STATE OF SOUTH CAROLINA

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Jun 28 2024
S.C. SUPREME COURT

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Deadra L. Jefferson, Circuit Court Judge

JACOBY FIELDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001229

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether Plea Counsel's assistance was ineffective for advising Petitioner that duress was not a viable defense where Petitioner was charged with murder and multiple counts of burglary, where Petitioner indicated he was coerced into committing the crimes by his codefendant's threats, and where Petitioner stated he would have gone to trial and risked the death penalty had he known duress was a viable defense?

STATEMENT

On October 9, 2008, Petitioner Jacoby Fields was indicted by the Colleton County grand jury for one count of murder, four counts of first-degree burglary, and one count of second-degree burglary (violent). The charges arose from Petitioner's participation in events occurring on June 18th, August 5, and August 29, 2008, with his co-defendant, Travis Harris (Harris). App. 22, ln. 24—App. 23, ln. 4; App. 209; App. 252-53; App. 255-56; App. 258-59; App. 261-62; App. 264-65; App. 267-68.

Specifically, the State alleged Harris and Petitioner burglarized two homes the night of June 18th into June 19th, 2008, on Churchill Road in Walterboro, South Carolina, during which time a shotgun was taken from one of the residences. App. 23, ll. 5-20. On the night of August 5th through the morning of the 6th, Harris and Petitioner entered two more locations: (1) the Sheriff's sub-station; and (2) a residence on Lodge Highway in Smoaks, South Carolina. During the burglary on Lodge Highway, Deputy Dennis Compton (Dep. Compton) arrived at the scene. Tragically, he was shot and killed inside the home. Both Harris and Petitioner left before more authorities arrived. App. 23, ln. 15—App. 24, ln. 19. Finally, Harris and Petitioner entered a fourth home on Johnnie Circle in Walterboro, South Carolina, the night of August 29, 2008, wherein a .22 caliber rifle was purportedly taken. App. 24, ll. 20-23.

Petitioner was later arrested and Mirandized by law enforcement on September 5, 2008. A search warrant was later executed on the home of Petitioner's girlfriend. Under questioning by police, Petitioner admitted participating in the burglaries, but indicated Harris was the gunman who killed Dep. Compton. App. 25, ll. 9-19; App. 72, ln. 2—App. 3, ln. 8. Later, Harris was apprehended as well. While he also admitted to the burglaries, he "pointed the finger at [Petitioner]" as the shooter. However, "[t]he gun was found at Harris' home." App. 25, ll. 20-24.

On December 21, 2011, both Petitioner's case and Harris' case proceeded to a guilty plea hearing before the Honorable Carmen T. Mullen. Boyd Young (Plea Counsel 1) and Drew Carroll (Plea Counsel 2) represented Petitioner, while Duffie Stone represented the State.[1] App. 1; App. 3, ll. 3-8. Pursuant to the negotiated agreement, both Harris and Petitioner pled guilty to the charged offenses; in exchange, the State waived its notice of intent to seek the death penalty, and a sentence of life without possibility of parole would be imposed. App. 3, ll. 21-25; App. 4, ll. 14-19; App. 5, ln. 23—App. 6, ln. 5; App. 121, ll. 2-7. The Plea Court accepted Petitioner's guilty pleas, and pursuant to the negotiated agreement, sentenced him as follows: life without parole for murder, and for each of the four counts of first-degree burglary; and fifteen (15) years for second-degree burglary. App. 27, ll. 12-16; App. 37, ln. 1—App. 38, ln. 4. No direct appeal was filed. App. 42; App. 48; App. 212.

On August 22, 2012, Petitioner filed his Post-Conviction Relief (PCR) Application, alleging *inter alia* ineffective assistance of counsel. App. 41; App. 43. The State filed its Return on February 21, 2013, and a hearing was held on August 30, 2013, before the Honorable Deadra L. Jefferson.[2] App. 48; App. 208. Petitioner was represented by Jeffrey M. Butler, and the State was represented by Ashleigh R. Wilson. App. 208.

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[1] Suppression hearings pursuant to Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964) and Delaware v. Franks, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), were previously held in Petitioner's case. App. 25, ll. 16-17; App. 88, ll. 3—App. 92, ln. 1; App. 152, ln. 16—App. 153, ln. 17; App. 168, ll. 11-25. After the suppression hearings were ruled upon, Petitioner had only 24 hours to choose whether to plead guilty, or go to trial and face the death penalty if he lost. App. 90, ln. 16—App. 91, ln. 9; App. 179, ln. 14—180, ln. 19.

[2] Petitioner's original PCR Hearing transcript was lost prior to his appeal becoming perfected. App. 244—App. 249. As a result, the record was reconstructed in a series of hearings via WebEx before Judge Jefferson on November 9, 2023, February 6, 2024, and February 26, 2024. App. 54; App. 132; App. 250—App. 251.

Several witnesses testified at the hearing, including Petitioner and both Plea Counsels. Petitioner acknowledged he spoke with Plea Counsel regarding defenses in his case, including the defense of duress or coercion as it related to his charges. App. 74, ll. 10-15. Specifically, Petitioner indicated he was counseled that duress or coercion was not a defense to murder, but that it was possibly a defense to the burglaries. However, they "didn't come to an agreement . . . as it related to the underlying felony attached to . . . the murder." App. 74, ln. 17—App. 75, ln. 9.

As to facts potentially supporting his defense of coercion, Petitioner further testified that Harris threatened to kill not only Petitioner, but also Petitioner's family and his girlfriend. App. 75, ll. 10-20. Further, Petitioner indicated Haris did so armed with a gun; he wanted Petitioner to drive him around and participate in the crimes with him, including burglarizing homes and stealing items from them. App. 75, ln. 21—App. 76, ln. 23. One of the burglaries into which Harris coerced Petitioner was the incident involving Dep. Compton. When Dep. Compton arrived at the house, Harris shot him. App. 76, ln. 18—App. 77, ln. 6. Even after the incident, Petitioner recalled Harris threatening him over the telephone, threats which Petitioner believed Harris would carry-out if he spoke with police. App. 77, ln. 16—App. 78, ln. 15. Finally, Petitioner indicated he felt pressured to take the plea offer, and that he would have gone to trial and risked the death penalty instead of pleading guilty. App. 98, ln. 3-19.

Plea Counsel 2 also testified. He confirmed Petitioner indicated that he was coerced by Harris to commit the burglary on August 6th, which was the same incident whereupon Dep. Compton was shot. App. 112, ll. 15-24. He further confirmed what the offer was, and that Petitioner had only 24 hours to make his decision. App. 121, ll. 2—App. 122, ln. 1.

Finally, Plea Counsel 1 testified as well. He indicated he discussed duress as a defense with Petitioner, and that Petitioner sometimes indicated to him that he was coerced by Harris.

However, Plea Counsel 1 did not believe that it was not a viable defense. App. 150, ll. 10-24; App. 160, ll. 10-24. In fact, he did not believe any viable defenses existed in the case. App. 157, ll. 5-7. Plea Counsel 1 also confirmed that the State was not proceeding on a theory of accomplice liability. App. 151, ll. 4-5. After the guilty plea offer was finally made in the case, Plea Counsel 1 agreed that Petitioner initially did not want to accept it. However, Petitioner changed his mind only after meeting with several additional attorneys over a 24-hour period. App. 179, ln. 14—App. 181, ln. 20.

On January 21, 2014, the PCR Court filed its Order of Dismissal denying Petitioner's PCR Application. App. 208. The Court found that Plea Counsel "was not ineffective for advising [Petitioner] that duress was not a viable defense, nor a possible defense in his case." App. 218. The PCR Court further found Petitioner's testimony "that he would have proceeded to trial had he known duress was an available defense" to be not credible. App. 218. The Court supported this ruling as follows:

> Considering the [Petitioner] was facing death if he proceeded to trial and duress was not a defense to his most serious charge of Murder, the lack of a duress defense likely was persuasive on the [Petitioner's] decision to plead guilty and the voluntariness of his guilty plea.

App. 218. Accordingly, the PCR Court concluded that "Counsel were not deficient in any manner, nor was [Petitioner] prejudiced by Counsel's representation." App. 220.

Petitioner filed a Notice of Appeal on February 5, 2014. However, the matter did not reach the appellate courts. App. 237. Petitioner filed a subsequent PCR Application on November 30, 2016, and the State filed its Return on August 3, 2016. A Consent Order Granting Appeal Pursuant to Austin v. State[3] was filed on August 27, 2020, granting belated appellate

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[3] 305 S.C. 453, 246 S.E.2d 395 (1991).

review of Petitioner's initial PCR case, and dismissing the remainder of the second PCR Application. App. 221; App. 228; App. 236.

This Petition for Writ of Certiorari follows.

ARGUMENT

Plea Counsel's assistance was ineffective for advising Petitioner that duress was not a viable defense where Petitioner was charged with murder and multiple counts of burglary, where Petitioner indicated he was coerced into committing the crimes by his codefendant's threats, and where Petitioner stated he would have gone to trial and risked the death penalty had he known duress was a viable defense.

Counsel provided ineffective assistance by failing to fully explain to Petitioner that duress or coercion could indeed be a defense to his burglary charges, and in turn potentially help attack the element of malice against the murder charge. Had Petitioner been properly advised, "he 'never ever' would have given up his constitutional rights" and would not have pled guilty; rather, he "would have gone to trial and risked the death penalty." App. 210. Accordingly, Petitioner's guilty plea was not knowingly and voluntarily made as it was a product of Counsel's advice, and there is a reasonable probability that he would have insisted on going to trial rather than plead guilty.

The difference "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). The longstanding test for determining the validity of a 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, 56, 106 S.Ct. 366, 369 (1985) (internal quotations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) to claims of the same against plea counsel). First, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Id. On the other hand, the prejudice requirement focuses on whether "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Id. 474 U.S. at 59, 106 S.Ct. at 370.

"An attorney undoubtedly has a duty to consult with the client regarding 'important decisions,' including questions of overarching defense strategy." Florida v. Nixon, 543 U.S. 175, 187, 125 S.Ct. 551, 560 (2004). Moreover, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) (quoting Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir. 1986)) (internal quotation marks omitted). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Lounds v. State, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (quoting Ard, 372 at 331-32, 642 S.E.2d at 597); see also Sneed v. Smith, 670 F.2d 1348, 1353 (4th Cir. 1982) ("To meet this standard, an attorney must at a minimum, 'conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.'") (quoting Coles v. Peyton, 389 F.2d 224, 226 (4th Cir. 1968)).

In the present case, Counsel's performance was deficient for failing to adequately convey to Petitioner that duress and coercion were themselves complete defenses to the burglary offenses charged. The defense of duress or coercion is defined as follows:

> *To excuse the criminal act*, coercion must be present, and of such a nature as to induce a reasonable apprehension of death or serious bodily harm if the act is not done. There must be no reasonable way, other than committing the crime, to escape the threat of harm.

Frasier v. State, 306 S.C. 158, 162, 410 S.E.2d 572, 574 (1991) (emphasis added) (citing State v. Robinson, 294 S.C. 120, 363 S.E.2d 104 (1987)). "Coercion is not defense if there is any reasonable way, other than committing the crime, to escape the threat of harm." Robinson, 294 S.C.

at 122, 363 S.E.2d at 104. Further, the fear of injury must also be reasonable. Id. Therefore, when these elements are met, the defense of duress or coercion is complete as an excuse to the offense.

Here, the facts indicated Petitioner was coerced by his codefendant Harris into committing the charged burglaries in the case. As Petitioner testified, Harris—who was armed with a gun—threatened not only Petitioner's life, but also those of his girlfriend and family members. App. 75, ln. 21—App. 76, ln. 23. Under these circumstances, Petitioner's fear of either himself or his loved ones being killed by Harris was reasonable. Further, Harris was in the same area as Petitioner during the charged incidents. Had Petitioner tried to run away, it is reasonable to believe that he would have been shot. Additionally, Harris continued to threaten Petitioner after the incidents. Specifically, Petitioner recalled Harris threatening him over the telephone, threats which Petitioner believed Harris would carry out if he spoke with police. App. 77, ln. 16—App. 78, ln. 15. Thus, had Petitioner gone to trial rather than pled guilty based upon Plea Counsel's advice, the requirements for the defense of duress/coercion would have been met as to the burglaries, and the matter would have been one for the jury to decide.

Furthermore, even though duress/coercion are not permitted as defenses to the charge of murder, the defense could still be brought against the underlying offense of first-degree burglary. For instance, Petitioner could have raised the defense against the first-degree burglary charge arising from the incident occurring on the night of August 6th. If successfully asserted, then the first-degree burglary charge would not have been a viable basis to imply malice for the murder charge, which itself arose from the tragic shooting of Dep. Compton during the burglary. In other words, it would have nullified the felony murder rule inference of malice. See, e.g., State v. Norris, 285 S.C. 86, 92, 328 S.E.2d 339, 343-44 (1985) ("The law says if one intentionally kills another during the

commission of a felony, the implication of malice may arise.") (quoting State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983) (suggested jury instruction regarding implied malice)).

Additionally, according to the testimony of Plea Counsel 1, the State was not prosecuting the murder charge against Petitioner on the theory of "hand of one" accomplice liability. Therefore, the remaining theory to meet the material element of malice would be for the State to prove Petitioner was the gunman.[4] Yet Petitioner denied being the person who shot Dep. Compton, and during questioning by police admitted it was Harris who was the shooter.[5] App. 25, ll. 9-19. This fact was further supported by where the shotgun in question was ultimately located: as the Solicitor himself told the Plea Court, "[t]he gun was found at Harris' home." App. 25, ll. 20-24.

Therefore, contrary to Plea Counsel's advice and the PCR Court's ruling, duress/coercion was a potential defense to the charged offenses in Petitioner's case—even as a means to challenge the inference of malice against the murder charge—regardless of whether the State served notice to seek the death penalty. Accordingly, Plea Counsel's advice to Petitioner was deficient. Hill, 474 U.S. at 56, 106 S.Ct. at 369 (applying the two-part test for claims of ineffective assistance of counsel in Strickland, 466 U.S. 668, 104 S.Ct. 2052 to claims of the same against plea counsel).

Moreover, Petitioner was prejudiced by Counsel's constitutionally deficient performance. Petitioner affirmatively indicated at the PCR hearing that he felt pressured to take the plea offer, and that he would rather have gone to trial and risked the death penalty instead of pleading guilty. App. 98, ln. 3-19. Had Petitioner been properly advised, "he 'never ever' would have

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[4] The statutory definition of murder in South Carolina is "the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (Westlaw, current through 2024 Act No. 210).

[5] Plea Counsel 1 even provided the Plea Court with the results of a polygraph exam taken by Petitioner "regarding whether or not he pulled the trigger." App. 29, ln. 23—App. 30, ln. 5.

given up his constitutional rights" and would not have pled guilty; rather, he "would have gone to trial and risked the death penalty." App. 210. See Davie v. State, 381 S.C. 601, 613, 675 S.E.2d 416, 422 (2009) ("[I]t is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice.") (citing Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000)). Additionally, as indicated above, sufficient evidence of the defense of duress/coercion would have been introduced at a trial through Petitioner's testimony. Thus, the jury would have most likely been instructed on the defense. Accordingly, Petitioner was prejudiced. Hill, 474 U.S. at 59, 106 S.Ct. at 370.

CONCLUSION

For the foregoing reasons, Petitioner Jacoby Fields respectfully requests that the Court grant his Petition for Writ of Certiorari, reverse the PCR Court's Order of Dismissal, reverse of his convictions and sentences, and grant him a trial.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of June, 2024.

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RESPONDENT

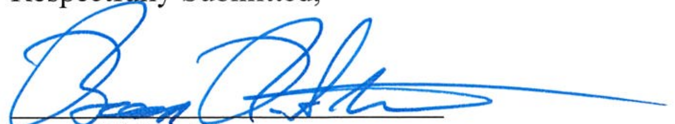
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jacoby Fields states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearings before Judge Deadra L. Jefferson, which were held via WebEx on November 9, 2023, February 6, 2024, and February 26, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Jacoby Fields.

Respectfully Submitted,



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of June, 2024.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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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ATTORNEY FOR PETITIONER

This 28th day of June, 2024.