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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Edgar W. Dickson, Circuit Court Judge

WILLIAM H. BLAKE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2021-000708

PETITION FOR WRIT OF CERTIORARI PURSUANT TO AUSTIN V. STATE

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ISSUES PRESENTED

Did the PCR judge err in finding that the Alford pleas were entered knowingly and voluntarily when plea counsel failed to obtain and review with Petitioner all of the discovery in the manslaughter case?

STATEMENT

In October of 2011, the Aiken County Grand Jury indicted Petitioner, William Henry Blake, for armed robbery, indictment #2011-GS-02-01378. On October 24, 2011, Petitioner appeared before the Honorable George C. James, Jr., waived presentment to the Aiken County Grand Jury on an indictment for voluntary manslaughter and pled pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to both armed robbery and voluntary manslaughter. Barry L. Thompson, II, represented Petitioner at the plea. David W. Miller was present on behalf of the State. Pursuant to a negotiated sentence cap of twenty-five (25) years, Judge James sentenced Petitioner to twenty-three (23) year concurrent sentences for each charge. A timely notice of intent to appeal was filed but dismissed for failure to make a sufficient showing pursuant to Rule 203(d)(1)(B)(iv). The remittitur issued on March 2, 2012.

On February 13, 2012, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 42-53). On May 9, 2012, the State filed a return. (App. pp. 54-59). On December 17, 2012, Petitioner filed an amended PCR application. (App. pp. 60-63). On June 25, 2014, the State filed an amended return. (App. pp. 64-69). On September 8, 2015, an evidentiary hearing was held before the Honorable Edgar W. Dickson. Aimee Zmroczek represented Petitioner at the PCR hearing. Daniel Gourley represented the State. In a written order signed January 28, 2016, Judge Dickson denied relief and dismissed the application. (App. pp. 190-198). Petitioner filed a timely motion to reconsider on March 2, 2016. (App. pp. 199-201). The State filed a return on December 30, 2016. (App. pp. 202-203). On March 14, 2017, Judge Dickson denied the motion to reconsider. (App. pp. 204-206).

On June 3, 2019, Petitioner filed a second PCR application. (App. pp. 207-214). The State filed a return and partial motion to dismiss on August 16, 2019. (App. pp. 215-221). On

June 4, 2021, the Honorable Jennifer B. McCoy signed an order granting relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). (App. pp. 224-228). This Austin petition for writ of certiorari and a separately filed petition for writ of certiorari follow.

ARGUMENT

The PCR judge erred in finding that the Alford pleas were entered knowingly and voluntarily when plea counsel failed to obtain and review with Petitioner all of the discovery in the manslaughter case.

Petitioner waived grand jury presentment of a voluntary manslaughter indictment and entered Alford pleas to both voluntary manslaughter and armed robbery. The armed robbery indictment had been true billed by the Aiken County Grand Jury. The indictments involved separate incidents occurring on separate dates. In the PCR application Petitioner alleged that the pleas were not made voluntarily. (App. p. 50). During the PCR hearing Petitioner testified that he received discovery material from PCR counsel on the murder/manslaughter charge that he never received from plea counsel prior to entering the pleas. (App. pp. 100-104). Petitioner testified that, "Which if I had all of these facts it would have aided me in my defense for me not to plead guilty and proceed on going to trial." (App. p. 104, lines 10-12).

During the PCR hearing plea counsel admitted that his investigation on the murder/manslaughter case was not complete when Petitioner entered the pleas to armed robbery and voluntary manslaughter. (App. p. 114, line 24 – p. 115, lines 1-5). Plea counsel testified that he advised Petitioner that the investigation on the murder/manslaughter case was not complete. (App. p. 115, lines 6-12). Plea counsel testified that the State's evidence against Petitioner on the armed robbery case was strong and prior to the armed robbery trial the State offered concurrent time on the reduced voluntary manslaughter charge if Petitioner pled to both charges. (App. p. 112, lines 1-25). Petitioner testified that he wanted to go to trial on the armed robbery charge but counsel told him that if he went to trial on both charges he would receive a life sentence. (App. p. 80, line 8 – p. 81, lines 1-5). Petitioner testified that if plea counsel had properly investigated the charges, he would have gone to trial on both charges. (App. p. 90, line

24 – p. 91, lines 1-6). Petitioner testified that he felt forced to enter the pleas because, "I was told that I was going to receive a life sentence if I went to trial." (App. p. 105, lines 15-21).

During the PCR hearing Applicant's exhibits #1 and #2 were accepted as proffers of discovery material received by the solicitor's office after Petitioner entered the pleas. (App. p. 127, line 14 – p. 128, lines 1-7; pp. 143-189). The PCR judge noted that he understood Petitioner's frustration with receiving discovery on the murder charge after the plea and stated, " - - pertaining to the murder you know, I mean, I think he'd have a really good case but I don't know that he wants me to grant him a PCR on the murder." (App. p. 140, lines 3-11).

In the order denying relief the PCR judge wrote, "The record reflects that Applicant was well aware of the benefits he was receiving with the plea deal that he took and that Applicant made the decision to accept the plea offer even though the investigation into the murder charge was not yet complete. For these reasons, the application is denied." (App. pp. 196-197). The PCR judge erred.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by

counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty [Alford] plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). "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, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

In Frierson v. State, 423 S.C. 257, 262, 815 S.E.2d 433, 436 (2018), the South Carolina Supreme Court wrote:

> To establish a claim of ineffective assistance of counsel, the defendant has the burden of proving "(1) counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) counsel's deficient performance prejudiced the applicant's case." McKnight v. State, 378 S.C. 33, 40, 661 S.E.2d

> 354, 357 (2008). In order to establish prejudice when challenging a guilty plea, a defendant must prove "there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have gone to trial." Harden v. State, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004). The crux of the inquiry is whether counsel's ineffective performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). As the United States Supreme Court stated in Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), "[I]n order to satisfy the 'prejudice' requirement, the defendant must show there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial."

The Alford pleas in the present case were not made knowingly and intelligently. Plea counsel was ineffective in advising Petitioner to enter pleas before receiving discovery in the murder/manslaughter case. Petitioner could not have entered his pleas with "eyes wide open" without knowing the full State's evidence against him. (App. p. 141, lines 15-18). Plea counsel advised Petitioner that if he went to trial, he would receive a life sentence. There is a reasonable probability that, but for counsel's errors, Petitioner would not have pled guilty and would have insisted on going to trial on both charges. The convictions should be reversed.

CONCLUSION

Based on the above arguments, this Court should grant the petition for writ of certiorari to allow further briefing on the issues.

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ATTORNEY FOR PETITIONER

This 3rd day of December, 2021.