

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Sep 28 2022

S.C. SUPREME COURT

—————
Certiorari to Aiken County

Honorable Jennifer B. McCoy, Circuit Court Judge

—————
KAYLA MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001249

—————
REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI
—————

KATHRINE H. HUDGINS
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

INDEXi

ISSUE PRESENTED.....1

ARGUMENT IN REPLY

The guilty plea to murder, entered without negotiations or recommendations, was rendered involuntary by counsel’s failure to obtain and provide Petitioner with the results of forensic analysis of weapons believed to have been used in the crime.....2

CONCLUSION.....7

ISSUE PRESENTED

Was the guilty plea to murder, entered without negotiations or recommendations, rendered involuntary by counsel's failure to obtain and provide Petitioner with the results of forensic analysis of weapons believed to have been used in the crime?

ARGUMENT IN REPLY

The guilty plea to murder, entered without negotiations or recommendations, was rendered involuntary by counsel's failure to obtain and provide Petitioner with the results of forensic analysis of weapons believed to have been used in the crime.

Petitioner, Kayla Nicole Moore, was eighteen years old on April 22, 2017, when the body of the deceased, David Mackey, was found. (App. p. 33, lines 21-24). Petitioner and her co-defendant, Jayson Miles, were quickly apprehended and charged with murder. Over one year later on May 10, 2018, Petitioner was indicted for murder. (App. pp. 62-63). Petitioner entered a straight up plea to murder on July 26, 2018. At the time of the plea, over a year after arrest, and after the State had obtained indictments, the State had still not obtained forensic evidence with regard to weapons believed to have been used in the crime. The forensic evidence was finally referenced by the State during the sentencing hearing which took place on December 13, 2018, about five months after the plea. (App. p. 37, lines 17-25). At the time of sentencing Petitioner had been incarcerated for 588 days. (App. p. 33, line 21). During the sentencing hearing the prosecutor told the judge:

They located the vehicle and they – and they located a number of items in the vehicle to include the hammer that was involved in this incident as well as a knife and actually, since the guilty plea in the case, SLED has analyzed the DNA results from the hammer, and they indicated that it was – it matched the DNA profile of the victim in this case with a probability of 1 in 3400 million, which I think is probably the biggest number that I recall seeing.

(App. p. 37, lines 17-25). There is no mention of any forensic evidence linking Petitioner or the co-defendant to the items. The co-defendant, however, admitted striking the deceased with the hammer. (App. p. 16, lines 9-11).

During the PCR hearing PCR counsel asked plea counsel, “Did you ever advise her that you thought that she should wait until all the evidence was in before moving forward?” (App. p.

136, lines 4-6). Plea counsel answered, “I believe there was a discussion when we discussed that I didn’t believe that the evidence that was coming forward would have had any more mutual benefit to us. That is the -- changing the outcome of a trial.” (App. p. 136, lines 7-10). Petitioner, however, testified at the PCR hearing that if she had known there was no forensic evidence linking her to the murder weapons, she would not have entered a guilty plea and instead would have insisted on going to trial. (App. p. 105, lines 19-24; p. 107, lines 20-25). Importantly, during the guilty plea defense counsel told the judge that Petitioner maintained that the co-defendant, Miles, killed Mackey by himself and set the mobile home on fire because Petitioner told Miles that she heard an allegation of inappropriate behavior by Mackey from years ago. (App. p. 33, lines 1-6). During the guilty plea defense counsel told the judge that Miles threw Petitioner’s belongings in the yard, told her to load the car and they left together. (App. p. 33, lines 6-18). Miles was a friend of Petitioner’s from high school and she did not want to betray him. (App. p. 33, lines 10-18).

During the PCR hearing plea counsel testified that in January of 2018, Petitioner requested that counsel hurry and work out a plea deal rather than waiting for trial. (App. p. 128, line 14 – p. 129, lines 1-2). Defense counsel testified that the State was not willing to offer a plea deal and was seeking a life sentence. (App. p. 139, lines 14-17). Plea counsel also testified that Petitioner requested that he file a speedy trial motion which he filed on May 2, 2018. (App. p. 129, lines 10-12). Petitioner did not request a speedy straight up plea. Petitioner did not waive the right to review all discovery. After being in pre-trial detention for over a year, Petitioner reasonably requested either a plea deal or a speedy trial. She received neither. Instead, she entered a straight up guilty plea to murder, without the benefit of full discovery, and received a life sentence.

In the return the State writes, “Petitioner requested her counsel get her case resolved as soon as possible and counsel did so in accordance with Petitioner’s express wishes.” (Return p. 13). Plea counsel did not testify that Petitioner requested that he get her case “resolved” as soon as possible. As discussed above, the record supports that Petitioner either wanted a plea deal or a speedy trial. In regard to trial, defense counsel testified that Petitioner’s potential defenses of mere presence and duress were imperfect in light of the hand of one is the hand of all theory. (App. p. 138, lines 16-25). Plea counsel, however, did not explain why he did not advise Petitioner to wait until the discovery process was complete in order to make a decision with regard to the guilty plea. Contrary to plea counsel’s opinion that the missing evidence would not help or hurt the case (App. p. 125, lines 15-17), the absence of forensic evidence linking Petitioner to the murder weapons would have been a critical factor in Petitioner’s decision to proceed to trial or enter a guilty plea.

While the prosecutor mentioned the DNA results during the sentencing hearing, Petitioner testified that she never received the DNA results from defense counsel and only received the DNA results after requesting discovery from the clerk of court three months after sentencing. (App. p. 104, line 12 – p. 105, lines 1-5). While plea counsel told the judge at the guilty plea that Petitioner wished to waive a pre-sentence report, defense counsel did not tell the judge that Petitioner wished to waive the right to receive complete discovery. Plea counsel was ineffective in failing to obtain and provide Petitioner with the results of forensic analysis of weapons believed to have been used in the crime. Plea counsel’s deficient performance affected the plea process and prejudiced Petitioner’s case, rendering the guilty plea involuntary.

Petitioner did not knowingly and intelligently waive the right to receive full discovery in exchange for a favorable plea offer from the State. Instead, Petitioner entered a straight up guilty

plea and received a life sentence. Plea counsel erroneously advised Petitioner that the results from the forensics testing, that the State had not provided at the time of the plea, would not help or hurt the case. (App. p. 125, lines 15-17). Again, as Petitioner testified at the PCR hearing, the fact that there was no forensic evidence linking Petitioner to the weapons believed to have been used in the crime would have supported Petitioner's version of events as told to the plea judge and would have been a critical determining factor in Petitioner's decision to proceed to jury trial rather than plead guilty.

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.”


Petitioner met her burden of proving that plea counsel was ineffective in advising Petitioner to plead guilty straight up before requiring the State to provide full discovery. Plea counsel was ineffective in advising Petitioner that the missing evidence would not be beneficial before he knew what the evidence would show. “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)). The plea in the present case does not represent a voluntary and intelligent choice among the courses of action open to Petitioner because the plea was entered without the benefit of full discovery and was based upon the erroneous advice that the missing discovery would not be helpful.

In contrast to Frierson, Petitioner was prejudiced by the deficient performance. Petitioner showed that there was more than a reasonable probability that if she had known the forensic evidence did not link her to the weapons, she would not have pled guilty, but would have gone to trial. Unlike Frierson, Petitioner did not confess to the crime. As plea counsel testified at the PCR hearing, while Petitioner admitted being present, she denied having any involvement in the actual killing stating that she was outside and loaded the vehicle. (App. p. 127, lines 17-19). During the guilty plea defense counsel told the judge that Petitioner maintained that the co-defendant, Miles, killed Mackey. (App. p. 33, lines 1-10). Petitioner established that she is entitled to post-conviction relief.

CONCLUSION

Based on the above argument this Court should grant the petition for writ of certiorari to allow further briefing on the issue.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of September, 2022.