RECEIVED

Jul 21 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

Appeal from Lexington County
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2022-000254

The State of South Carolina, ...Respondent,

v.

Michael Young, ... Petitioner.

REPLY TO RESPONDENT'S RETURN TO PETITIONER'S *AUSTIN* PETITION FOR A WRIT OF CERTIORARI

Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
3710 Landmark Drive
Columbia, South Carolina 29204
elizabeth@franklinbestlaw.com
(803) 445-1333
Counsel for Appellant

Other Counsel of Record:

Danielle Dixon
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211-1549

Respectfully, Petitioner offers this brief Reply to Respondent's Return to his Austin Petition for a Writ of Certiorari.

ARGUMENT

I. Trial counsel was ineffective when he did not advise his client that he would have been entitled to a voluntary manslaughter charge had he chosen to exercise his Constitutional right to a jury charge.

Much of Respondent's brief addresses whether Petitioner would have prevailed at trial under a theory of voluntary manslaughter ("Petitioner never described a physical fight with Victim or an overt, physical action from Victim", Respondent's Brief, p. 12; "Petitioner's repeated harassment of Ex-Wife—which led to his arrest for stalking—the evidence shows Petitioner was unable to accept the fact that Ex-Wife no longer wanted a relationship", Respondent's Return, p. 16). Whether Petitioner would have prevailed at his trial or not is beside the point. In his petition, Petitioner alleges that 1) sufficient evidence existed to warrant a judge giving the charge to a jury, and 2) his attorney rendered ineffective assistance of counsel by not informing his client that he would not receive the charge. Whether Petitioner elected to take his case to trial or not was dependent on whether he believed he would receive a voluntary manslaughter jury charge. Ultimately the decision was up to Petitioner to make this decision, and he did not make a knowing and voluntary decision to forego his right to a trial because he received ineffective assistance of counsel from his lawyer. It was this failure to accurately inform Petitioner that he would have

received a jury instruction for voluntary manslaughter, had he proceeded to trial, that rendered his performance unreasonable. *Strickland*, *supra*.

Respondent additionally errs when it argues Petitioner did not provide sufficient evidence at the PCR hearing to support the trial court's giving a voluntary manslaughter jury charge. Respondent's Brief, p. 11-12. At the PCR hearing, the following testimony was elicited:

> Q: Okay… Did you tell Mr. Delgado that you were involved in an argument at the time—
>
> A: Yes.
>
> Q: -- with the deceased?
>
> A: Correct.

App. 106.

> Q: … And you were—you gave a statement also stating that you were very emotional at the time, correct?
>
> A: Yes.

App. 107.

> Q: And, again, as far as the cocaine found in the system of the victim of the murder, did you and Mr. Delgado talk about that?
>
> A: We spoke about the cocaine in the system.
>
> Q: Okay. Did you talk about that as a potential factor in determining whether or not you go to trial on voluntary manslaughter?
>
> A: Oh, no.

Q: Okay. If you had known that it was a potential factor in going to trial on voluntary manslaughter, would you have pled guilty?

A: No.

App. 107-108.

Petitioner's ex-wife also indicated that Petitioner and her father were arguing just prior to the shooting. App. 109.

On cross-examination from the State, additional evidence was elicited that would have supported giving the jury charge:

Q: And you were having a conversation with Mr. Bell outside of the car, correct?

A: Correct.

Q: And then you shot him three times, correct?

A: There was some things in between but, yes, that did happen.

App. 111-112.

Q: And do you recall if Mr. Bell ever had a gun that day?

A: He did.

Q: Did he have a knife?

A: No. I don't think so.

Q: Did he ever pull a weapon on you?

A: I believe—I believe he—I believe he was trying to scare me. But he did have a weapon and, I believe, he was going for it.

App. 116-117.

There was ample evidence provided at the PCR hearing to show that Petitioner would have been successful in obtaining a voluntary manslaughter instruction had he proceeded to trial.

At the end of the day, Petitioner would have received a jury charge for voluntary manslaughter at trial. Plea counsel rendered ineffective assistance of counsel by convincing his client that he would not have received one. Whether or a not a jury would have convicted Petitioner of the offense is a separate question, but failure to give the charge at Petitioner's trial would have resulted in a reversal. To warrant reversal based on the trial court's failure to give a requested jury instruction, the failure must be both erroneous and prejudicial. *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003); *State v. Patterson*, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (2006). Failure to give requested jury instructions is not prejudicial error when the instructions given afford the proper test for determining the issues. *State v. Burkhart*, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002) (citations omitted). Had his case gone to trial, the jury would have been charged to assess whether the killing of Mr. Bell was the result of murder or manslaughter. Trial counsel should have properly informed Petitioner that he would have received the jury charge and then allowed Petitioner to make his own independent decision about the issue. The right to trial by jury is fundamental to American criminal jurisprudence. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). The right to a trial by jury may be waived only when the defendant's decision is voluntary, knowing, and intelligent. *See Patton v. United States*, 281 U.S. 276, 312 (1930); *Johnson v. Zerbst*, 304 U.S. 458, 468-69

(1938). Counsel's failure to properly advise his client rendered his performance substandard and Petitioner was prejudiced. Respectfully, this Court should grant Petitioner's petition for a writ of certiorari.

CONCLUSION

The Court should grant Petitioner's petition for a writ of certiorari.

Respectfully submitted,

/s/ Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
Bar License No. 72555
3710 Landmark Drive, Suite 113
Columbia, South Carolina 29204
(803) 445-1333
elizabeth@franklinbestlaw.com

July 21, 2022.