

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

ELIZABETH ANN TILLMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000129

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in isolating one defense, which was an insanity defense, as the only defense in the case rather than seeking the opinions of medical experts to assist in the preparation of a guilty but mentally ill defense because the facts here supported such a defense, particularly where petitioner explained that she “snapped” before the crimes were committed.

STATEMENT

Petitioner Elizabeth Ann Tillman pled guilty to assault and battery with intent to kill, possession of a firearm during the commission of a violent crime, and second degree burglary (violent) during the October, 2007 term of the Lexington County General Sessions Court before Judge Kenneth G. Goode. Petitioner was sentenced to an aggregate term of thirty years imprisonment. Elizabeth C. Fullwood represented petitioner at the plea proceeding. App. 1-3.

On November 23, 2010, petitioner filed a PCR application with the Lexington County Office of the Clerk of Court. App. 35-43. The respondent filed a return dated February 28, 2011, requesting that an evidentiary hearing be held in response to petitioner's PCR action.

A PCR hearing was convened on August 14, 2012, at the Lexington County Courthouse before Judge W. Jeffery Young. App. 58-76. Petitioner was present at the hearing and represented by Charles T. Brooks. On January 4, 2013, Judge Young issued an order of dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 78-86.

Petitioner appealed Judge Young's order of dismissal. This petition follows.

ARGUMENT

Trial counsel erred in isolating one defense, which was an insanity defense, as the only defense in the case rather than seeking the opinions of medical experts to assist in the preparation of a guilty but mentally ill defense because the facts here supported such a defense, particularly where petitioner explained that she “snapped” before the crimes were committed.

The solicitor apprised the trial judge of the facts of the case at hand during the plea proceeding. Apparently, around 5:00 am on April 7, 2007, petitioner pried open the front door lock to Crystal Walker’s home, entered inside, went to Walker’s bedroom door, and fired gunshots through the bedroom door. Walker and her four-year old son, both of whom were inside the bedroom, managed to escape from a bedroom window. Thereafter, petitioner exited the home and followed Walker and her son down the street and fired gunshots at them during the chase. Walker received a gunshot wound to her leg, but her son was unharmed. App. 15, l. 9-p.17, l. 10. Additionally, the solicitor summarized petitioner’s journal contents in the matter as follows:

She told the officers that she kept a journal of how she was going to kill this lady and that she went over there with the full intention – She explained that she went over to the house about 3:30 that morning and waited outside the window until her mother left and that’s when she went inside. She said that she was going to kill Crystal. And she said she wasn’t going to kill her son but she was going to wrap his head in duct tape and then she was going to wait until Crystal’s mother came home and then she was going to kill the mother and anybody else and if the police came, she was going to shoot the police too.

App. 32, lines 5-16.

Trial counsel spoke extensively on petitioner’s behalf at the plea proceeding. Trial counsel explained that petitioner and Walker were childhood friends, but that after Walker moved in another direction later on, petitioner continued to try to be Walker’s best friend. Petitioner was persistent and even left notes to Walker’s boyfriend. Ultimately, Walker’s mother saw fit to talk to petitioner

about her pursuit of Walker. App. 24, l. 8-p. 25, l. 1. At that point, petitioner's mother knew petitioner had a problem, especially after petitioner became depressed by Walker's rejection of her. App. 25, l. 3-19. Counsel advised the court that petitioner had been bullied and ridiculed in kindergarten, elementary school, and middle school. App.23, l. 11-p. 24, l.4. Counsel added the following at the plea proceeding:

Trial Counsel: And I would tell the court that shortly before this happened, anybody would have thought that [petitioner]was the perfect child. Certainly her parents thought that. She made good grades. She was attending college. She was in the nursing program at Midlands Tech... She had never used ant type of illegal drugs ever in her life. She had never taken a drink of alcohol. She didn't smoke cigarettes. She did not have relations with men. She had no problems with the law.... What her family didn't realize because she's so quiet and was always doing what she was supposed to do, there was a deep well of hurt in Elizabeth.

App. 22, l. 23-p. 23, l. 10.

Nonetheless, the state's mental health doctor and Dr. Thomas Martin (independent doctor) found that petitioner did not evidence symptoms of mental illness. App. 3, l. 25- p. 4, l. 21. Note further that the trial judge ordered mental health counseling for petitioner, which implied that despite the two doctors' findings, petitioner clearly suffered from some form of mental illness. App. 33, lines 2-9.

During the PCR hearing held in the case, petitioner testified that "she snapped" and wanted revenge and an apology from Walker because of the things said against her brother (who died before the incident) and for the pain she suffered from Walker's teasing while growing up. App. 63, l. 15-16; App. 64. l. 1-14; App. 65, l. 10-11.

Trial counsel testified at the PCR hearing and explained that based on petitioner's troubled history, she arranged for an independent psychiatric examination in addition to the state hospital examination, but that both doctors found no mental illness on petitioner's behalf. App. 70, l. 3-20;

App. 74, lines 11-12. Trial counsel admitted, however, that she only entertained an insanity defense and in effect did not attempt to develop a guilty but mentally ill defense in the case. App. 70, l. 21-p.72, l. 15.

One is insane if at the time of the crime, he or she, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong, or to recognize the crime as morally or legally wrong. See S.C. Ann. Code § 17-24-10 (1998). State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990). One is guilty but mentally ill when he or she had the capacity to distinguish right from wrong, but because of mental disease or defect he lack sufficient capacity to conform his conduct to the requirements of the law. S.C. Code Ann. § 17-24-20. See also State v. Hartfield, supra. Petitioner's case, at the very least, fell in the guilty but mentally ill category because she "snapped" under the weight of holding years of pain inside sans any help and was unable to conform her conduct within legal boundaries. Although insanity might not have been provable in the case; nevertheless, counsel erred in failing to pursue a guilty but mentally ill defense and in failing to hire an additional independent medical doctors to examine petitioner in light of a guilty but mentally ill defense for petitioner.

As a rule, counsel has a duty to conduct adequate and appropriate investigations in a case. Strickland v. Washington, 466 U.S. 668 (1984). Also, with respect to cases where mental issues abound, counsel has a duty to investigate, prepare, and present evidence of mental illness on behalf of the defense. See Wiggins v. Smith, 539 U.S. 510 (2003), where trial counsel was found ineffective in failing to expand the investigation into the defendant's background with enough sufficiency 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. Compare Rompilla v. Beard, 545 U.S. 374 (2005), where the Court held that trial counsel erred in failing to investigate

into the defendant's prior conviction file in order to uncover his mental health issues for presentation at sentencing.

Our state courts have ruled similarly in cases where counsel were found ineffective in failing to develop mental illness defenses. For example in Von Dohlen v. State, 360 S.C. 598, 601 S.E.2d 738 (2005), the Court found that counsel was ineffective in failing to provide the psychiatrist who testified at trial with all the defendant's extensive medical records and information so that the defendant's true mental diagnosis of major episodes of depression with severe symptoms of anxiety and psychosis could have been presented during the penalty phase. Moreover, in Nance v. Frederick, 358 S.C. 480, 596 S.E.2d 62 (2005), the Court reversed because trial counsel pursued a guilty but mentally ill verdict, but omitted his expert's qualifications and failed to provide the jury with any insight into petitioner's mental illness. Furthermore, in Nance v Ozmint, 367 S.C. 547, 557 S.E.2d 883 (2006), the Court found that trial counsel erred in failing to investigate into and present evidence of the defendant's mitigating social history documents outlining his troubled childhood and mental illness. Additionally, in Council v. State, 380 S.C.159, 670 S.E.2d 356 (2009), trial counsel was found ineffective in failing to investigate into and present mitigating evidence of petitioner's mental illness at the time of the crime from his background records, and medical records, hospital records, and information from his childhood. Finally, in Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009), the Court held that trial counsel's error in failing to present evidence of the defendant's mental illness was deficient and that such deficient performance was prejudicial to the case.

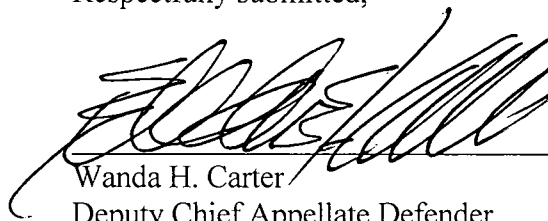
In the case at bar, counsel violated petitioner's Sixth Amendment right to effective assistance of counsel with respect to his guilty plea case by failing to develop a guilty but mentally ill defense in the case; and petitioner was prejudiced counsel's deficient legal representation

because but for the error, the outcome of petitioner's case might have been different. See Hill v. Lockhart, 484 U.S. 50 (1985).

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of July, 2013.

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ELIZABETH ANN TILLMAN,

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Appellate Case No. 2011-192933

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 John Walt Whitmire, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Elizabeth Ann Tillman, # 323392, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 22nd day of July, 2013.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of July, 2013.


(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.