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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Court of Common Pleas, Spartanburg County
The Honorable Grace Knie, Circuit Court Judge

Circuit Court Case No. 2019-CP-42-02979
Appellate Case No. 2021-000551

Tysean Edmondson, #372301 . . . . Petitioner,

v.

State of South Carolina, ... Respondent.

PETITION FOR WRIT OF CERTIORARI
(PCR CASE)

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Statement of the Case

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In July 2016, the Spartanburg County Grand Jury indicted Petitioner for two counts of attempted murder, 2016-GS-42-4096, 2016-42-4097 (count one) and possession of a weapon during a violent crime, 2016-42-4097 (count two). All sentences ran concurrently. On April 25, 2017 Petitioner pled guilty before the Honorable Letitia A. Verdin, circuit court judge, to the lesser-included offenses of assault and battery of a high and aggravated nature and the lesser-included offense of unlawful carrying of a firearm. Petitioner was sentenced to sixteen years imprisonment on the ABHAN charges and one year imprisonment on the unlawful carrying charge. Petitioner filed a timely motion to reconsider the sentence. A hearing was held on June 5, 2017. The matter was taken under advisement. On December 27, 2018 the court amended Petitioner's sentences on the ABHAN charges to twelve years. N. Douglas Brannon represented Petitioner at the guilty plea and post trial motion hearing. No appeal was filed. Petitioner filed his application for post conviction relief *pro se* on August 26, 2019. Respondent filed its return on October 30, 2019 requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 6, 2021. J. Falkner Wilkes represented Petitioner at the hearing. Assistant Attorney General Chelsey Marto represented the Respondent. An Order of Dismissal was entered April 26, 2021. Petitioner timely filed a notice of appeal on May 24, 2021. This petition follows.

Questions Presented for Review

1. Was Petitioner's plea knowingly, intelligently, and voluntarily entered?

2. Does the record support a finding that the Petitioner was advised and understood the law applicable to the charges to which he pled guilty, including the elements of the *hand of one/hand of all* theory of accomplice liability and transferred intent?

3. Was the plea court required to advise Petitioner of the elements of the charges before accepting the Petitioner's guilty plea?

4. Was the plea court required to advise a defendant of the elements of *hand of one/hand of all* theory of accomplice liability and transferred intent when the theory was necessary to support the Petitioner's guilty plea?

5. Does the record show that the Petitioner admitted to facts sufficient to support guilt under hand of one/hand of all theory of accomplice liability and transferred intent?

Argument

The Petitioner's charges stem from shots being fired from a vehicle in which the Petitioner was a passenger. (A. p. 95-98). During Petitioner's guilty plea Petitioner's counsel specifically informed the court that the Petitioner never fired a weapon. (A. p. 100). Counsel stated that the Petitioner was pleading guilty "because the hand of one is the hand of all." (A. p. 100). The record from the guilty plea shows that despite being informed that the Petitioner was not admitting to having shot at the victims the plea judge failed to inform Petitioner of the elements of the offenses to which he was pleading guilty or the elements of *hand of one/hand of all* theory of accomplice liability. The court made no inquiry as to Petitioner's understanding of accomplice liability. Most importantly the record shows that the plea judge failed to question

Petitioner to ensure that Petitioner was actually admitting to facts that would make the *hand of one/hand of all* theory applicable to the charges so as to establish a factual basis for the plea. There was no admission by the Petitioner that he got into the car having any knowledge that a crime was going to be committed by others in the car. Nor was there any admission by the Petitioner that he did anything to aid, abet, or assist in the shootings by others in the car. (A. p. 80-106). Petitioner unknowingly entered a guilty plea without there being a sufficient factual basis for the court to accept the plea. Petitioner testified that he did so because counsel never explained to him the elements of assault and battery of a high and aggravated nature nor the elements of the *hand of one is the hand of all* theory of accomplice liability and transferred intent. (A. p. 119-120).

Petitioner entered guilty pleas only because he was told by trial counsel that "the hand of one was the hand of all." (A. p. 120). Petitioner had never been in trouble before or involved in any kind of court proceeding. (A. p. 128). He testified that counsel never explained to him exactly what "hands of one" meant other than he could be found guilty if he was in the car when the shootings occurred. (A. p. 119-129). At the PCR hearing Petitioner's counsel could not affirmatively say that he left Petitioner with a clear understanding of the conflict between the theories of *hands of one* and *mere presence*. (A. p. 138). Petitioner testified that he pled guilty simply because he believed that his being in the car during the shootings was sufficient to support the charges for which he was charged. (A. p. 125). At the PCR hearing Petitioner testified that he had no intent to commit any crime when he got in the car as a passenger with the two other co-defendants. (A. p. 120). Petitioner testified that he would not have pled guilty if counsel or the court would have informed him that the *hand of one/hand of all* would not apply

given that he did not participate, aid, assist, or abet in the shootings. (A. p. 121).

Petitioner also testified that trial counsel never informed him of the elements of assault and battery of a high and aggravated nature. (A. p. 121-122). There is nothing in the record to show how trial counsel explained the elements of the charges or of the *hand of one/hand of all* doctrine to the Petitioner. The written advisement titled "GUILTY PLEA AFFIDAVIT" that trial counsel had Petitioner sign just five days prior to the plea not only fails to make mention of *hand of one/hand of all*, transferred intent, or accomplice liability, it fails to address the elements of attempted murder or assault and battery of a high guilty. (App. p. 227-228). When questioned at the post conviction relief hearing trial counsel was unable to recall how he explained *hand of one/hand of all* or *mere presence* to Petitioner and could not say whether Petitioner had a clear understanding of either. (App. p. 138).

At Petitioner's guilty plea the court failed to question Petitioner to ensure that he was aware of the elements of the offenses to which he was pleading guilty. The one question the plea judge asked about Petitioner's understanding of the charges Petitioner never answered. (App. p. 85). Although the trial attorney informed the judge that Petitioner was pleading guilty because "the hand of one is the hand of all" the plea judge never reviewed the elements of the doctrine with Petitioner to make sure that he understood what that meant and was admitting to facts that would support its application. (App. p. 100). Given trial counsel's statements to the court during the guilty plea, and the trial court's failure to conduct a proper inquiry, Petitioner could not have know that his mere presence in the car at the time of the shooting was insufficient to support his convictions.

The doctrine of accomplice liability arises from the theory that "the hand of one is the

hand of all." 23 S.C. Jur. Homicide § 22.1 (2014). Under this theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). A person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act to be guilty under a theory of accomplice liability. State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999). State v. Reid, 408 S.C. 461, 472-73, 758 S.E.2d 904, 910 (2014). Under the "hand of one, the hand of all theory," one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. To admit evidence under this theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown. State v. Langley, 334 S.C. 643, 645, 515 S.E.2d 98, 99 (1999). "Mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt." *Id. at* 262, 647 S.E.2d at 705. "However, 'presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a [principal].'" *Id.* (*alteration in original*) (*quoting* State v. Hill, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977)). State v. Harry, 420 S.C. 290, 299, 803 S.E.2d 272, 277 (2017).

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant

must be advised of the constitutional rights he or she 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. This Court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) and Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In addition to the requirements of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. *Id.* Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). In Pittman the trial judge did not affirmatively ask him for an admission of guilt. The transcript in Pittman also indicated that the trial judge did not advise Pittman of the crucial elements of the charged offenses. This Court reversed the conviction. Pittman v. State, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999).

In Pittman the defendant signed a "checklist for guilty plea," the date on this document was one month prior to the court appearance and entrance of the guilty plea, which was similar to the "GUILTY PLEA AFFIDAVIT" Petitioner signed case just days prior to his plea. The list in Pittman failed to include the crimes Pittman was charged with, the elements of the charged crimes, or a statement about mandatory minimum penalties. As in Pittman, the affidavit Petitioner was given failed to include the elements of attempted murder, or of assault and battery of a high and aggravated nature to which Petitioner pled. As in Pittman, the defects in Petitioner's case were not cured by information provided at the guilt plea proceeding where the court failed to advise Petitioner of the elements of the offenses, failed to advise Petitioner of the elements of *hand of one/hand of all*, and failed to ascertain whether the Petitioner was admitting to facts that would establish guilt under *hands of one/hands of all*.

The validity of a plea resting on a theory of *hands of one/hands of all* accomplice liability and transferred intent rests on two things. First, the plea court must ensure that the defendant understands the elements of both the charges and accomplice liability. Second, the plea court must determine whether the defendant is admitting to facts that will establish the elements of the theory. In reviewing whether a state court plea was voluntary under Boykin v. Alabama, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969) the Federal District Court for the District of South Carolina in a *habeas corpus* action looked specifically to the state plea court's discussions with the defendant to determine whether the defendant clearly understood the theory of *hand of one/hand of all,* and was admitting to facts that would support a conviction under that theory. *See* Greene v. Cartledge, Civil Action No. 2:14-cv-3238-BHH-MGB, 2015 U.S. Dist. LEXIS 131373 (D.S.C. July 27, 2015). In Greene the court found that Greene's plea was valid because Greene understood the *hand of one/hand of all* theory and admitted to facts that would subject him to the its application in his case. The district court in Green noted that the state court judge asked Greene during the plea a number of questions about his role in the offenses and did not accept the plea until Greene admitted to facts that made *hand of one/hand of all* applicable in his case.

In the Petitioner's case, not only did the trial court fail to question Petitioner as to his understanding of the *hand of one* theory of accomplice liability, it also failed to determine whether Petitioner was actually admitting to any facts that would make the theory applicable in his case. This was compounded by the plea court's failure to advise Petitioner as to the elements of the charges to which he was pleading guilty. The record therefore fails to show that Petitioner's guilty pleas were knowingly, intelligently, and voluntarily entered. The decision of the post conviction relief court was therefore in error.

Conclusion

Based on the foregoing the decision of the lower court should be reversed and Petitioner's convictions and sentence should be reversed and set aside.

Respectfully submitted,

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