STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Dec 04 2020
S.C. SUPREME COURT

Certiorari to Sumter County

Honorable R. Kirk Griffin, Circuit Court Judge

TIMOTHY ODELL HEAD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000860

JOHNSON PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX i

ISSUE PRESENTED 1

STATEMENT 2

ARGUMENT 4

CONCLUSION 10

PETITION TO BE RELIEVED AS COUNSEL 11

ISSUE PRESENTED

Whether the PCR court erred in denying relief, where Petitioner's plea was not knowingly, voluntarily, or intelligently made, where Petitioner felt coerced into pleading after the plea court denied his request for a mental health evaluation?

STATEMENT

Petitioner was indicted by a Sumter County grand jury on January 11, 2018 for armed robbery and possession of a weapon during the commission of a violent crime. App. 150 – 151. After his counsel expressed concerns regarding Petitioner's competency, a hearing was held before the Honorable George M. McFaddin, Jr. on July 24, 2018. App. 1. A. Jackson Barnes represented Petitioner; John P. Meadors appeared on behalf of the state. Judge McFaddin denied the request for a mental health evaluation. App. 13 ll. 11 – 22. That same day, Petitioner moved to have Barnes relieved as counsel. App. 21 ll. 13 – 25. Petitioner claimed that he had not seen the full discovery in his case. Id. Judge McFaddin denied the motion. App. 22 ll. 21 – 23.

On the following day, July 25, 2018, Petitioner entered a guilty plea. In exchange for a plea to the armed robbery charge, the state dismissed the weapon offense. App. 24 l. 17 – 25 l. 3. Petitioner pled guilty before Judge McFaddin with the same counsel present. App. 25 ll. 14 – 17; App. 35 l. 20 – 36 l. 6. The facts leading to the indictment as alleged by the state were that Petitioner robbed a gas station clerk on August 22, 2017. App. 28 l. 23 – 33 l. 5. Petitioner agreed with the state's rendition of the events giving rise to his arrest. App. 33 ll. 21 – 23. Judge McFaddin accepted Petitioner's plea and found that it was freely, knowingly, and voluntarily made. App. 37 ll. 5 – 8. The state recommended a sentence of fifteen years. App. 40 ll. 5 – 14. Plea counsel was seemingly prevented from requesting less than the recommended sentence, based on an agreement with the solicitor. App. 41 ll. 10 – 22. Judge McFaddin sentenced Petitioner to fifteen years' incarceration. App. 42 ll. 8 – 14.

Petitioner filed an application for post-conviction relief on May 17, 2019. App. 44. It contained allegations of ineffective assistance of counsel as well as claims that his plea was not

intelligently made. App. 51 – 55. The state filed a return, motion for more definite statement, and partial motion to dismiss on or about July 25, 2019. App. 56 – 67.

An evidentiary hearing was held before the Honorable R. Kirk Griffin on February 24, 2020. App. 69. James K. Falk represented Petitioner, and Brianna L. Schill appeared on behalf of the state. Petitioner and plea counsel testified at the hearing. At the conclusion of the hearing, the PCR judge requested proposed orders from both sides. App. 129 ll. 11 – 16. An Order of Dismissal was filed on May 27, 2020. App. 133 – 149. The PCR court denied relief on all claims.

This petition follows.

ARGUMENT

The PCR court erred in denying relief, where Petitioner's plea was not knowingly, voluntarily, or intelligently made, where Petitioner felt coerced into pleading after the plea court denied his request for a mental health evaluation.

Relevant facts

Petitioner advised plea counsel of his bipolar and schizo-affective disorders at their very first meeting in September 2017. App. 105 ll. 9 – 25. Plea counsel testified that he "knew from our initial meeting that [Petitioner] had, that he suffered from a mental illness or mental illnesses." Id. Plea counsel met with Petitioner a dozen or so times leading up to the plea; counsel advised the PCR court that Petitioner was "always very engaged" such that he never had any concerns about his mental illness. App. 106 ll. 1 – 25. That trend continued until plea counsel met with Petitioner on Monday, July 23, 2018. App. 109 l. 1 – 111 l. 21.

Plea counsel described Petitioner as "very lethargic" and uninterested at their Monday meeting. Id. Based on this shift in demeanor, plea counsel moved for a mental evaluation. Plea counsel testified that the solicitor "pushed back" and questioned why plea counsel had not raised the matter before. App. 110 l. 15 – 111 l. 21. According to plea counsel, although the solicitor's office usually simply consented when a mental health evaluation was requested, Meadors refused to consent this time. Id.

When a hearing on the motion was held the following day, Petitioner "was a completely different person." Id. Plea counsel described Petitioner as engaged and energetic. The circuit court judge found that Petitioner was "oriented times four." App. 11 ll. 6 – 22. Petitioner understood the role of the judge, jury, solicitor, and defense counsel. App. 10 l. 1 – 13 l. 10. The judge denied the motion for an evaluation. App. 13 ll. 11 – 22.

Petitioner explained to the PCR judge that he had been on disability since 1999 and took three medications for his mental illnesses. App. 76 l. 3 – 79 l. 11. Petitioner testified that as long as he was medicated, his thoughts and actions were typical. Id. Immediately prior to the incident at the gas station, Petitioner had stopped taking his medication. App. 80 l. 20 – 14. For reasons largely outside of his control, Petitioner became unmedicated and entered a manic state. Id.

At the PCR evidentiary hearing, Petitioner indicated that he was not provided any discovery at the outset of plea counsel's representation. App. 86 ll. 9 – 21. He was never shown the surveillance video from the gas station. Id. Further, plea counsel never advised him of the elements of the charged offenses. App. 85 ll. 22 – 24; App. 92 l. 25 – 93 l. 9. These shortcomings resulted in Petitioner's motion to relieve counsel that was made prior to his guilty plea. App. 88 ll. 3 – 12.

Petitioner moved to have plea counsel relieved for reasons similar to those listed in his application for post-conviction relief:

> Well, I just feel like that I haven't been fully represented and I don't feel like that my attorney is really in the interest of defending my position and what I, the role I played in this crime that I supposedly did and I, I requested all my discovery and I haven't received it all. I never did see anything where this toy [BB] gun was even recovered, which according to the preliminary it was recovered. Also, my attorney has been very persistent and completely refuse[s] to budge on issues where I deemed should be maybe brought out to get fairness in my sentencing so I would like to, I would like to get a different attorney.

App. 21 ll. 13 – 25. The motion to relieve plea counsel was denied. App. 22 l. 21 – 23 l. 8.

Discussion

PCR counsel accurately summarized Petitioner's most viable ground for relief, that Petitioner felt coerced to plead guilty because he was denied a mental health evaluation the day before he was scheduled to go to trial:

> [The plea] was involuntary because he felt coerced because he was faced with either going to trial without the benefit of a mental health evaluation or taking his plea right now. So that's why, our argument is he was presented with no option but to take the plea or run the risk of going to trial without the benefit of a mental health evaluation and that's why it's the involuntary plea, the coercion.

App. 128 l. 25 – 129 l. 8.

Before a defendant may plead guilty, it must be established that the defendant is competent and that the defendant's decision to plead guilty is a knowing and voluntary one. Sims v. State, 313 S.C. 420, 423–24, 438 S.E.2d 253, 254–55 (1993) (citing Godinez v. Moran, 509 U.S. 389, 398–401, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993)). The test for competency is the same whether a defendant pleads guilty or goes to trial—namely, "whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding" and the requirement that the defendant "have a rational as well as a factual understanding of the proceedings against him." Id. at 422–23, 438 S.E.2d at 254.

"The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the *ability* to understand the proceedings." Godinez, 509 U.S. at 401 n.12, 113 S.Ct. 2680 (citing Drope v. Missouri, 420 U.S. 162, 171, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975) (observing that a defendant is incompetent if he "lacks the *capacity* to understand the nature and object of the proceedings against him") (emphasis added)). "The purpose of the 'knowing and voluntary' inquiry, by contrast, is to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is

uncoerced." Id. (citing Faretta v. California, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)).

"There is a two-prong test for evaluating claims of ineffective assistance of counsel. First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991)). "Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. (citing Strickland, 466 U.S. at 687, 104 S.Ct. 2052; Alexander, 303 S.C. at 541–42, 402 S.E.2d at 485).

A PCR applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted upon going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP.

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. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving. Id. Specifically, a defendant must be aware

of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id.

"That the plea be voluntary is not only a requirement of due process, but a premise of the defendant's meaningful participation in the plea process." United States v. Savinon-Acosta, 232 F.3d 265, 268 (1st Cir. 2000) (citing McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969)).

When determining issues relating to guilty pleas, appellate courts will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Specifically, the voluntariness of a guilty plea is not determined by an examination of a 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 also from the record of the PCR hearing. Id. 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). However, where there is no evidence of probative value to support the findings of the PCR judge, the ruling will not be upheld. Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

When considering 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 information conveyed by the plea judge cured any possible error made by counsel. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The Court will uphold the PCR court's findings if there is *any* evidence of probative value to support them. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Id. at 434-435, 405 S.E.2d at 392. Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). 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, e.g., 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).

Plea counsel failed to offer meaningful evidence at the hearing on his motion for a mental health evaluation. There was no discussion, as there was a the PCR hearing, of how Petitioner was not taking his prescribed medications at the night of the robbery. Petitioner was not advised by his attorney to go into detail regarding the events giving rise to his homelessness. The circuit court judge made a ruling based on the evidence presented, but that was not the complete picture. Plea counsel failed to present evidence and elicit testimony from Petitioner showing why Petitioner should, at the very least, receive a mental evaluation.

As a result of the denied motion, Petitioner was concerned about going to trial. Armed only with the ordinary defenses, he felt like his special circumstances—namely his multiple mental illnesses—would not be taken into consideration. He felt like the trial would not have challenges to the charges based on his diagnoses. Petitioner felt like he had no choice but to plead guilty. A mental health evaluation would have afforded him the opportunity to make a meaningful and knowing decision. Instead, he felt obligated to plead. Accordingly, his plea was not freely or voluntarily made.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant certiorari in order to allow for further briefing on this issue.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of December, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Odell Head states:

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

2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge R. Kirk Griffin, which was held on February 24, 2020, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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 him as counsel for Timothy Odell Head.

Respectfully Submitted,

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

This 4th day of December, 2020.

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S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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/Taylor D. Gilliam
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This 4th day of December, 2020.