RECEIVED

Nov 23 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

JOSEPH E. MILLS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000627

JOHNSON PETITION FOR WRIT OF CERTIORARI

Adam Sinclair Ruffin
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

INDEX

ISSUE PRESENTED

Did the post-conviction relief court err in finding that Petitioner's guilty plea was voluntary where Petitioner was never able to view the full surveillance video which was the most important evidence against him, and where Petitioner also contended that plea counsel told him to perjure himself at the plea and admit guilt even though he maintained that he was not guilty?

STATEMENT

Petitioner was indicted by the Lexington County Grand Jury for two counts of murder, and one count of possession of a weapon during the commission of a violent crime. App. 216 – 229. Petitioner was represented by Sarah Mauldin and Robert Madsen. The state was represented by Gill Bell. App. 1. On May 31, 2018, Petitioner appeared before the Honorable R. Knox McMahon and pled guilty to both counts of murder for a negotiated sentence of forty-years imprisonment. The weapons possession charge was dismissed. App. 11, ll. 8 – 20.

At Petitioner's plea, the state alleged that Petitioner had gotten into a dispute with his girlfriend over drugs while they were sitting in a car in the parking lot of a bar on Lake Murray. App. 16, l. 16 – 17, l. 19. According to the assistant solicitor, Petitioner allegedly chased his girlfriend from the parking lot to the shoreline of the lake and tackled her to the ground.[1] App. 17, l. 20 – 18, l. 8. At that point multiple bar patrons got involved and pulled Petitioner off his girlfriend and one of the patrons shoved Petitioner off the dock causing him to fall down to a beach area on the shoreline. App. 18, ll. 9 – 18.

After being shoved off the dock, Petitioner pulled out a gun and fired it several times into the air causing the crowd to disperse. However, two men who were not associated with the initial crowd approached Petitioner with their hands up. One of the men who approached Petitioner tried to grab the gun out of Petitioner's hand at which time Petitioner fired several times killing both men. App. 18, l. 19 – 20, l. 6. Petitioner told the judge that he was guilty. App. 10, ll. 6 – 18. The judge accepted Petitioner's guilty plea and imposed the negotiated forty-year sentence. App. 38, l. 23 – 39, l. 8.

---

[1] Petitioner maintained that his girlfriend tripped and fell and that he was trying to help her get back up. App. 109, ll. 1 – 11.

Petitioner subsequently moved to withdraw his guilty plea and a hearing was held on the motion on June 18, 2018, before the Honorable R. Knox McMahon. App. 41. Plea counsel Mauldin told the judge that Petitioner wished to withdraw his guilty plea because "he believes he made the wrong decision." App. 44, l. 9 – 45, l. 3. The state opposed Petitioner's request and asked the judge to enforce the plea. App. 45, ll. 13 – 21. The judge ultimately denied Petitioner's request to withdraw his guilty plea, ruling that "[c]hanging one's mind is not a ground" for withdrawing a guilty plea. App. 53, l. 6 – 54, l. 22. Petitioner then told the judge that his decision to plead guilty was "a very rash decision," and that he was not guilty of murder. App. 55, ll. 2 – 6. The judge disagreed and denied Petitioner's motion to withdraw his guilty plea. App. 55, ll. 7 – 13.

Petitioner filed a notice of appeal which the Court of Appeals dismissed for failure to provide a sufficient explanation under Rule 203(d)(1)(B)(iv), SCACR. App. 57 – 65. Petitioner filed an application for post-conviction relief on February 26, 2019 and the state filed its Return on August 2, 2019. App. 66 – 97. Petitioner then filed an amended application through counsel on April 14, 2021. App. 98. An evidentiary hearing was held on April 29, 2021 before the Honorable Debra R. McCaslin. Ashley McMahan represented Petitioner and Lillian Meadows represented the state. App. 100. Petitioner, Sarah Mauldin, and Robert Madsen all testified. App. 101.

Petitioner testified that when his lawyers told him about the forty-year plea offer, he informed them that he did not want to plead guilty because he was not guilty of murder. App. 106, ll. 11 – 19. Ultimately, Petitioner pled guilty because he felt that his lawyers left him with no choice, and they told Petitioner to perjure himself at the plea and admit to committing murder even though he was not guilty. App. 112, l. 14 – 113, l. 18. Petitioner then told his lawyers that

he wanted to withdraw his guilty plea because he was forced to shoot and that he acted in self-defense, not with malice aforethought. App. 115, l. 19 – 116, l. 5; app. 117, l. 22 – 122, l. 2. Petitioner also complained that the video of the incident that was shown to him by his lawyers had the sides cut off and were therefore not visible when Petitioner viewed the video. Petitioner asked his lawyers to show him the full video, but they never did. App. 123, l. 8 – 124, l. 18.

Counsel Mauldin testified that she did not believe Petitioner could meet the first element of self-defense because she believed that he was at fault in bringing on the difficulty due to the allegation that he was chasing his girlfriend and trying to get drugs from her. App. 138, l. 13 – 139, l. 10. Mauldin claimed that the surveillance video was the strongest evidence against Petitioner, but she admitted that the video did not show whether the girlfriend was tackled by Petitioner or fell to the ground. App. 141, ll. 19 – 25. Mauldin denied threatening Petitioner into pleading guilty. App. 145, ll. 4 – 10. When Petitioner informed Mauldin that he wanted to withdraw his guilty plea, she acknowledged that Petitioner informed her that he was not guilty of murder and that was the reason for wanting to withdraw the plea. App. 151, ll. 10 – 153, l. 4.

Counsel Madsen also testified that he did not believe Petitioner would be successful at trial with his plea of self-defense. App. 157, ll. 12 – 20. Madsen maintained that he believed it was in Petitioner's best interest to plead guilty but that he did not threaten Petitioner into pleading guilty. App. 159, ll. 11 – 24. Madsen characterized Petitioner's decision to withdraw his guilty plea as "changing his mind." App. 162, ll. 2 – 14.

The PCR judge ruled that Petitioner failed to show that he was coerced into pleading guilty and that the record showed Petitioner pled guilty freely and voluntarily. App. 210. Petitioner's application was denied. App. 215.

This petition for writ of certiorari follows.

ARGUMENT

The post-conviction relief court erred in finding that Petitioner's guilty plea was voluntary because Petitioner was never able to view the full surveillance video which was the most important evidence against him, and because Petitioner also contended that plea counsel told him to perjure himself at the plea and admit guilt even though he maintained that he was not guilty.

In order to prove ineffective assistance of counsel, Petitioner must show that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient," meaning that it fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) citing Strickland, 466 U.S. at 688. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) citing Strickland, 466 U.S. at 668.

Criminal defendants have a right to effective assistance of counsel during the plea negotiating process. Missouri v. Frye, 566 U.S. 134, 144 (2012). The same two-part inquiry developed in Strickland also applies to claims of ineffective assistance of counsel which arise in the context of guilty pleas. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). "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." Id. at 56 (internal quotations omitted).

"If a prisoner pleads guilty on the advice of counsel, he must demonstrate that the advice was not within the range of competence demanded of attorneys in criminal cases." Tollett v. Henderson, 411 U.S. 258, 266 (1973) (internal quotations omitted). In order to show that plea counsel was ineffective, the defendant must show that he would not have pled guilty but for counsel's deficient performance. Griffin v. State, 361 S.C. 173, 176–77, 604 S.E.2d 394, 396 (2004). "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997).

"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." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A defendant must be advised of the specific constitutional rights he is waiving prior to a plea judge accepting his guilty plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969). "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." Pittman, 337 S.C. at 599, 524 S.E.2d at 624. Additionally, "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.

Petitioner's guilty plea was involuntary because it was effectively coerced. Specifically, Petitioner was faced with a choice of pleading guilty without having had an opportunity to view

the entire surveillance video, which was critical to his case, or proceed to trial and face a possible life without parole sentence. Petitioner's plea cannot be said to have been voluntarily made under these coercive circumstances.

In Kolle v. State, 386 S.C. 578, 584, 690 S.E.2d 73, 76 (2010), the defendant pled guilty to trafficking cocaine and was sentenced to seven-years imprisonment after his lawyer's motion to suppress the drugs was unsuccessful. The defendant sought PCR on the grounds that his plea counsel was ineffective in failing to procure certain discovery and failing to thoroughly advocate for the suppression of the drugs. Id. at 585, 690 S.E.2d at 76. This Court affirmed the PCR judge's decision to grant the defendant relief because his plea counsel was ineffective. Id. at 590, 690 S.E.2d at 79. This Court found that counsel's failure to obtain certain discovery materials prevented him from effectively cross-examining the officers at the suppression hearing on several discrepancies which would have affected the outcome of the suppression motion. Id. at 591, 690 S.E.2d at 80.

In Hyman v. State, 397 S.C. 35, 41, 723 S.E.2d 375, 378 (2012), the defendant alleged that he was coerced into pleading guilty without having seen the video evidence of the drug transaction he was allegedly involved in. The defendant testified at his PCR hearing that he informed his plea counsel multiple times that he needed to see the video evidence before he could decide on whether to plead guilty. Id. at 40, 723 S.E.2d at 377. Plea counsel disputed this and testified that the defendant asked *her* to view the video evidence and that upon her viewing the video, she could clearly see the defendant involved in a drug transaction. Id.

The defendant told his attorney that it was impossible for him to be on the video because he never wore hats and his plea counsel had told him that the person on the video who the state claimed was the defendant was wearing a hat. Id. at 40-41, 723 S.E.2d at 377. Plea counsel then

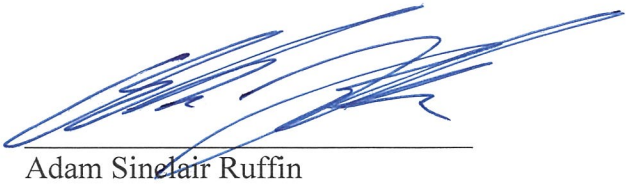
obtained still shots from the video and took them to the defendant and the defendant acknowledged that the person in the still shots was him. However, the defendant still wanted to see the video itself because the still shots did not show him engaged in a drug transaction. Id. at 41, 723 S.E.2d at 377-78.

This Court ultimately held that the defendant's guilty plea was not involuntarily made because of his never having viewed the videotape prior to his guilty plea. Id. at 42, 723 S.E.2d at 378. Instead, this Court found that the disclosure of the videotape to plea counsel was sufficient. Further, the defendant did not show that the video was favorable to him. Id. at 46-47, 723 S.E.2d at 381. Finally, this Court noted that the defendant failed to show prejudice because he testified that he would have pled guilty sooner had he seen the video; he would not have insisted on going to trial. Id. at 48-49, 723 S.E.2d at 381-82.

Petitioner's case is distinguishable from Hyman because Petitioner was essentially threatened that if he did not plead guilty that day, the plea offer would be revoked, and he would be forced into a trial facing life imprisonment without having had adequate time to review his discovery to make an informed decision. Petitioner could not voluntarily plead guilty without having seen his discovery materials. Counsel was ineffective in failing to provide Petitioner with the entire surveillance video in advance of the plea date so that Petitioner could make a voluntary decision free from coercion.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented.



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of November, 2021.

RECEIVED
Nov 23 2021
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

JOSEPH E. MILLS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph E. Mills 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 Debra R. McCaslin, which was held on April 29, 2021, 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 Joseph E. Mills.

Respectfully Submitted,

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of November, 2021.

RECEIVED

Nov 23 2021

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."

Adam Sinclair Ruffin
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

This 23rd day of November, 2021.