

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
J. Derham Cole, Circuit Court Judge

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JUL - 8 2013

S.C. Supreme Court

WALTER LAMONT MORGAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213698

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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

INDEX

INDEX 1

ISSUE PRESENTED 2

STATEMENT 3

ARGUMENT 4

CONCLUSION 8

ISSUE PRESENTED

Trial counsel erred in failing to develop petitioner's self-defense claim due to the mistaken belief that petitioner was in no danger during his fight with Jonathan Rainey, who was stabbed, since Rainey was not in possession of a gun when petitioner's PCR testimony and the PCR testimony of three other eyewitnesses at the scene, one of whom was Jonathan Rainey, confirmed that petitioner was in danger of being choked to death before acting in self-defense and because the law of self-defense does not require the presence of a gun as an element.

STATEMENT

Petitioner Walter Lamont Morgan pled guilty to attempted murder during the November 2010 term of the Spartanburg County General Sessions Court before Judge J. Mark Hayes, II. Petitioner was sentenced to imprisonment for a period of fifteen years, suspended upon the service of ten years and five years probation. App. 1-26. John Reckenbeill represented petitioner at the guilty plea proceeding. App. 1-26. Petitioner did not enjoy the benefit of a direct appeal of his guilty plea conviction and sentence.

On October 27, 2011, petitioner filed a PCR application. App. 28-34. The respondent filed a return dated July 17, 2010, requesting that a hearing be held in response to petitioner's PCR action. App. 35-38.

A PCR hearing was convened on September 5, 2012, at the Spartanburg County Courthouse before Judge J. Derham Cole. App. 40-72. Petitioner was present at the hearing and represented by Richard W. Warder. On December 7, 2012, Judge Cole issued an order of dismissal therein denying petitioner's allegations of ineffective assistance of counsel in the case. App. 74-81.

Petitioner appealed Judge Cole's order of dismissal filed in the case. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel erred in failing to developing petitioner's self-defense claim due to the mistaken belief that petitioner was in no danger during his fight with Jonathan Rainey, who was stabbed, since Rainey was not in possession of a gun when petitioner's PCR testimony and the PCR testimony of three eyewitnesses at the scene, one of whom was Jonathan Rainey, confirmed that petitioner was in danger of being choked to death before acting in self-defense and because the law of self-defense does not require the presence of a gun as an element.

At the plea proceeding, the solicitor apprised the plea judge of the facts of the case. This case began when petitioner learned that Rainey took marijuana from him. Thereafter, petitioner and Rainey became involved in a physical altercation regarding this theft at a party on July 4, 2010, in Spartanburg County, South Carolina, during which time petitioner stabbed Rainey in his chest. App. 12, l. 13-p. 13, l. 16. Also during the plea proceeding, trial counsel stated initially that self-defense was applicable in the case because based on "what transpired [during the fight] it was imperative for [petitioner] to defend himself," but then counsel nullified his first assessment by explaining later that self-defense was not applicable in the case per the following rationale:

[Trial Counsel]: This was an altercation that started between Mr. Rainey and [petitioner] because of the fact that they were fighting over marijuana. [Petitioner] accused Mr. Rainey of taking some of his marijuana and smoking it, after that dispute escalated to a physical altercation... [and that Petitioner stated] in his voluntary statement that, "Jonathan Rainey told me he was going to get his pistol and kill me. So, therefore, I pulled my knife and I stabbed him" [but that since there was no] imminent threat of serious bodily harm...justif[ying] [the] use [of] self-defense to include deadly force...[then] I don't think that we met those levels of what South Carolina requires for us to even get a jury charge [on self-defense] in the case because there was no weapon recovered by Mr. Rainey. App. 19, l. 12 – 16; App. 20, lines 1-4; App 20 lines 13-20.

The law of self-defense does not require the presence of a weapon. Regardless of whether a gun was present during the fight in the case at bar, petitioner was fearful for his life because Rainey

was the aggressor who started the fight, commenced to choke petitioner, and vowed to kill petitioner. Therefore, counsel erred in apparently believing that a gun had to be present at the scene before a self-defense claim could be developed in petitioner's case.

In a case of self-defense, the law to be charged is determined from the facts presented in the case. State v. Bryant, 336 S.C. 340, 520 S.E. 2d 319 (1999). If there is any evidence in the record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense. State v. Stone, 285 SC 386 330 S.E. 2d 286 (1985). In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed, and he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Moreover, when a one claims self-defense, the state is required to disprove the elements of self-defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012).

Clearly, self-defense was applicable in the case. For example, during the PCR hearing, petitioner stated that he told counsel that he acted in self-defense since Rainey threatened to kill him and that Rainey started the fight by choking him, making the threat to kill, and vowing to go get a gun. App. 49, l. 15–p. 52, l. 5. Petitioner explained that Rainey jumped out of the car and made the first move by putting his hands on him and choking him. App. 52, l. 6; App. 51, l. 16-17. To argue that there was no danger since there was no gun at the scene was faulty logic and not what the law of self-defense would require because danger cannot be defined singularly by the presence or non-presence of a weapon. Also, the act of choking would fall under the category of placing one in danger of injury or death.

Petitioner testified about the details of the fight at the PCR hearing as follows:

PCR Counsel: Tell how the, the, the cutting, the stabbing, how it happened.

Petitioner: We was over there and I had - - you know, me and him had got into it and he jumped out of the car and he started choking me out, and then it's like soon as he let go I had stabbed him.

PCR Counsel: Okay. It was just one time?

Petitioner: One time.

PCR Counsel: And the knife was where, in your back pocket?

Petitioner: Front pocket.

PCR Counsel: Okay. And you just pulled it out and opened it one handed?

Petitioner: Uh-huh. (Affirmative).

PCR Counsel: And stabbed him?

Petitioner: Right.

PCR Counsel: And that's cause (sic) he was choking you?

Petitioner: Right. App.46, lines 3 – 17.

Additionally, Frederick Porter testified at the PCR hearing on behalf of petitioner's case. Porter witnessed the event in question and explained that "Rainey jumped out of the car and choked (petitioner)" and that Rainey "choked (petitioner) so bad he had to fall to his knees" and was "wind[ed]." Porter stated that petitioner stabbed Rainey thereafter. App. 15, 1.2-25.

Moreover, Jonathan Rainey testified at the PCR hearing and admitted that on the date in question, he choked petitioner at the party and that he threatened to shoot petitioner, although he had no gun at the time. App. 57, l. 11-17; App. 58, l. 8-17.

Lastly, Josh Meadows testified at the PCR hearing on behalf of petitioner's case. Meadows explained that Rainey choked petitioner so hard during the fight at the party that he (petitioner) could hardly breathe. App. 59, l. 16-p. 60, l. 21.

Trial counsel testified during the PCR hearing and explained that self defense was not applicable in the case because the state could have shown that petitioner brought on the difficulty himself because the fight began after Rainey took marijuana from petitioner, and in effect because there was no imminent threat where Rainey had no gun at the scene and only promised to get a gun

and come back to shoot petitioner. App. 62, l. 7-p. 64, l. 16. Counsel added that he knew about petitioner's witnesses, but did not talk to them because they were irrelevant and their renditions would not have assisted petitioner's defense since it was not believable to try and justify how a choking led to a stabbing. App. 65, l. 24-p. 66, l. 21; App. 69, l. 15-p. 70, l. 31.

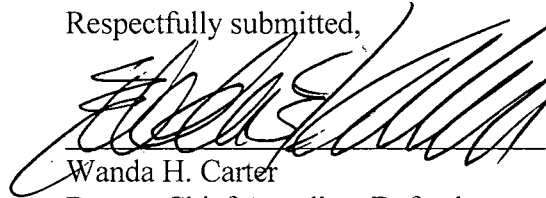
In the case at bar, counsel erred in misjudging the identity of the one who brought on the difficulty and the question of the magnitude of the attacks, i.e., a choking versus a chest stabbing. Undoubtedly, petitioner was the one perceived as most likely to start the fight because Rainey stole marijuana from him; however, to the contrary, it was thief Rainey (not petitioner) who started the fight. Therefore, petitioner did not bring on the difficulty. Petitioner was the victim of the theft, but took no steps to seek revenge against Rainey. Rather, it was thief Rainey who became the aggressor by first attacking and instigating the fight, and then by moving to choke petitioner. Furthermore, cutting off one's air passages could have led to death and would have placed the victim in sufficient danger to warrant an act in self-defense. The presence of a gun would not be the only scenario that would place one in sufficient danger to prompt an act of self-defense. Counsel erred in judging petitioner's case by measuring the act of choking versus the act of stabbing because the law of self-defense does not require such an assessment, and by concluding incorrectly that the act of choking was not dangerous and that law of self-defense required the element of the presence of a gun.

Trial counsel erred in allowing petitioner to plead guilty to attempted murder in the stabbing of Jonathan Rainey rather than developing a self-defense case because the facts of the case supported petitioner's self-defense claim. Counsel's error violated petitioner's Sixth Amendment right to effective assistance of counsel in a guilty plea setting; and but for this error, a reasonable probability exists that petitioner would likely have exercised the option of a trial by jury rather than entering a guilty plea to the state's charge against him. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the argument above, petitioner requests that the petition be granted and full briefing allowed on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of July, 2013.

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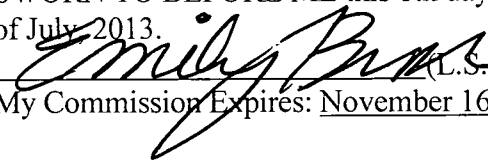
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Walter Lamont Morgan, # 343621, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 8th day of July, 2013.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of July 2013.


(L.S.) Notary Public for South Carolina
My Commission Expires: November 16, 2022.