STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Sep 24 2020

S.C. SUPREME COURT

---

Certiorari to Richland County

Honorable Diane Schafer Goodstein, Circuit Court Judge

---

IBN GADSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001855

---

JOHNSON PETITION FOR WRIT OF CERTIORARI

---

Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

# INDEX

INDEX ....................................................................... i

ISSUE PRESENTED ....................................................................... 1

STATEMENT ....................................................................... 2

ARGUMENT

**The guilty plea was rendered involuntary by the fact that Petitioner believed that if he did not plead guilty that he would face the death penalty.** ....................................................................... 3

CONCLUSION ....................................................................... 8

PETITION TO BE RELIEVED AS COUNSEL ....................................................................... 9

# ISSUE PRESENTED

Was the guilty plea rendered involuntary by the fact that Petitioner believed that if he did not plead guilty that he would face the death penalty?

## STATEMENT

In April of 2016, the Richland County Grand Jury indicted Petitioner, Ibn Gadson, for murder, armed robbery, attempted armed robbery, and assault and battery first degree, indictments #2016-GS-40-1559, 1661, 1667, 1670. (App. pp. 26-33). In March of 2017, the Richland County Grand Jury indicted Petitioner for assault and battery by a mob second degree, indictment #2017-GS-40-0335. (App. pp. 34-35). On July 19, 2017, Petitioner appeared before the Honorable Jocelyn Newman and pled guilty to armed robbery, attempted armed robbery, assault and battery first degree and the lesser included offenses of accessory after the fact to murder and assault and battery by a mob third degree. Additionally, Petitioner waived grand jury presentment and pled guilty to throwing fluids on a correctional officer, indictment #2017-GS-40-4243. (App. pp. 36-37). Tivis Southerland represented Petitioner at the guilty plea hearing. Kathryn Cavanaugh represented the State. Pursuant to negotiations with the State, Judge Newman sentenced Petitioner to twenty-five (25) years for armed robbery, twenty (20) years concurrent for attempted armed robbery, ten (10) years concurrent for assault and battery first degree, fifteen (15) years concurrent for accessory after the fact and one year concurrent for assault and battery by a mob third degree. Additionally, Judge Newman imposed a consecutive time served sentence for the bodily fluids charge. Petitioner did not appeal his sentence or conviction.

On May 8, 2018, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return in July of 2018. On June 20, 2019, an evidentiary hearing was held before the Honorable Diane Schafer Goodstein. Jonathan D. Waller represented Petitioner at the PCR hearing. Brianna L. Schill represented the State. In a written order signed October 14, 2019,

Judge Goodstein denied relief and dismissed the application. A timely notice of intent to appeal was served on November 5, 2019. This petition for writ of certiorari follows.

## ARGUMENT

**The guilty plea was rendered involuntary by the fact that Petitioner believed that if he did not plead guilty that he would face the death penalty.**

Petitioner pled guilty to three separate sets of charges. The first set of charges, armed robbery, attempted armed robbery, assault and battery first degree and accessory after the fact to murder, involved a robbery and fatal shooting by the co-defendant at the Sphinx Gas Station. (App. pp. 6-9). After Petitioner was arrested and awaiting trial on the first set of charges, he and other inmates were involved with an assault and battery of another inmate who had been caught stealing. (App. p. 20, lines 12-18). This incident resulted in the guilty plea to assault and battery by a mob third degree. While still awaiting trial and apparently in isolation at the jail as a result of the assault on the other inmate, Petitioner was charged with throwing fluids on a correctional officer. (App. p. 20; lines 18-24).

In the application for post-conviction relief [PCR] Petitioner alleged that counsel told him that if he did not plead guilty he could face the death penalty. (App. p. 46). Petitioner testified at the PCR hearing that plea counsel told him if that if he did not plead guilty he could face the death penalty. (App. p. 72, lines 2-13). When asked if he discussed the death penalty with Petitioner, plea counsel answered:

> It – it could have been – maybe a misunderstanding. I had one client -- and this was after his case was resolved – that I told him very directly that, "They're going to stick a needle in your arm if you don't shut up." But he didn't have any pending charges at that time, his cases were over. It didn't – it's conceivable – I couldn't see a DP in this case, honest, honestly. So it had to be some sort of misunderstanding. Now he could said, "Hey, could I get the death penalty?" And I'm like, "Well, I don't know," you know? But I don't remember that, and I would not tell my guys something like that unless I meant it, so . . .

(App. p. 81, line 14 – p. 82, lines 1-2).

In the order of dismissal the PCR judge wrote:

> This Court finds Counsel did not tell Applicant he would receive the death penalty if Applicant did not plead guilty. The transcript reflects Counsel told the plea court he explained to Applicant the charges against him and the possible punishment for each charge. (GP Tr.4). Furthermore, when asked at the evidentiary hearing why he ultimately pleaded guilty, Applicant stated he did so because his co-defendant was previously sentenced, and he felt pressured to plead guilty by some unnamed and unspecified influence or person. Applicant did not indicate he pleaded guilty due to this alleged statement by Counsel. This Court finds Applicant ultimately chose to take the negotiated plea, and agrees with Counsel's testimony doing so was in his best interest. Several other charges were dismissed in exchange for Applicant's guilty plea. Additionally, Applicant told the plea court he was freely and voluntarily pleading guilty, he was satisfied with his representation from Counsel, and that Counsel had done everything Applicant asked him to do. Accordingly, this Court finds Applicant freely and voluntarily entered his guilty plea, and therefore, denies and dismisses this application with prejudice.

(App. pp. 103-104). The PCR judge erred.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694,

104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.' " Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.' " Hill, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

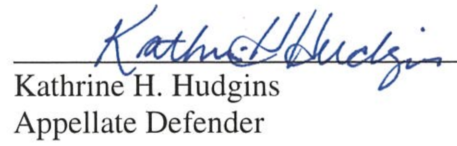
> In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), "[I]n order to satisfy the 'prejudice' requirement, the

> defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial."

Plea counsel was ineffective in failing to correct any misunderstanding that Petitioner believed that he would face the death penalty if he did not plead guilty. As a result of the misunderstanding, the plea does not represent a voluntary and intelligent choice among the alternative courses of action open to Petitioner. There is a reasonable probability that, but for counsel's errors. Petitioner would not have pled guilty and would have insisted on going to trial.

## CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow for further briefing on the issue.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of September, 2020.

RECEIVED
Sep 24 2020
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Richland County

Honorable Diane Schafer Goodstein, Circuit Court Judge

---

IBN GADSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Ibn Gadson states:

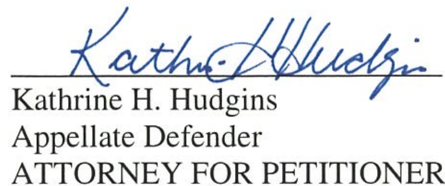
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Diane Schafer Goodstein, which was held on June 20, 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 Ibn Gadson.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

This 24th day of September, 2020.

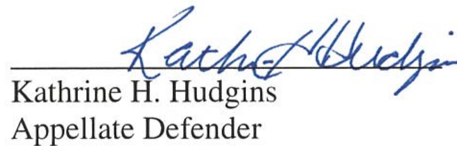
RECEIVED

Sep 24 2020

S.C. SUPREME COURT

**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."



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 24th day of September, 2020.