

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Mar 30 2023

S.C. SUPREME COURT

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Certiorari to Lee County

Honorable Diane Schafer Goodstein, Circuit Court Judge

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ISAAC WRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001487

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JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred finding defense counsel was not ineffective where he advised petitioner to plead guilty where the state had no physical evidence tying petitioner to the incident and where the state's best evidence was the inconsistent statements of witness?

STATEMENT

On December 7, 2017, a Lee County grand jury indicted petitioner for murder and possession of a weapon during the commission of a violent crime. App. 88-89. On July 23, 2019, petitioner pled guilty to voluntary manslaughter pursuant to negotiations under *North Carolina v. Alford*¹ before the Honorable R. Ferrell Cothran, Jr. App. 1-12. Scott Robinson represented petitioner and John Gentry, assistant solicitor, represented the state. App. 1. Judge Cothran sentenced petitioner fifteen years' imprisonment, suspended upon the service of ten years followed by two years of probation. App. 11, 1. 23-12, 1. 3.

Thereafter, petitioner filed an application for PCR. App. 13-18. On November 19, 2021, an evidentiary hearing was held before the Honorable Diane S. Goodstein. App. 26-71. Timothy Griffith represented petitioner and Michael Neubauer, assistant attorney general, represented the state. App. 26.

On September 26, 2022, Judge Goodstein signed an order denying PCR. App. 72-87. The court held petitioner entered a knowing, intelligent, and voluntary guilty plea with the advice of competent, diligent counsel. App. 84. The court found counsel was not ineffective where his credible testimony established that he provided competent advice that it was in petitioner's best interest to accept a favorable plea offer from the state rather than risk likely conviction at trial for murder and face a minimum of thirty years. App. 83.

This petition follows.

¹ 400 U.S. 25 (1970).

ARGUMENT

The PCR court erred finding defense counsel was not ineffective where he advised petitioner to plead guilty where the state had no physical evidence tying petitioner to the incident and where the state's best evidence was the inconsistent statements of witness.

Relevant facts

At petitioner's guilty plea hearing the state alleged that on October 28, 2017, petitioner and Fabian Wright had an argument at a private residence. App. 8, ll. 7-13. Fabian was shot in the back of his left shoulder. App. 7, ll. 2-7. Fabian was still alive when law enforcement responded but he was pronounced dead a short time after he was transported to the hospital. App. 7, ll. 1-11. There were several individuals present at the scene, but none came forward and named petitioner as the shooter until several days after the incident. App. 6, ll. 18-20; 7, ll. 1-25; 8, ll. 1-6. The solicitor conceded they had no physical evidence tying petitioner to the scene and their case was based solely on witness testimony. App. 8, ll. 21-24.

Defense counsel asserted that petitioner had difficulty accepting this guilty plea deal and had thought seriously about going to trial. App. 10, ll. 1-3. Counsel told the plea court that the state's eyewitnesses were not immediately cooperative and gave conflicting statements the night of the incident and the following day, only implicating petitioner days after the incident. App. 10, ll. 3-9.

During the evidentiary hearing, petitioner testified that he had always wanted to go to trial and would have proceeded to trial but was coerced by counsel to plead guilty. App. 32, ll. 3-20. Petitioner said on the day his trial was called defense counsel put a lot of pressure on him to plead guilty. App. 32, ll. 16-20; 35, l. 3. He contended counsel upset his family by telling them that if he was convicted at trial, petitioner could serve a life sentence and that is what

convinced him accept the state's offer that day. App. 32, l. 21-33, l. 11.

Defense counsel acknowledged the state had no physical evidence tying petitioner to the incident and had only inconsistent witness statements to put forward as evidence. Counsel testified law enforcement had "botched" the crime scene. App. 55, ll. 1-24. Law enforcement had failed to secure the scene and there were people walking all through the crime scene. App. 55, ll. 7-9. He testified petitioner gave him names of persons to interview in his defense. Counsel sent his investigator to speak to witnesses, but no one would speak to the investigator. App. 50, l. 19-51, l. 24.

Counsel said that on the day of petitioner's trial all the persons that his investigator attempted to interview showed up in court and were sitting with the victim's family and that was why he strongly urged petitioner to plead guilty. App. 52, ll. 1-5. He averred that although the case had several problems including inconsistent witnesses statements, lack of physical evidence, and mishandling of the scene by law enforcement, there were no witnesses that would testify to petitioner's side of the story, and it was in petitioner's best interest to plead guilty. App. 59, ll. 12-25. Counsel denied threatening or coercing petitioner to plead guilty but admitted that it was his nature to "emphasize . . . strongly." App. 63, ll. 7-23.

Discussion

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

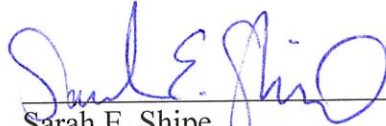
"In determining guilty plea issues, it is proper to consider the guilty plea transcript as

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 a guilty plea is not determined by an examination of a 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*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “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 v. Lockhart*, 474 U.S. 52, (1985) (quoting *North Carolina v. Alford*, 400 U.S. 25 (1970)).

Here petitioner’s *Alford* plea was not entered freely or voluntarily where he testified at PCR that he was coerced into pleading guilty by defense counsel’s manipulation of his family’s emotions. Petitioner wanted to go to trial because the state’s case against him was weak at best. It is uncontroverted that the state had no physical evidence tying him to the scene and that the state’s only evidence, witnesses’ statements, were less than credible. Although the plea transcript alone appears to reflect voluntary guilty plea, a review of the entire record reveals petitioner’s guilty plea was not voluntarily tendered due to coercion.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of March, 2023.

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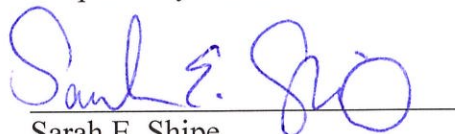
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Isaac Wright states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Diane Schafer Goodstein, which was held on November 19, 2021, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Isaac Wright.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of March, 2023.

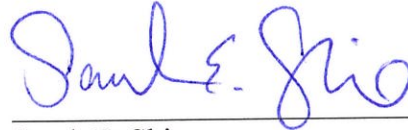
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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This 30th day of March, 2023.