

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Heath P. Taylor, Circuit Court Judge

LANCE MILLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000273

PETITION FOR WRIT OF CERTIORARI

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Aug 30 2023

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Trial counsels erred in advising and allowing petitioner to put forth a proffer to assist police in solving a murder case where the proffer placed petitioner at the scene of the murder and subsequently led to a murder indictment filed against petitioner; and where the submission of the proffer also placed petitioner at the crime scene of another separate criminal case (attempted armed robbery and attempted murder charges for which he previously denied guilt), because this legal representation constituted a breach of client confidentiality3

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ISSUE PRESENTED

Trial counsels erred in suggesting and allowing petitioner to put forth a proffer to assist police in solving a murder case where the proffer placed petitioner at the scene of the murder and subsequently led to a murder indictment filed against petitioner; and where the submission of the proffer also placed petitioner at the crime scene of another separate criminal case (attempted armed robbery and attempted murder charges for which he previously denied guilt) because this legal representation constituted a breach of client confidentiality.

STATEMENT

Petitioner Lance Miller pled guilty to voluntary manslaughter and attempted armed robbery during the October 2019 term of the Orangeburg County General Sessions Court before Judge Edgar W. Dickson and was sentenced to imprisonment for an aggregate term of seventeen years. App.1-110. Blair C. Jennings, Esquire, and Ray E. Chandler, Esquire, represented petitioner at the guilty plea proceeding, and Assistant Solicitors David M. Pascoe, Jr., and Catherine E. Mubank appeared on behalf of the state. Petitioner did not appeal his guilty pleas or sentences.

On February 21, 2020, petitioner filed a PCR application with the Orangeburg County Office of the Clerk of Court. App. 112-131. The respondent filed a Return dated August 26, 2021. App. 119-131. An amended PCR application was filed on January 20, 2023. App. 132-133.

A PCR hearing in the case was convened on January 24, 2023, at the Orangeburg County Courthouse before Judge Heath P. Taylor. App. 135-194. Petitioner was present at the hearing and represented by Attorney Tommy A. Thomas, and Assistant Attorney General Danielle E. Dixon appeared on behalf of the state.

On February 11, 2023, Judge Taylor issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsels in the case. App. 195-206.

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

ARGUMENT

Trial counsels erred in advising and allowing petitioner to put forth a proffer to assist police in solving a murder case where the proffer placed petitioner at the scene of the murder and subsequently led to a murder indictment filed against petitioner; and where the submission of the proffer also placed petitioner at the crime scene of another separate criminal case (attempted armed robbery and attempted murder charges for which he previously denied guilt), because this legal representation constituted a breach of client confidentiality.

The case at bar consisted of two criminal events that occurred on March 20, 2017. One event involved an attempted robbery of Eric Jamison, who was an alleged drug dealer, during a drug transaction wherein gunshots were fired at him during that incident. The second event, which occurred later on March 20, 2017, involved the fatal shooting of Scott Brooks at his (Brooks') home.

Petitioner was arrested on March 29, 2017, in connection with the drug dealer incident after Jamison identified petitioner as the perpetrator during a photographic line-up presented to him by police. Jamison claimed that petitioner was the male in the photographic line-up who wanted to buy crack from him on that date, but instead approached in an attempt to rob him and fired gunshots at him in the process. Petitioner denied any involvement in the Jamison incident. App. 5, l.16 - p. 12, l.17. Although the police had evidence in the Jamison case, there was no evidence in existence or information that would solve the Brooks murder case.

On August 9, 2017, police met with petitioner who submitted information in the form of a proffer upon the advice of his counsels. Note that before the proffer, petitioner had been charged only on the offenses of attempted armed robbery and attempted murder in connection with the Jamison incident. At the time of the proffer, petitioner had not been charged with the

Brooks murder and was not even considered a suspect in the Brooks murder. Note further that petitioner denied involvement in the Jamison incident despite Jamison's identification of him as the one who committed the attempted armed robbery and attempted murder.

In the proffer, petitioner informed the police that on March 20, 2017, he and Aaron Beach drove to Jamison's residence to purchase crack cocaine per Scott Brooks' request. Petitioner stated that upon their arrival there, Beach made a decision to rob Jamison. Petitioner explained that Beach got out of the truck while armed with a gun and moved toward Jamison, who realized that a robbery was happening and fled. Petitioner added that Beach fired gunshots at Jamison at that time. Petitioner added that later on that same date, they drove back to Scott Brooks' residence whereinafter Beach went inside and fatally shot Brooks. App. 17, l. 1 – p. 25, l. 12.

With this proffer, petitioner placed himself at the Jamison crime scene, even though he previously denied being guilty of the crimes associated with the Jamison case; **and additionally** this proffer placed petitioner at the Brooks murder crime scene when he was not previously considered as a suspect therein prior to the proffer. After the proffer, police arrested Beach and charged Beach with the Brooks murder, but ultimately Beach gave a statement to police that it was petitioner who shot Brooks, and that it was petitioner who fired his weapon at Jamison and attempted to rob Jamison. After Beach gave his statement to police, petitioner was charged with the murder of Scott Brooks. Petitioner had been charged already with the attempted robbery and attempted murder of Jamison despite that fact that he denied any involvement in those crimes.

During the PCR hearing held in the case, petitioner testified that his attorneys advised him to help police solve the Brooks murder case by giving law enforcement a proffer wherein he would admit that he saw Beach shoot Brooks dead at Brooks' residence. Petitioner explained that he gave the proffer because the attorneys advised that the state would not use the proffer to

charge him with the Brooks murder, which didn't happen because after Beach informed police that he (petitioner) shot Brooks, then he (petitioner) was charged with the Brooks murder. Then, after the proffer plan went awry, petitioner explained that his attorneys stated that the hand of one was the hand of all, which led him to plead guilty to the state's charges against him in the end despite his belief that he never should have plead guilty in either of the cases. App. 143, l. 24 – p. 155, l. 23.

Trial counsels testified at the PCR hearing and claimed that they were trying to avoid a murder conviction against petitioner in the Brooks case, and that as a result they tried “to get ahead of the game” and “cooperate” because it looked as though a murder indictment would come out against petitioner in the Brooks case, and that they wanted petitioner to be in a “much better position” regarding all of this. The attorneys stated that they never advised petitioner that he would not be charged in the Brooks murder case, but rather that the proffer would not be used against him in the Brooks case. App. 164, l.1 – p. 189, l. 21.

At the close of the PCR hearing, petitioner's PCR counsel made the following argument:

PCR Counsel: ...[T]hey were not even looking at him (petitioner) for the murder of [Brooks]...when the proffer was made, it did two things...it placed him at the scene of the attempted armed robbery...[which] allowed there to be some credibility and credence to the fact that he was there...[and] it place[d] him at the scene of a murder...I don't think, that given those circumstances, that that was a good decision. I think it was ineffective to make that decision to give that proffer. App. 190, l. 14 – p. 191, l. 5.

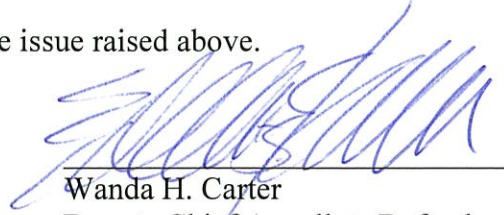
Confidentiality of information is found under Rule 1.6 of the Code of Professional Lawyer Conduct. A breach of confidentiality is only allowed in order to prevent the client from committing a crime, or fraud, or in cases where a defendant has physical criminal evidence of a crime. Morrell v. State 575 P.2d 1200 (Alaska 1978). However, the duty of confidentiality precludes the disclosure of information relating to the representation of a client. Rule 1.6(c).

Counsel has a duty not to disclose information that in effect would be adverse to the client. People v. Belge, 372 N.Y. S.2d 798 (1975). Furthermore, a lawyer has a duty to his client rather than to the prosecution. Burdett v. Miller, 957 F-2d 1375 (1993). In Burdett, the defendant had no warning that evidence admissible as relevant to a conspiracy charge would be used to establish a subsequent RICO charge at a later date. In other words, a lawyer has a duty not to take a position adverse to the client. Owen v. Pringle, 621 S.2d 668 (1993).

Here, counsels' suggestion that petitioner submit a proffer that was wholly incriminating and detrimental to petitioner's defense of crimes that he was charged with and a crime that he had not been charged with constituted ineffective assistance of counsels to the extent that the proffer placed petitioner at the scene of the crime for both the Jamison case and the Brooks case, which in turn served only to implicate petitioner as guilty as charged in both cases and to establish proof of guilt on both cases for the prosecution. Counsels revealed where the bodies were buried so to speak. Note that petitioner had a convincing argument that Jamison's identification of petitioner as the perpetrator was faulty and unreliable, which meant that the Jamison case against petitioner was weak. Counsels' error with respect to the delivery of petitioner's proffer to police was far below the level of competence demanded of criminal attorneys, and the prejudice was obvious because this gave police a road map to make its case against petitioner; and but for the proffer a reasonable probability exists that the outcome in both of the cases in connection to petitioner would have been different. Counsel's unreasonable advice to implicate himself in both cases constituted legal ineffectiveness as it solved that state's cases to petitioner's detriment. Counsel's deficient representation in this case violated the Sixth Amendment (see also Hill v. Lockhart, 474 U.S.52 (1985)).

CONCLUSION

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



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of August, 2023.