

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge

RECEIVED

Jan 27 2023

S.C. SUPREME COURT

ANDREW MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000939

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX..... i

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

Trial counsel erred in failing to obtain a mental evaluation for petitioner in order to develop a mental illness defense and proceed with a jury trial in the case, particularly in light of the fact that petitioner received a fifty-year sentence after pleading guilty as charged.....3

CONCLUSION.....7

ISSUE PRESENTED

Trial counsel erred in failing to obtain a mental evaluation for petitioner in order to develop a mental illness defense and proceed with a jury trial in the case, particularly in light of the fact that petitioner received a fifty-year sentence after pleading guilty as charged.

STATEMENT

Petitioner pled guilty to murder and possession of a weapon during the commission of a violent crime at the June 2019 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Petitioner was sentenced to imprisonment for an aggregate period of fifty years. App. 1-44. Andrew Johnston represented petitioner at the plea proceeding, and Assistant Solicitor Jennifer Jordan appeared on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On April 28, 2020, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 46-54. The respondent filed a return dated July 1, 2020. App. 55-68. A PCR hearing was convened on April 19, 2022, at the Spartanburg County Courthouse before Judge G.D. Morgan App. 69-110. Petitioner was present at the PCR hearing and represented by Rodney Richey, Esquire, and Assistant Attorney General Chelsey Marto appeared on behalf of the state. On June 29, 2022, Judge Morgan signed an Order of Dismissal denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 136-151.

Petitioner appealed Judge Morgan's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to obtain a mental evaluation for petitioner in order to develop a mental illness defense and proceed with a jury trial in the case, particularly in light of the fact that petitioner received a fifty-year sentence after pleading guilty as charged.

At the plea proceeding, the solicitor apprised the plea judge of the facts of petitioner's case. On February 18, 2018, petitioner shot Daeshawn Brown after sending out certain messages to his (petitioner's) ex-girlfriend. Apparently, petitioner's ex-girlfriend had been friendly with Daeshawn Brown. The shooting was captured on surveillance videotape. App. 15, l.9 - p. 21, l.14.

During the PCR hearing held in the case, petitioner testified that trial counsel was ineffective because he failed to investigate into a mental illness defense. Petitioner stated that he was threatened by this certain group of people who were players in this case, and that he had been shot previously by these same people prior to the date on which Brown was fatally shot. Petitioner claimed that he was having a mental health crisis when he shot Brown. Petitioner explained that he was suffering from many different mental illnesses prior to the shooting including brain neuropsychological deficiencies that involved memory, learning, and impulsivity disorders. App. 74, l. 19 -p. 77, l.12. The genesis of petitioner's brain impairment occurred after his exposure to lead poisoning when he was two years old. App. 82, l 11 – p 86, l.16. The legitimacy of petitioner's brain disease from lead poisoning was evidenced via a monetary settlement received from the City of Baltimore, Maryland where this tragedy occurred. App. 112; App. 114-126. Also, petitioner stated that he was sent to the mental health ward at the Spartanburg Regional Hospital for mental health care and testing just a few days prior to Brown's shooting. Petitioner added that he submitted all of the details of his mental health information to counsel. App. 80, lines 9-25.

Petitioner stated that trial counsel did not schedule a competency/mental evaluation for him in the case. Petitioner's position was that trial counsel erred in advising that there were no defenses available to him when it was clear that a mental illness defense should have been presented in his case. App. 86, lines 24-24; App. 89, l.10 - p. 90, l.3. Note that after the guilty plea proceeding, petitioner was diagnosed with a chemical imbalance and placed on various and numerous medications. App. 87, l. 21 – p. 88, l. 3; App. 94, l. 22 – p.95, l.2.

Trial counsel testified at the hearing and explained that he was privy to petitioner's clinical mental health documents that dated as far back as the years 2000, 2012, and many years before then, but that he did not believe petitioner needed a mental evaluation. App. 99, l.2 - p. 102, l.7. Counsel added there were no defenses available to petitioner in his case. App. 104, lines 1-5. Counsel stated that during the plea proceeding, he informed the plea judge of petitioner's lead poisoning earlier in his life, and about the PTSD petitioner suffered after been shot five times simultaneously prior to the Brown shooting that resulted in his handicap (crippled left hand). Nonetheless, counsel concluded that the sum of this information did not rise to the level of an insanity defense in the case. App. 105, l.8 - p. 106, l.20. Counsel stated that petitioner came "across as an intelligent individual" and exhibited no indications that "he ...suffered from something like hallucinations or delusions or psychosis" that would have required a mental evaluation, and that his prior psychological sufferings did not support a mental illness defense. App. 106, lines 1-8.

The records submitted as applicant's exhibit #1 at the PCR hearing reflected a clinical analysis conducted during the year 2000 where petitioner was evaluated because of problems from lead poisoning, which resulted in behavioral problems, hyperkinesis, impatience, impulsivity, poor memory, low verbal and math achievement, a speech impediment, low

cognitive ability, and overall social problems and self-control difficulties, all of which originated from a base neuropsychological and neurological dysfunction that stemmed from his exposure to lead poisoning. Medication was suggested at that time in order to improve petitioner's ability to focus. App.127-133. A clinical analysis conducted by Johns Hopkins Psychiatry in 2002 revealed that petitioner needed continual mental assistance to manage his anger and behavioral issues that arose from an anxiety disorder and his mental maladies that included his learning and disruptive behavioral disorders. App. 134-135.

The PCR judge ruled that trial counsel was not ineffective in failing to secure a mental evaluation on petitioner's behalf. App. 136-151.

Due process prohibits the conviction of one who is mentally incompetent. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). Additionally, counsel has a duty to conduct adequate and appropriate investigations in a case. Strickland v. Washington, 466, U.S. 668 (1984). Specifically, with respect to cases where mental issues exist, counsel has a duty to investigate, prepare, and present evidence of mental illness on behalf of their clients. In Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017), the Court held that when establishing ineffective assistance of counsel in the context of plea counsel's alleged failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea; and that once such a reasonable probability has been established, then prejudice is also demonstrated. See also Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004). In Ramirez, plea counsel was found ineffective in failing to request proper competency evaluations for the defendant when he (counsel) was on notice that the defendant suffered from retardation.

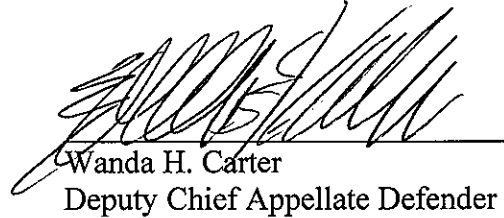
Compare Von Dohlen v. State, 360 S.C. 598, 601 S.E.2d 738 (2005), where the Court found that counsel was ineffective in failing to present the psychiatrist who testified at trial regarding the

defendant's extensive medical records and information in support of the defendant's true mental diagnosis of major episodes of depression with severe symptoms of anxiety and psychosis to testify at the penalty phase in order to preclude a death sentence. Also, compare Wiggins v. Smith, 539 U.S. 510 (2003), where trial counsel was found ineffective in failing to expand the investigations into the defendant's background with sufficiency in order to learn of the defendant's diminished mental capacity and childhood abuse, rape, and molestation in order to show his impaired mental and psychological state of mind. Compare further, Davenport v. State, 301 S.C. 39, 389 S.E.2d 649 (1990), where the Court held that counsel was ineffective in failing to develop an insanity defense when the state's psychiatrist diagnosed the defendant as legally insane. Finally, in the federal court cases of People v. Coroma, 80 Cal. App. 3d 684, 145 Cal. Rptr. 899 (1st Dist. 1978); Ramseyer v. Glodgett, 853 F. Supp. 1239 (WD. Wash. 1994), and Hull v. Hyler, 190 F.3d 88 (C.A. 3PA, 1999), the courts found counsel ineffective in failing to investigate into evidence establishing their clients' mental incompetence.

Clearly, in the case at bar, counsel's failure to secure a mental evaluation for petitioner in order to develop a mental illness defense, which obviously existed in the case, constituted deficient legal representation that was below the range of competence demanded of criminal attorneys in violation of the Sixth Amendment. Prejudice existed as a result because but for counsel's error in this regard, a reasonable likelihood exists that petitioner would not have pled guilty and opted for a trial by jury instead based on a mental illness defense. Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing of the above-raised issue.



Wanda H. Carter
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ATTORNEY FOR PETITIONER

This 27th day of January, 2023.