge Hayes and expressed his hesitancy to enter a plea without any guarantee as to sentence. (App. 3-5). Counsel echoed Brock’s concerns, informing Judge Hayes, “I think he knows he’s gonna get some time but he wanted to know something more specific than that. That’s something we couldn’t give him, and he realizes that this is probably gonna be the best day in his life for these cases.” (App. 4). Brock elaborated to Judge Hayes that he was guilty, but that he wanted more than “a shot in the dark” as to what sort of sentence he would receive and wanted mercy. (App. 4-5). Judge Hayes then explained the plea process to Brock, including that Brock and his counsel would have the opportunity to make any arguments and present information for him to consider in sentencing. (App. 5-6). Brock was then given time to speak to his attorney. Then, despite still not having any sort of guaranteed as to

what sentence he would receive, Brock returned to court to enter his guilty pleas “straight up” without any sort of recommendation. (App. 6-7).

Judge Hayes then reviewed the potential sentences for each indictment, to which Brock stated he understood and wished to plead guilty:

THE COURT: All right. And sir, do you understand that, on the felony driving under influence resulting in death, that’s a one to – one to thirty?

MR. SMITH: Twenty-five.

SOLICITOR BARNETTE: One to twenty-five years, Your Honor. It’s a no parole offense.

THE COURT: Sir, do you understand that, on both of those offenses, that the possible sentence I could impose is between one and twenty-five years?

THE DEFENDANT: Yes, sir.

THE COURT: And, sir, do you also understand that, that both of those offenses are classified as serious offenses under the law?

THE DEFENDANT: Yes, sir.

THE COURT: And you’ve been able to talk to your lawyer as to the consequences and ramifications of those offenses being classified as serious?

THE DEFENDANT: Yes, sir.

THE COURT: Sir, do you understand that, on a felony driving under the influence resulting in great bodily injury, that I could sentence you to --?

SOLICITOR BARNETTE: Thirty days up to fifteen years, Your Honor.

THE COURT: I could sentence you between thirty days and could sentence you up to 15 years on that particular offense?

THE DEFENDANT: Yes, sir.

(App. 16-18).

Based on the pre-plea appearance and plea colloquy, it is abundantly clear Brock knew the plea was without any recommendation as to sentence he could receive. It is also clear Brock was aware he could receive sentences of up to twenty-five years’ imprisonment for each felony DUI resulting in death and up to fifteen years’ imprisonment for felony DUI resulting in great

bodily injury. The plea colloquy is straightforward, unambiguous, and establishes that Brock did not have any misconceptions regarding sentencing. Accordingly, the post-conviction relief court erred in finding the plea colloquy was ambiguous and Brock did not know the sentence he could receive. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (reversing the grant of relief where the colloquy at the sentencing hearing did not support the PCR court's finding of an involuntary guilty plea because the colloquy establishes respondent did not have any misconceptions regarding sentencing); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (reversing the grant of relief and finding a guilty plea voluntary where respondent admitted committing the crimes, acknowledged the potential sentences, and stated that his plea had not been induced by promises). The post-conviction relief court's findings are erroneous, not supported by the record, and require reversal.

The unambiguous plea proceedings are also buttressed by the testimony of counsel, who unequivocally testified he did not promise Brock a sentence of twenty-five years or less. Counsel repeatedly testified he told Brock that he hoped and believed Judge Hayes would sentence him to concurrent time and pleading before Judge Hayes was his best chance for a lesser sentence, but it never guaranteed a particular sentence and explained that he could receive a sentence in excess of twenty-five years. (App. 188, 189, 190, 196). Rather, counsel expressly testified he informed Brock he could receive a sentence of sixty-five years of imprisonment if he pled guilty. (App. 196). The post-conviction relief court's finding Brock was misadvised as to possible sentences he could receive are erroneous and not supported by the record.

Moreover, the post-conviction relief court's finding Brock was under duress when he accepted the plea for fear he would not have counsel if he decided to proceed to trial is not supported by the record. The record shows that plea counsel Smith was Brock's third attorney,

having previously engaged private counsel, then a public defender, before eventually hiring Smith. The post-conviction relief court's findings that Brock pled under duress because he thought he would have been without counsel had he opted for a trial are not supported by the record—Smith was Brock's third attorney, showing he understood he could obtain new counsel (including a public defender) if needed. Moreover, Smith testified that while the State wanted to resolve the case, it had never appeared on a trial docket at the time of the plea. (App. 191, 193, 200). The lower court's findings that Brock pled out of duress because Smith advised him he would move to be relieved if he wanted to go to trial and he felt he had no other option are not supported by the record, where the matter had never appeared on a trial docket and Brock clearly understood he could receive new, court appointed counsel should Smith be relieved. This Court should grant certiorari and reverse the lower court's findings, where the record shows Brock's plea was voluntarily entered.

Because the record establishes the knowing, voluntary, and intelligent nature of Brock's plea, the post-conviction relief court erred in finding counsel constitutionally ineffective. Based on the foregoing, the post-conviction relief court erred in granting Brock relief and remanding his case to the court of general sessions for a new trial. Therefore, the State asks this Court to grant certiorari and ultimately reverse the lower court's grant of post-conviction relief.

CONCLUSION

For all the foregoing reasons, the State requests that this Court grant this petition for writ of certiorari and reverse the post-conviction relief court's grant of a new trial.

Respectfully submitted,

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