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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

D. Craig Brown, Circuit Court Judge

SHEMAINE M. ROBERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-000433

JOHNSON PETITION FOR WRIT OF CERTIORARI

David Alexander
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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ISSUE PRESENTED

Did the PCR court err in finding that trial counsel's ineffective assistance did not render petitioner's guilty plea unknowing and involuntary?

STATEMENT

On June 9, 2016, a Florence County grand jury indicted petitioner for first-degree assault and battery for an incident that occurred on October 17, 2015. App. 301. On April 6, 2017, another Florence County grand jury indicted petitioner for kidnapping, grand larceny, carjacking, and a weapons charge for a separate incident that occurred in 2016. App. 298-99. On January 22, 2018, the State called the kidnapping incident for trial. App. 1. The Honorable D. Craig Brown presided and a jury was selected. App. 1 – 23. John C. Jepertinger and David A. Richardson, Jr. represented the State. App. 1. Emily M. Crayton and Elizabeth H. Neyle represented petitioner. App. 1. After three of the State's witnesses testified, appellant pled guilty. App.1, 140. Appellant pled to both kidnapping and the unrelated assault and the remaining charges were dismissed. App. 140. Judge Brown sentenced petitioner to concurrent terms of ten years' imprisonment for assault and twenty-five years' imprisonment for kidnapping. App. 164, l. 3 – 24. No appeal was filed.

Petitioner filed three PCR applications which were ordered merged into a single action. App. 201-02. On December 17, 2020, a hearing was held before the Honorable Walton J. McLeod, IV. App. 205. Jonathan Waller represented petitioner and Michael Davidson represented the State. App. 205. On April 6, 2021, Judge McLeod denied petitioner's PCR application. App. 272. This petition follows.

ARGUMENT

The PCR court erred in finding that trial counsel's ineffective assistance did not render petitioner's guilty plea unknowing and involuntary.

Petitioner's guilty plea to kidnapping and an unrelated assault charge occurred after the State presented three witnesses in his kidnapping trial. Trial counsel represented petitioner in both cases. Despite repeated requests that trial counsel find witnesses who could corroborate petitioner's defense that he knew the complainant in the kidnapping case and that she left with him voluntarily, trial counsel admitted at the PCR hearing that she could not find these witnesses. App. 251, l. 18 – 253, l. 6.

Petitioner told trial counsel his version of events, but was "coerced" and "ended up pleading to something that I didn't do." App. 220, l. 5 – 221, l. 10. Petitioner knew the complainant and they "partied together." App. 222, l. 12 – 16. Their prior relationship would have shown that he did not kidnap her and refuted complainant's testimony that they did not know each other. App. 223, l. 4 – 13.

Trial counsel told petitioner he "didn't have a defense." App. 221, l. 14 – 20. Trial counsel admitted telling petitioner he would likely be convicted by the jury. App. 253, l. 12 – 24. In the holding cell during the trial, trial counsel and petitioner's mother together tried to convince petitioner to plead guilty. App. 226, l. 15 – 228, l. 9. Also present were co-counsel, their investigator, and an older white male petitioner did not know. App. 228, l. 1 – 9. Trial counsel "stormed" out when petitioner refused to plead guilty. App. 228, l. 9 – 19. The investigator and the older man then continued to attempt to persuade petitioner to plead guilty. App. 228, l. 17 – 229, l. 15.

Trial counsel returned to the holding cell with petitioner's mother. App. 229, l. 10 – 25. Trial counsel reminded petitioner he told her that he had a gun in front of petitioner's mother. App. 229, l. 10 – 25. Petitioner "froze" because he realized the State could call his mother as a witness and she heard what he had told his attorney. App. 229, l. 10 – 25. Trial counsel said at PCR that she did not "believe" she was present when petitioner "spoke with his mother" and that they had a private conversation. App. 255, l. 2 – 5.

After trial counsel said she would recommend a fifteen-year sentence, petitioner acquiesced and "pled guilty because I was told to plead guilty." App. 230, l. 10 – 231, l. 19. Petitioner only "said yes to all" the judge's questions because he "was told to say yes." App. 241, l. 5 – 7. Petitioner thought that as long as he did what he was told, he would receive a fifteen year sentence. App. 241, l. 15 – 18. The court issued a twenty-five year sentence. App. 164, l. 3 – 24.

Petitioner's guilty plea was coerced by trial counsel during her meeting with him in the holding cell with his mother and three other people. The PCR court erred in finding the guilty plea was voluntary solely based on the plea colloquy. The PCR court wrote, "This Court finds that the record of the plea hearing establishes the knowing and voluntary nature of Applicant's plea." App. 295. The court only cited to the plea colloquy with the judge and did not consider the evidence at the PCR hearing.

Basing its ruling solely on the plea hearing, without considering the testimony at the PCR hearing about coercion, was error. 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 v. Lockhart, 474 U.S. 52, 56 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)). Because a guilty plea is equivalent to a conviction, the trial court's determination of voluntariness must consider that "[i]gnorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." Boykin v. Alabama, 395 U.S. 238, 242-43 (1969).

"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, 339 S.C. at 33, 528 S.E.2d at 420 (emphasis added).

As stated in Suber and Roddy, the PCR court must consider the record of the PCR hearing. Here, petitioner's testimony concerning coercion was improperly disregarded by the PCR court. But for the coercion, petitioner likely would not have pled guilty and would have continued with his trial. The prejudice is doubled because his plea also included the unrelated assault charge. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.

s/David Alexander
Appellate Defender

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Appellate Defend
ATTORNEY FOR PETITIONER

This 7th day of October, 2021.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shemaine M. Roberson 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 D. Craig Brown, which was held on December 17, 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 Shemaine M. Roberson.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of October, 2021.

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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/David Alexander
Appellate Defender

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ATTORNEY FOR PETITIONER

This 7th day of October, 2021.