

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Brian M. Gibbons, Circuit Court Judge

BOOKER T. HILL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001364

JOHNSON PETITION FOR WRIT OF CERTIORARI

Sarah E. Shipe
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

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MAR 11 2020
S.C. SUPREME COURT

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ISSUE PRESENTED

Did the PCR court err in finding petitioner's guilty plea was voluntary and intelligent where the record shows petitioner's very strong desire to go to trial, and that counsel coerced petitioner to plead guilty, including enlisting the help of petitioner's wife?

STATEMENT

On November 22, 2016, petitioner entered a liquor store and was seen on security camera footage taking a bottle of Hennessy and concealing it in his pants. When petitioner left the store the store owner ran after him into the parking lot. There was a physical altercation, and the owner suffered a cut to his neck which required surgery. App. 8, l. 2-9, l. 2. When police detained and interviewed petitioner, he admitted he was at the store, the owner confronted him, and he pushed the owner. App. 9, ll. 3-7.

On July 17, 2018, petitioner pled guilty to armed robbery, attempted murder, and possession of a weapon during the commission of a violent crime before the Honorable Edward W. Miller. App. 1. Richard Warder represented petitioner and Hunter Blouin, assistant solicitor, represented the state. App. 1. Judge Miller sentenced petitioner to concurrent terms of ten years' imprisonment for attempted murder, ten years' imprisonment for armed robbery, and five years' imprisonment for possession of a weapon during the commission of a violent crime. App. 10, ll. 16-19.

Thereafter, petitioner filed an application for PCR on November 19, 2018. App. 12. On June 3, 2019, an evidentiary hearing was held before the Honorable Brian M. Gibbons. App. 38. R. Mills Ariail, Jr., represented petitioner and Taylor Z. Smith, assistant attorney general, represented the state. App. 38.

At the evidentiary hearing petitioner testified that he "begged" for a jury trial and only pled guilty because he was coerced by plea counsel. App. 44, ll. 1-3; 47, ll. 6-2; 51, l. 7. Petitioner said plea counsel threatened him if he went to trial, he would get a thirty-year sentence. App. 47, ll. 21. At plea counsel's urging petitioner's wife sent him a note telling him to plead guilty because thirty years was too long to be in a cell. App. 48, ll. 2-16. Petitioner

ultimately pled guilty because he was “scared.” App. 48, ll. 14-16.

Plea counsel Warder denied threatening or coercing petitioner to plead guilty. App. 70, ll. 20-24. However, Warder contended, he did not think petitioner could get a better deal than ten years and he thought going to trial would have been “disastrous.” App. 65, ll. 1-4. Warder admitted he discussed the case with petitioner’s wife. He told petitioner’s wife that petitioner should plead guilty, and Warder recalled she relayed that message to petitioner. App. 70, ll. 9-19.

On July 19, 2019, Judge Gibbons signed an order denying PCR. App. 95-107. Judge Gibbons found petitioner’s allegations that plea counsel coerced him and threatened him to plead guilty were contradicted by plea counsel’s more credible testimony and the transcript from petitioner’s plea hearing. App. 106. Judge Gibbons also found petitioner “made his decision to plead guilty freely and without coercion and based upon the merits of his defense and the potential sentence that could result after a trial.” App. 106.

ARGUMENT

The PCR court erred in finding petitioner's guilty plea was voluntary and intelligent where the record shows petitioner's very strong desire to go to trial, and that counsel coerced petitioner to plead guilty, including enlisting the help of petitioner's wife.


The 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 v. Lockhart*, 474 U.S. 52, 56 (1985). Where a defendant was represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases. *Id.* In order to show prejudice in the context of a guilty plea a defendant must show there was a reasonable probability that, but for counsel's errors he would not have plead guilty and would have insisted on going to trial. *Id.* at 59.

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984).

Petitioner did not have a “voluntary and intelligent choice” where counsel intimidated him with the threat of a long sentence, thirty years. Plea counsel used petitioner's wife to pressure him to plead guilty instead of taking his case to trial. Plea counsel's influence on petitioner and his family forced petitioner to plead guilty when he really wanted to go to trial. Petitioner said repeatedly at the PCR hearing he “begged” for a trial. But for plea counsel's coercion petitioner would not have pled guilty and would have insisted on going to trial.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of March, 2020.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Brian M. Gibbons, Circuit Court Judge

BOOKER T. HILL,

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V.

STATE OF SOUTH CAROLINA,

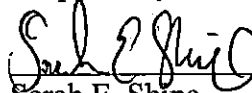
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Booker T. Hill 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 Brian M. Gibbons, which was held on June 3, 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 Booker T. Hill.

Respectfully Submitted,



Sarah E. Shipe

Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of March, 2020.

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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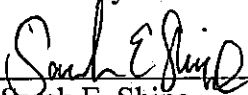
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RESPONDENT


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon William M. Blich, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Booker T. Hill, #131643, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 11th day of March, 2020.



Sarah E. Shipe
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 11th day of March, 2020.



(L.S)
Notary Public for South Carolina
My Commission Expires: December 31, 2029.