RECEIVED
Oct 01 2020
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chester County

Honorable D. Craig Brown, Circuit Court Judge

CLAYTON ELI WATTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000167

JOHNSON PETITION FOR WRIT OF CERTIORARI

Joanna K. Delany
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

ISSUE PRESENTED

Whether the PCR court erred where it found plea counsel provided effective representation where counsel did not move to suppress Petitioner's statements, since counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, voluntarily, and intelligently tendered?

STATEMENT

During the April term of 2013, a Chester County Grand Jury indicted Petitioner for murder and possession of a weapon during the commission of a violent crime. App. 97 – 100. Petitioner, who was a teenager and in the eleventh grade, was accused of assisting in the murder of his grandmother. App. 13, l. 18 – 27, l. 12; App. 16, ll. 18-19; App. 36, ll. 12-13. It appears Petitioner had some history of mental illness. App. 7, ll. 19-20.

On April 15, 2015, Petitioner appeared before the Honorable Benjamin H. Culbertson for a guilty plea hearing. Petitioner was represented by Nathan Sheldon. The State was represented by Julie Hall. App. 1. A plea agreement was reached between the State and Petitioner whereby Petitioner would receive a negotiated sentence of concurrent terms of thirty years for murder and five years for possession of a weapon during the commission of a violent crime; an agreement which was contingent upon Petitioner's cooperation with the prosecution of his codefendants. App. 4, ll. 9-19. Petitioner then proffered testimony about the offenses in accordance with the agreement. The court accepted his pleas and sentencing was deferred. App. 13, l. 11 – 28, l. 18.

On June 10, 2015, the parties reconvened for sentencing before the Honorable Daniel Hall. App. 30. Petitioner was sentenced to concurrent terms of imprisonment of thirty years for murder and five years for possession of a weapon during the commission of a violent crime. App. 39, l. 15 – 40, l. 4.

No direct appeal was taken, and on April 6, 2016, Petitioner filed an application for post-conviction relief (PCR). App. 43 – 50. The State made its return and Petitioner filed an amended application. App. 51 – 55; App. 56 – 57. A hearing was held on the matter on July 29, 2019, before the Honorable D. Craig Brown. Geoffrey Dunn represented Petitioner. Samuel Key represented the State. App. 58.

At the hearing, Petitioner explained that he felt he had no choice but to plead guilty. App. 63, ll. 21-25. Petitioner alleged plea counsel should have moved to suppress his statements but did not, and he said counsel did not tell him that his statements could potentially be suppressed. App. 64, ll. 4-11. Petitioner further explained that as a seventeen-year-old who had never been in trouble before, he had not known he could discontinue an interrogation. App. 67, l. 25 – 68, l. 5.

Petitioner's plea counsel said that Petitioner had a "troubled youth" and was seventeen at the time of the crime. App. 69, ll. 24-25. Plea counsel claimed that there "weren't any defenses" regarding Petitioner's statements to police. App. 70, ll. 15-23. Plea counsel said that "[a]t no point did it seem that . . . it would have been appropriate to do a *Jackson v. Denno*[1] hearing, which again would have been done pretrial . . ." App. 75, ll. 11-14.

On November 4, 2019, the PCR court issued an order of dismissal in which it addressed Petitioner's claim that counsel was ineffective based on his "[f]ailure to file appropriate motions to have Applicant's statement(s) to police suppressed due to his age." App. 92. The court found that, "Because the case did not proceed to trial, Counsel was not deficient for failing to move to suppress Applicant's statements." App. 93. "Counsel did testify had the case proceeded to trial, he would have challenged the admission of Applicant's statements. The Court finds Counsel's testimony on this issue credible, and therefore, Counsel was not deficient for failing to challenge Applicant's statements to police." App. 93.

The order of dismissal also found, "Applicant failed to show any prejudice resulted from Counsel's alleged deficiency. At the PCR hearing, Applicant never testified he would not have pleaded guilty and would have, instead, chosen to proceed to trial." App. 93.

This petition for writ of certiorari follows.

---

[1] *Jackson v. Denno*, 378 U.S. 368 (1964).

ARGUMENT

The PCR court erred where it found plea counsel provided effective representation where counsel did not move to suppress Petitioner's statements, since counsel's deficient performance resulted in Petitioner's entry of pleas that were not knowingly, voluntarily, and intelligently tendered.

Counsel's failure to move, at some point prior to a trial, to suppress Petitioner's confessions left Petitioner believing that the confessions would be admitted against him at trial and, thus, he had no choice but to plead guilty.

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). A defendant is entitled to the effective assistance of competent counsel before deciding whether to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). The decision to plead guilty must be a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985).

"In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) counsel's deficient performance prejudiced the applicant's case." *McKnight v. State*, 378 S.C. 33, 40, 661 S.E.2d 354, 357 (2008) (citing *Strickland*, 466 U.S. at 687). "[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill*, 474 U.S. at 58.

Petitioner was entitled to a pretrial determination on the admissibility of his statements, outside the presence of the jury. A defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, and he has the

right to object to the use of the confession and have a fair hearing on the issue of voluntariness. *Jackson v. Denno*, 378 U.S. 368, 376–77 (1964).

The use of a defendant's confession offends due process if his will has been overborne and his capacity for self-determination critically impaired. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973). "In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Id*. at 226. A totality of the circumstances inquiry mandates "inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). *See also Haley v. Ohio*, 332 U.S. 596 (1948); *Gallegos v. Colorado*, 370 U.S. 49 (1962).

Here, the totality of the circumstances weighed in favor of suppressing Petitioner's statements: his age (only seventeen); his education (eleventh grade); mental illness (he was being prescribed psychotropic drugs at the plea hearing); background (a "troubled youth"); his capacity to understand his Fifth Amendment rights and the consequences of waiving them (he did not know he could discontinue an interrogation). Therefore, the admission of any statements made by Petitioner in response to interrogation by law enforcement would offend due process. Counsel was deficient for failing to move to suppress. *Denno*, 378 U.S. at 376-77; *Fare v. Michael C.*, 442 U.S. at 725.

To establish prejudice when challenging a guilty plea, a PCR applicant 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." *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018). *See also Shirley v. State*, 306 S.C. 241, 244, 411 S.E.2d 215, 216 (1991) (finding counsel was ineffective for failing to inform defendant prior to his guilty plea that his statements may have been made involuntarily, and, if so, would be inadmissible at trial, and prejudice existed where defendant would have gone to trial had he been so advised). Here, Petitioner testified that counsel never advised him of the possibility his statements could be suppressed, and he satisfied the prejudice requirement. *Hill*, 474 U.S. at 59; *Strickland v. Washington*, 466 U.S. 668.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that a writ of certiorari be granted to allow full briefing on this issue.

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of October, 2020.

RECEIVED
Oct 01 2020
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chester County

Honorable D. Craig Brown, Circuit Court Judge

CLAYTON ELI WATTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Clayton Eli Watts 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 D. Craig Brown, which was held on July 29, 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 Clayton Eli Watts.

Respectfully Submitted,

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender
ATTORNEY FOR PETITIONER

This 1st day of October, 2020.

RECEIVED

Oct 01 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."

s/ *Joanna K. Delany*
Joanna K. Delany
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 1st day of October, 2020.