

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Michael G. Nettles, Circuit Court Judge

TEVIN HART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001379

JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

Whether the PCR court erred finding defense counsel was not ineffective where trial counsel's singular focus in petitioner's case was to persuade him to cooperate with the prosecution and plead guilty and where counsel's failure to conduct any investigation left petitioner with no choice but to plead guilty rendering his guilty plea invalid?

STATEMENT

On July 16, 2012, a Dorchester County grand jury indicted petitioner for first degree burglary, armed robbery, and four counts of kidnapping. App. 194-205. On October 7, 2013, petitioner pled guilty as indicted before the Honorable Maite Murphy. App. 1. Lisa Gay represented petitioner, and Don Sorenson, assistant solicitor, represented the state. App. 1. Petitioner's sentencing was deferred so that petitioner could testify as a witness for the state in the trial of one of his codefendants. App. 17; 24.

On January 23, 2014, petitioner appeared before Judge Murphy for sentencing. App. 19. Judge Murphy sentenced petitioner to concurrent terms of forty years' imprisonment for first degree burglary, thirty years' imprisonment for armed robbery, and thirty years' imprisonment for each count of kidnapping. App. 33-34.

On January 30, 2014, defense counsel filed a motion for reconsideration, arguing petitioner's sentence was excessive because petitioner did not have a prior record, had cooperated in the state's prosecution of his codefendant, and asserted petitioner was deprived of his due process rights when Judge Murphy denied defense counsel's motion to continue the hearing until petitioner's mother could attend. Supp. App. 1. On April 3, 2014, Judge Murphy signed an order denying the motion for reconsideration. Supp. App. 2.

Defense counsel filed a notice of appeal asserting the Court should review the denial of the motion to reconsider petitioner's sentences despite the fact that petitioner pled guilty because Judge Murphy's denial was an abuse of discretion and petitioner's decision to plead guilty was tainted by the state's misrepresentations to petitioner. Supp. App. 6. Subsequently appellate counsel, Benjamin Tripp, filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. *State v. Hart*, Op. No. 2016-UP-085

(S.C. Ct. App. filed February 24, 2016).

Thereafter, petitioner filed an application for PCR on November 21, 2016. App. 36-42. An evidentiary hearing was held before the Honorable Michael G. Nettles on September 1, 2020. App. 62. Lesli Sarji represented petitioner and Taylor Smith, assistant attorney general, represented the state. App. 62.

On September 18, 2020, Judge Nettles signed an order denying PCR. App. 166-93. The court found that defense counsel was not ineffective for failure to conduct an adequate investigation. The court found petitioner did not meet his burden of proving deficiency and resulting prejudice and that petitioner “merely speculated that the outcome of his case may have been different had plea counsel done some more investigation.” App. 188.

This petition for a writ of certiorari follows.

ARGUMENT

The PCR court erred finding defense counsel was not ineffective where trial counsel's singular focus in petitioner's case was to persuade him to cooperate with the prosecution of his codefendant and plead guilty and where counsel's failure to conduct any investigation left petitioner with no choice but to plead guilty rendering his guilty plea invalid.

Relevant facts

At petitioner's guilty plea hearing, the state alleged petitioner and two other men, Martin Young and Joshua Manigault, entered the home of Laura Smith early in the morning of March 29, 2012. Smith and her three children were woken up by the family's dog growling. The state claimed that Manigault, Young, and petitioner robbed Smith at gunpoint and stole a gun safe, jewelry, and electronics. App. 7-8.

Young gave a statement to police implicating petitioner. App. 11. During the investigation, petitioner spoke with the solicitor prosecuting the case, Dan Sorenson, and agreed to cooperate and testify against Manigault. Petitioner pled guilty as indicted and was sentenced after his testimony in Manigault's trial. App. 24.

At sentencing, Sorenson told the court that petitioner had no prior record and had been cooperative with the state. App. 24. Defense counsel explained that petitioner was young at the time of the incident and was improperly influenced by his older friends. App. 26-27. Additionally, counsel stated that she "always talked" to petitioner about the possibility of his receiving the lower end of the sentencing range because of his youth, lack of prior criminal record, and willingness to testify for the state in its prosecution of Manigault. App. 29. Ultimately, the court sentenced petitioner to an aggregate term of forty years' imprisonment. App. 33.

At the PCR hearing petitioner insisted that, but for, defense counsel's advice he would not have pled guilty and instead would have gone to trial. App. 96, l. 6; 108, ll. 9-10. At the time of the incident, petitioner was eighteen years old, and he was twenty years old when he pled guilty. App. 104. Petitioner testified that defense counsel did not discuss with him any potential defenses that might be raised at trial. Instead, counsel immediately began trying to persuade petitioner to cooperate with the state and testify against Manigault and plead guilty. App. 99-100; 103-04. Petitioner said that as soon as counsel discovered he had given statements to police, "her whole demeanor changed," and counsel told him he had no choice but to cooperate with the state. App. 105, ll. 6-14. Petitioner said that counsel did not explain to him that if he were to go to trial, he could challenge the admission of the statements he made to police. App. 107, ll. 14-24.

Petitioner testified that at the time of his guilty plea he had "no understanding" of the proceedings. App. 90-91; 111, l. 12. Petitioner said that counsel advised him that, because Manigault was older and had a serious criminal history, it would be beneficial to petitioner to testify against Manigault at trial and plead guilty. App. 90-91.

Defense counsel testified petitioner was young at the time of the incident and her understanding was that his older codefendants, Manigault and Young, convinced him to commit the crime. App. 115. Counsel recalled petitioner was a "seventeen-year-old kid who was completely freaked out." App. 118, ll. 8-23. During her representation of petitioner, it was counsel's belief that the state's main goal was to convict Manigault because he had a history of criminal violence and she focused her efforts on having petitioner testify for the state in Manigault's trial. App. 114-115.

Counsel stated that she and solicitor Sorenson communicated extensively about petitioner's case and unfortunately the end result was "a traumatic sentence." App. 113 ll. 19-24. Counsel said the most damaging fact in petitioner's case was that he gave inconsistent statements to police. App. 114. Counsel did not have an independent recollection of whether she told petitioner that if he went to trial, they could challenge the admission of his statements to police but said she "probably" did because that was her general practice. App. 129, l. 3-130, l. 8. Counsel claimed that she did not think petitioner would have prevailed at trial and she believed cooperating with the state and pleading guilty would result in his receiving a lesser sentence. App. 123, ll. 1-12. Counsel readily admitted that she told petitioner if he went to trial, he would likely receive a higher sentence. App. 130, l. 19-131, l. 18.

Counsel conceded that petitioner chose to plead guilty, on her advice, with the understanding that his cooperation with the state in the trial of Manigault could benefit him. App. 115, ll. 22-25; 126, ll. 1-5. Counsel acknowledged that she told petitioner that she thought he should get a fifteen-year sentence and that they would work toward that goal. App. 117, ll. 18-20. Counsel thought petitioner was sentenced harshly by Judge Murphy because Manigault was acquitted. App. 117, ll. 20-22.

Dan Sorenson, the solicitor prosecuting petitioner's case, testified that he spent a great deal of time meeting with petitioner regarding his case and his codefendant, Manigault's, trial. App. 140. Sorenson prosecuted the case against Manigault, and petitioner testified for the state in that trial. Sorenson said that petitioner appeared to have a "disconnect" regarding his understanding of the process. Sorenson admitted that he "stressed" to petitioner that he would get some benefit from cooperating with the state. App. 139, ll. 5-11.

Discussion

“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 v. Lockhart*, 474 U.S. 52, (1985). “A defendant 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 on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). “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.” *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

In this case, the PCR court incorrectly found counsel was not deficient for failing to conduct an adequate investigation into possible defenses and instead singularly working towards convincing petitioner to plead guilty. It is apparent from all the testimony at PCR that petitioner was only ever given one choice, to cooperate with the state and plead guilty. Counsel’s failure to conduct an investigation or otherwise communicate to petitioner that, if he chose to go to trial he could challenge the admission of the damaging statements he gave to police, in conjunction with petitioner’s youth and inexperience with the legal process resulted in an involuntary guilty plea. Petitioner testified, and it was not refuted by defense counsel, that from the outset counsel

encouraged him to plead guilty. Petitioner also testified that he was not made aware of the fact that if he chose to go to trial, he could challenge the admission of his statements to police. Defense counsel did not give any testimony about her investigation of petitioner's case and admitted that from the beginning petitioner's statements to police were problematic and it was her goal for him to work with the state in order to secure a conviction for his codefendant, Manigault, with the hope that petitioner might receive a lesser sentence.

The court incorrectly found there was no prejudice where petitioner clearly said during the evidentiary hearing that but for counsel's advice he would have gone to trial. *See Hill v. Lockhart*, 474 U.S. 52 (1985).

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 7th day of May, 2021.

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Counsel for Tevin Shaquille Hart 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 Michael G. Nettles, which was held on September 1, 2020, 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 Tevin Shaquille Hart.

Respectfully Submitted,




Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of May, 2021.

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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APPELLATE CASE NO. 2020-001379

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Johnson Petition for Writ of Certiorari, Appendix, and Supplemental Appendix in the above-referenced case has been served upon Benjamin Limbaugh, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 7th day of May, 2021; and on Tevin Shaquille Hart, #358579, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of May, 2021.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER