

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 18 2023

CERTIORARI TO HORRY COUNTY

S.C. SUPREME COURT

Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2020-CP-26-00172

McKinley Lee Daniels, #310775,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2023-00087

JOHNSON PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. DID THE PCR COURT ERR IN FINDING COUNSEL EFFECTIVE WHEN COUNSEL FAILED TO OBJECT TO THE ILLEGAL SENTENCE FOR MURDER?

STATEMENT OF THE CASE

During the April 2015, term the Horry County Grand Jury indicted the Petitioner for two counts of Armed Robbery (2015-GS-26-01772, 01748 & 1756), two counts of Murder (2015-GS-26-01754 & 1770), Attempted Murder (2015-GS-26-1755), and two counts of Possession of a Weapon During the Commission of a Violent Crime (2023-GS-26-01749 & 01771). Petitioner was indicted again during the June 2015, term of the Horry County Grand Jury for an additional count of Possession of a Weapon During the Commission of a Violent Crime (2023-GS-26-01913). Finally during the April 2018, term of the Horry County Grand Jury the Petitioner was indicted for two counts of Criminal Conspiracy (2018-GS-26-02912 & 02916). (App. pp. 75-114.) Petitioner was represented by Deputy Public Defender James C. Galmore, III, and Assistant Public Defender William (Bill) S. McGuire. (App. p. 1.)

On January 22, 2019, Petitioner appeared before the Honorable Robert E. Hood and pleaded guilty to a negotiated forty-five (45) year sentence for Murder (2015-GS-26-01754) and a negotiated thirty (30) year sentence for Armed Robbery (2015-GS-26-01772). The sentences were ordered to run concurrently. The remaining charges were dismissed in exchange for this plea. Petitioner did not appeal his conviction and sentence. (App. pp. 1-28.)

On January 13, 2020, Petitioner timely filed his post-conviction relief application. (App. pp. 29-36.) Respondent filed its Return on or about August 25, 2020, requesting an evidentiary hearing. (App. pp. 37-44.) The post-conviction relief

hearing was held on September 6, 2022, before the Honorable Kristi F. Curtis at the Horry County Courthouse. Petitioner was represented by James K. Falk, Esquire. Assistant Attorney General Chelsey F. Marto represented the State. (App. p. 48-64.) Judge Curtis denied the Petitioner's application by written order filed on December 15, 2022. (App. pp. 65-74.) This petition follows.

STANDARD OF REVIEW

The reviewing court defers to the PCR court's factual findings and will uphold them if supported by any evidence in the record. Smalls v. State, 422 S.C. 174, 179–181, 810 S.E.2d 836, 839 (2018). Furthermore, the reviewing court affords great deference to a PCR court's credibility findings. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012). Questions of law are reviewed *de novo*, and this court will reverse the PCR court if its decision is controlled by an error of law. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

STATEMENT OF THE FACTS

On January 2, 2015, the Petitioner and a co-defendant drove out to a convenience store in the Red Bluff area of Horry County. (App. p.21, lines 10-14.) Petitioner and the co-defendant then entered the store wearing face masks and nondescript clothing and robbed the convenience store clerk, taking the cash drawer with them. (App. p. 21, lines 17-21.) On the way out of the store both the Petitioner and the co-defendant were seen on video firing multiple rounds, killing the store clerk. Both of them fled the scene. (App. p. 21, lines 21-24.)

A second incident occurred in Conway on January 25, 2015, when Petitioner and co-defendants entered another convenience store. Petitioner was not armed during this incident. (App. p. 22, lines 1-10.) However, after the convenience store clerk complied with their commands and turned over the cash drawer, one of the co-defendants fired shots and killed the clerk. (App. p. 22, lines 11-14.)

ARGUMENT

The PCR court erred in finding trial counsel was effective when counsel failed to object regarding the illegal sentence for murder.

When reviewing a claim for ineffective assistance of counsel, the "court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (*quoting* Strickland v. Washington, 466 U.S. 668, 690 (1984)). To rebut this presumption and succeed on an ineffective assistance claim, a PCR applicant must show (1) trial counsel's performance was deficient, and (2) trial counsel's deficient performance prejudiced the outcome of the trial. Strickland, 466 U.S. at 687.

"To prove trial counsel's performance was deficient, a [PCR] applicant must show '[trial] counsel's representation fell below an objective standard of reasonableness.'" Smalls, 422 S.C. at 181, 810 S.E.2d at 840 (*quoting* Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005)).

In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. Boykin v. Alabama, 395 U.S. 238, 241, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000).

South Carolina Code §16-3-20(A) is the statute that sets out the sentencing for the crime of murder. In the past, this statute stated the punishment for murder

is “by death, by imprisonment for life, **or** by a mandatory minimum term of imprisonment for thirty years.” Emphasis added. *See* SC Code §16-3-20, effective from June 18, 2007 to June 1, 2010. Petitioner asserts that his current sentence is illegal because he can only be sentenced to life or thirty years. (The threat of death penalty was removed after a hearing pursuant to Atkins v. Virginia, 536 U.S. 304, (2002), which states that individuals with intellectual disabilities cannot be executed.) Petitioner’s counsel was ineffective when he failed to advise the Petitioner that his sentence could only be the death penalty, life, or thirty years. The issues regarding the sentencing discrepancies for murder was not addressed at the Petitioner’s guilty plea.

CONCLUSION

For the foregoing reasons, Petitioner submits this Court should grant the Petition for Writ of Certiorari and reverse the convictions and sentence and the case remanded for a new trial.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

September 17, 2023

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
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Certiorari to Horry County
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PETITION TO BE RELIEVED AS COUNSEL

Counsel for McKinley Lee Daniels states:

1. She is a member of the South Carolina Bar and was appointed to represent the Petitioner.

2. She has reviewed the records and transcripts of Petitioner's post-conviction relief hearing which was held on September 6, 2022. In her opinion seeking certiorari from the Order of Dismissal is without merit.

3. She has, pursuant to Johnson v. State, 294 SC 310, 364 SE2d 201 (1998), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Mr. Miller.

Respectfully submitted,



ASHLEY A. MCMAHAN
ATTORNEY FOR PETITIONER

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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 a Writ of Certiorari complies with SCACR 11(b) 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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