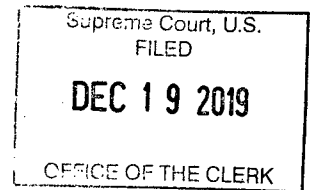


No. 19-7194

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

JUAN CARLOS VASQUEZ — PETITIONER
(Your Name)

vs.

STATE OF SOUTH CAROLINA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF SOUTH CAROLINA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JUAN Carlos Vasquez

(Your Name)

386 Redemption Way

(Address)

McCormick, South Carolina 29899

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

DOES THE EVIDENCE IN THE RECORD THAT PETITIONER DOES NOT UNDERSTAND ENGLISH PLAINLY SHOWS THAT ANY ADMISSION AT THE GUILTY PLEA HEARING COULD NOT RELIABLY INDICATE THAT PETITIONER'S PLEA WAS KNOWING AND VOLUNTARY, WHICH WAS A DENIAL OF PETITIONER'S SIXTH AND FOURTEENTH AMENDMENTS RIGHTS?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

OTHER

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was June 19, 2019. A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: November 20, 2019, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment of the United States Constitution

The Fourteenth Amendment of the United States Constitution

STATEMENT OF THE CASE

In this case, the Spartanburg Grand Jury, at its May 7, 2009 term, indicted Petitioner for two counts of accessory before the fact of murder; accessory before the fact of first degree burglary; trafficking in cocaine; and possession of marijuana with intent to distribute. App. 156-162. Petitioner attended a plea hearing on July 12, 2012, the Honorable J. Derham Cole presided. Hunter Chase Harbin represented Petitioner and Barry Joe Barnette represented the State. App. 1.

Petitioner needed a specially approved Spanish-language interpreter to assist him throughout the hearing. App. 5, line 5-16 - App. 6, line 22. The State's allegations against the Petitioner were that on January 24, 2009, Petitioner met in Greer with a man named Jose Reyes Arevalos and a female acquaintance of theirs from Atlanta. The female acquaintance brought five other men with her. All of the individuals except for Petitioner drove to the home of two local men with whom Petitioner and Arevalos had been involved in drug dealings. They broke into the home and killed the two men. During the law enforcement's investigation of the killings, officers found quantities of marijuana and cocaine in a home belonging to another individual connected with the victims. When asked about drugs, Petitioner gave a statement admitting they belonged to him. App. 24, line 11 - App. 25, line 19. Petitioner pled guilty as charged. App. 10, line 13 - App. 14, line 24. Judge Cole accepted the pleas and deferred sentencing. Tr. 34, lines 9-6.

Petitioner appeared at sentencing on May 23, 2012, before the Honorable J. Mark Hayes, II. Scott D. Robinson and Hunter Chase Harbin represented Petitioner, the State was again represented by Barry Joe Barnette. App. 36. Petitioner required an interpreter to communicate with the Court. App. 37

lines 1-14. Judge Hayes sentenced Petitioner to concurrent sentences of incarceration for life for each of the murders and burglary charges, thirty years incarceration for the cocaine charge; and five years incarceration for the marijuana charge. App. 66, lines 22 - App. 67, line 6.

Petitioner filed for post-conviction relief in the Spartanburg County Court of Common Pleas on February 4, 2013, Petitioner alleged in his PCR application that he was received ineffective assistance of counsel during his guilty plea proceedings. App. 69-82. The State filed a Return on March 19, 2014. App. 83-89. On November 3, 2014, Petitioner appeared at an evidentiary hearing before the Honorable R. Keith Kelly. Brandt Rucker represented the Petitioner and Suzanne H. White represented the State. App. 90.

Petitioner testified through an interpreter that he and plea counsel always had problems communicating because of language barrier. At his guilty plea, Petitioner did not even know to which offenses he was pleading guilty. App. 93, lines 13-18; App. 100, lines 11-13. Also, plea counsel never adequately explained to Petitioner in the first place the charges

he was facing, and Petitioner never understood the concept of "accessory". App. 102, lines 7-20; App. 111, lines 13-20.

To make matter even worse, plea counsel never secured an interpreter through whom Petitioner believed he could honestly communicate. The two went through at least three different interpreters. One interpreter whom plea counsel arranged had drug charges, so Petitioner could not work with him. App. 102, line 14 - App. 104, line 2. During another meeting, plea counsel asked police officers to act as interpreters during a meeting. App. 110, lines 4-7. Petitioner at one point pleaded with plea counsel to let him arrange and pay for an interpreter himself. Plea counsel never responded. App. 108, lines 6-11. As a result of the communication failures, Petitioner stated that he felt pressured into pleading guilty. App. 111, lines 21-23.

In response, plea counsel simply testified that he "was very comfortable" with their communication because Petitioner "did no, you know, question things". App. 124, line 24 - App. 125, line 11. Even though it was obvious that Petitioner was confused and could not make a rational decision as to whether he should plead guilty or go to trial, the PCR court issued an order dismissing Petitioner's claims on November 26, 2014. The order stated that Petitioner made a solemn, judicial admission of guilt in the plea colloquy, and he "presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea." App. 153.

REASONS FOR GRANTING THE PETITION

There are several reasons why this Court should grant this petition, however, the most important reason this Court should grant this petition is to determine whether Petitioner understood English well enough to enter into guilty pleas that would end his life as a free man.

The Courts recognize Petitioner's inability to understand English as "limit English proficiency" or LEP, the due process clause of the Fourteenth Amendment of the United States Constitution requires equal justice for anyone facing criminal action in a court of law in the United States of America. The Petitioner being saddled with LEP during his court appearances to plead guilty to the charges he is sentenced for was like Petitioner was not even in the courtroom during the guilty pleas proceedings because he did not understand what was going on.

Petitioner's plea hearing attorney was ineffective for failing to secure a qualified interpreter to assist Petitioner through the guilty plea proceedings.

Under section 15-27-155(B): An "interpreter" means a person who: (1) is eighteen years of age or older; (2) is not a family member of the party or witness; (3) is an instructor of foreign language at an institution of education; or (4) has educational training or experience that enables him or her to fluently speak a foreign language and interpret the language of another person. An "interpreter" shall not be a person confined to an institution.

There is clear evidence in the record that Petitioner does not understand English, therefore, any admission at the guilty plea could not reliably indicate that Petitioner's plea was knowing and voluntary. The Sixth Amendment of the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687. The two-part test adopted in Strickland "applies to challenges to guilty pleas based on ineffective assistance of counsel". Hill v. Lockhart, 474 U.S. 52, 58 (1985); see generally Brady v. United States, 397 U.S. 742, 758 (1970) ("Guilty pleas are no more foolproof than full trials to the court or jury....Accordingly, we take great precautions against unsound results.").

Just by showing in the record that Petitioner and his plea attorney could not communicate because of the language barrier show that counsel's representation fell below the objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the Petitioner would not have pled guilty and would have insisted on going to trial. Petitioner has sufficiently undermined the voluntariness of his plea, and its intelligent character. See Bolen v. State, 384 S.C. 409, 683 S.E.2d 471, 474 (2009);

accord State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) (holding record must reflect that defendant freely and intelligently waived constitutional trial rights and had full understanding of the consequences of the plea); Berry v. State, 381 S.C. 603, 635, 675 S.E.2d 425, 427 (2009) (holding the difference "between a valid plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea"). It follows that incorrect or omitted advice may deprive a defendant of his constitutional right "to make a certain fundamental decision regarding the case, as to whether to plead guilty, waive a jury, testify in his own behalf, or take an appeal". Jones v. Barnes, 463 745, 751 (1963).

Under the Sixth Amendment the Petitioner had a right to be able to communicate with counsel even if he did speak English, Without communication there would be no understanding how to proceed in a matter such as this.

"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 the guilty plea is not determined by an examination of 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, 229 S.C. 29, 33, 528 S.E.2d 418, 429 (2000).

In this case, the PCR court held that Petitioner made a solemn, judicial admission of guilt, and he presented no evidence

to countervail the conclusion that the plea was knowing and voluntary. However, the record is replete with such evidence.

Petitioner cannot communicate through the English language. He needed specially approved Spanish-language interpreters for basic communication with his attorney. Furthermore, the interpreters that plea counsel did procure were insufficient for Petitioner to fully understand his advisement. Petitioner had no faith in the honesty or competency of the interpreters insofar as one was facing drug charges and another was a police officer and agent of the prosecution. Based on the communication failure, Petitioner did not know what charges he was facing; what the substance of each charge was; or to which charge he was pleading guilty to. Thus, the evidence shows not only that Petitioner found the plea court's statement to him unintelligible but also that he never independently understood the plea proceedings based on communication with his attorney, Petitioner's plea was therefore not knowing. Naturally, Petitioner felt pressured into compliance with plea counsel and the plea court, and his plea was therefore also not voluntary.

Overall, Petitioner's inability to understand the plea proceedings was a result of plea counsel's defective representation, and the PCR court's finding to the contrary was not supported.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vazquez Juan P.

Date: December 19-2019