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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

DEQUAN VEREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000591

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR judge err in refusing to find that the guilty plea was rendered involuntary by the fact that Petitioner's first appointed public defender left the Public Defender Office after representing Petitioner for two years and the second public defender was appointed just six months before the State planned to call the case for trial?

STATEMENT

In August of 2014, the Richland County Grand Jury indicted Petitioner, Dequan Vereen, for murder, attempted armed robbery, attempted murder and armed robbery, indictments #2014-GS-40-5488, 5489, 5491, 5493. (App. pp. 31-38). On July 30, 2015, Petitioner appeared before the Honorable Robert E. Hood and pled guilty to the lesser included offense of voluntary manslaughter, attempted murder and armed robbery. Alicia Goode and Tracy Pinnock represented Petitioner at the plea. Daniel Goldberg prosecuted the case. Sentencing was deferred so that witnesses could be present. On August 4, 2015, Judge Hood, pursuant to the negotiation with the State, sentenced Petitioner to thirty (30) years on each charge to be served concurrently. (App. pp. 39-41). A timely notice of intent to appeal was filed. The appeal was dismissed pursuant to Rule 203(d)(B)(iv), SCACR. On November 3, 2015, while the appeal was still pending, Petitioner filed an application for post-conviction relief [PCR]. On November 24, 2015, the Honorable Alison R. Lee dismissed the PCR application, without prejudice, pending resolution of the appeal.

On April 7, 2016, Petitioner filed a second PCR application. (App. pp. 42-48). The State filed a return on December 9, 2016. On March 29, 2017, an evidentiary hearing was held before the Honorable Jocelyn Newman. David K. Allen represented Petitioner at the PCR hearing. Jessica E. Kinard represented the State. In a written order filed March 25, 2020, Judge Newman denied relief and dismissed the application. A timely notice of intent to appeal was filed on April 8, 2020. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in refusing to find that the guilty plea was rendered involuntary by the fact that Petitioner's first appointed public defender left the Public Defender Office after representing Petitioner for two years and the second public defender was appointed just six months before the State planned to call the case for trial.

Petitioner pled guilty to two separate sets of charges. The first set of charges involved the attempted murder and armed robbery charges. On November 14, 2012, three masked individuals robbed the Corner Pantry on Forest Drive. (App. p. 9, lines 9-17). The individuals and the clerk exchanged gunfire and one of the individuals was shot. (App. p. 9, lines 18-25). Providence Hospital notified law enforcement when Petitioner sought treatment for gunshot wounds. According to the prosecutor, Petitioner made an incriminating statement at the hospital. (App. p. 10, lines 1-11). During the PCR hearing, however, Petitioner testified that he told his first lawyer that he was shot by the boyfriend of a female he was involved with. (App. p. 98, line 3 – p. 99, lines 1-25). Petitioner denied making a statement at the hospital and testified that he was medicated. (App. p. 100, lines 1-19).

The second incident involved the voluntary manslaughter charge. This incident was captured on surveillance video that, according to the prosecutor, showed Petitioner and a co-defendant approach another individual. (App. p. 10, line 21 – p. 11, lines 1-6). The individual owed the co-defendant money. (App. p. 11, lines 11-15). An altercation took place, the co-defendant punched the individual and the gun Petitioner was holding discharged fatally wounding the individual. (App. p. 11, lines 6-10). According to the prosecutor, both Petitioner and the co-defendant gave statements implicating themselves and each other. (App. p. 11, lines 16-21). The prosecutor indicated that the second incident was scheduled for trial the following Monday. (App. p. 10, lines 12-13).

In the PCR application Petitioner alleged a lack of pretrial investigation, failure to interview witnesses, involuntary guilty plea and alleged that counsel "rendered inadequate advice, a reasonably competent attorney would not have advised me to plead guilty." (App. p. 44). During the PCR hearing plea counsel testified that Petitioner's case was transferred to her in February of 2015, after Petitioner's first lawyer left the Public Defender Office. (App. p. 62, line 25 – p. 63, lines 1-13; p. 66, lines 12-20). The plea took place in July of 2015. Plea counsel admitted that she did not discuss the case with former counsel. (App. p. 66, lines 12-18). Plea counsel admitted that she did not hire an investigator and admitted that an investigator would have been helpful. (App. p. 75, lines 15-20).

Petitioner testified that his first public defender represented him for two years and his second public defender represented him for five to six months. (App. p. 97, lines 1-15). Petitioner testified that the second lawyer met with him four or five times. (App. p. 97, lines 16-18). Petitioner testified that he wanted an investigator to find evidence that the deceased had drugs in his system, to determine the validity of the surveillance video from the second incident and to determine that the deceased had tools in his car and that the car was rolling backward at the time of the incident. (App. p. 105, lines 8-14; p.120, line 18 -p. 121, lines 1-9). During the PCR hearing Petitioner testified, "I don't feel like as if she was prepared to take on a full defense. Personally, I wasn't even prepared, and seeing a lawyer after having one for two years, almost two years, and seeing one within five months, and with, with four times, five times after that, it's kind of stressful to go to trial, and put my trust in someone like that." (App. p. 104, lines 11-16).

In the order of dismissal the PCR judge wrote:

> Based on the foregoing, Applicant is unable to demonstrate that Plea Counsel was ineffective or that she did anything more than employ a valid trial strategy in

> resolving his case. Further, although Applicant claims that he only pled guilty because he would otherwise have to "go into trial blind," this is not supported by the evidence. Applicant's uninformed belief that Plea Counsel was not ready for trial is insufficient to sustain his burden of proof. Plea Counsel thoroughly investigated and prepared for trial and presented her progress to Applicant over the course of many meetings. Applicant understood the adversities and options that he faced and made an informed, voluntary decision to plead guilty. Therefore, these allegations are denied and dismissed with prejudice.

(App. p. 130). The PCR judge erred. A valid trial strategy was not employed as Petitioner did not proceed to trial. The six month time frame between appointment of counsel and the State calling the murder case for trial was not sufficient for counsel to fully investigate and build a relationship of trust with the client, who had been represented by another lawyer for almost two years.

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:

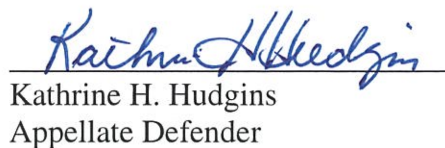
> To establish a claim of ineffective assistance of counsel, the defendant has the burden of proving "(1) counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) counsel's deficient performance prejudiced the applicant's case." McKnight v. State, 378 S.C. 33, 40, 661 S.E.2d 354, 357 (2008). 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."

The guilty plea was rendered involuntary by the fact that Petitioner's first appointed public defender left the Public Defender Office after representing Petitioner for two years and the second public defender was appointed just six months before the State planned to call the case for trial. Plea counsel was ineffective in failing to properly prepare for trial and investigate the case. There is a reasonable probability that, but for counsel's error, 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 further briefing on the issue.



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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dequan Vereen states:

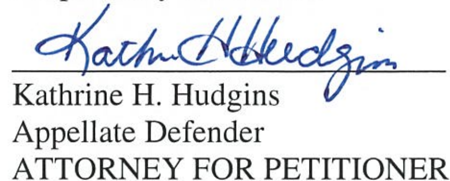
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Jocelyn J. Newman, which was held on March 29, 2017, 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 Dequan Vereen.

Respectfully Submitted,



Kathrine H. Hudgins
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This 3rd day of December, 2020.

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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."

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