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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable George M. McFaddin, Circuit Court Judge

EDDIE LOUIS BASS, III,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000535

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred by ruling defense counsel did not coerce petitioner into pleading guilty by telling him he would receive a ten-year sentence if he pled guilty, and that a life sentence was probable if he was convicted following a jury trial since this was materially inaccurate sentencing exposure advice?

STATEMENT OF FACTS

Petitioner was indicted at the November 2018 term of the Lexington County grand jury for the offense of the murder of Malcom Cruze Jones. App. 359- 360. Petitioner had earlier been indicted by the Lexington County grand jury on various drug charges and one count of possession of a weapon during a violent crime, to wit: trafficking of heroin. App. 361- 366.

The state called petitioner's murder indictment case to trial on January 28, 2019, before the Honorable William P. Keesley. Michael Laubshire and Richard Dolce represented petitioner. Suzanne Mayes and Sutania Fuller were the assistant solicitors. App. 1.

A Blair[1] hearing was held prior to trial. Dr. Roseanna Tross, from the Department of Mental Health, conducted an interview with petitioner as part of her evaluation on December 18, 2018. App. 72, ll. 21-25. Dr. Tross opined petitioner was competent to stand trial and that he currently had no symptoms of mental impairment that would inhibit his ability to go forward. App. 74, l. 21- 76, l. 5.

On cross-examination, Dr. Tross admitted she did not receive certain childhood records of petitioner's from the State of Michigan. She understood from petitioner's mother that he had received disability benefits in the past but petitioner's mother was not able to articulate the particulars of his disability. App. 79, ll. 1-21. Judge Keesley then found petitioner was competent to stand trial. App. 80, l 10- 81, l. 1.

Defense counsel Laubshire then told the judge that the defense had filed a motion for immunity from prosecution under the Castle Doctrine and the Stand Your Ground law. Laubshire said the defense following through with immunity motion depended on the results of

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1 State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981)

other pre-trial rulings the judge was being called upon to make. The defense ultimately did not pursue an immunity hearing for whatever reason. App. 89, l. 17- 90, l. 15.

A Jackson v. Denno, 378 U.S. 368 (1964), hearing was also held. Sergeant Adam Creech and Detective Joseph Andaloro testified for the state during that hearing. App. 91, l. 1- 140, l. 11.

The judge said following the hearing that he was "really troubled by this one. Very troubled." App. 150, l. 17- 153, l. 14. The judge said that he would read the case law overnight and rule in the morning on the admissibility of appellant's statement given the conduct of the police. App. 153, ll. 15-17.

However, the following morning, January 29, 2019, it was announced that petitioner was pleading guilty to the crime of voluntary manslaughter. App. 160, ll. 2-11.

As to the factual predicate for the plea, the solicitor offered that petitioner became convinced the decedent had stolen twenty-seven-hundred dollars' worth of heroin, cocaine, and marijuana from him and petitioner went looking for the decedent on January 31, 2018. App, 163, ll. 16-25. The solicitor said that petitioner found the decedent and that they engaged in a fist fight. The solicitor claimed that petitioner hit the decedent with his pistol during the fight and then petitioner shot him. App. 166, ll. 1-18.

The solicitor said in exchange for petitioner's guilty plea, the state was dismissing the possession of a weapon during a violent crime charge and "a multitude of drug charges that arose from a November incident..." App. 167, l. 14 - 168, l. 7.

Defense counsel Laubshire confirmed that petitioner and the decedent were involved in the fist fight and that petitioner was getting beat up during that fight. Petitioner was calling out

for help from others nearby when he was being beaten. Help apparently never came, and "the end result is Mr. Bass shot and killed Mr. Jones. That fact does not change." App. 192, ll. 3-16.

Laubshire explained petitioner had fallen through the cracks of society, and that petitioner was unable to work for most of his life. He was "just in the streets kind of left to fend for himself." Petitioner was originally from Detroit: "He's had significant trouble throughout his life with alcohol and drugs, sometimes leading to hospitalization and [it is] also indicated in the medical reports and in talking to Mr. Bass that [he had] significant trouble with his occupational and interpersonal relationships." App. 193, ll. 8-18. Judge Keesley then sentenced petitioner to twenty-eight years' imprisonment for voluntary manslaughter. App. 198, ll. 6-16.

Petitioner filed an application for post-conviction relief on August 30, 2019. App. 200-208. The state filed a return and motion for a more definite statement dated February 20, 2020 in response. App. 209- 221. PCR counsel Ashley McMahan then filed an amended post-conviction relief application dated October 4, 2022. App. 222- 223.

An evidentiary hearing was convened on October 13, 2022, before the Honorable George McFaddin. Ashley McMahan represented petitioner and Samantha Weidauer was the assistant attorney general. App. 224.

Petitioner testified that defense counsel Laubshire "coerced me to take the plea deal." App. 235, ll. 18-20. Petitioner remembered they had picked a jury for trial and then had a hearing on his statement. App. 235, l. 18- 236, l. 14. Then court recessed for the day and the next morning, Laubshire came to the holding cell. App. 236, ll. 10-15.

He told petitioner: "I've got good news and I've got bad news." App. 236, ll. 10-15. Laubshire then informed petitioner he would likely receive a life sentence if he continued with the jury trial and was convicted. App. 236, ll. 20-24. Defense counsel then advised petitioner:

"If you take this plea deal, I can get you ten years, only if you tell the judge you was (sic) not promised anything." App. 236, l. 20- 237, l. 17; App. 237, l. 18- 238, l. 9. Petitioner testified at PCR that he pled guilty because "ten years sounds better than life." App. 238, ll. 20-24.

Defense counsel Laubshire then testified that "to the best of my recollection, there was no actual plea offers other than to plead straight up in this case. We weren't given any offers in the case until much later on. Real negotiations didn't begin until the first day of trial." App. 285, ll. 12-20.

Laubshire also said that after the first day of trial he was told petitioner could plead guilty to voluntary manslaughter with no cap on sentencing and that the state would dismiss all of the other drug and gun charges that were pending against petitioner at the time. Laubshire said this plea offer was conveyed after court recessed following pre-trial hearings. As will be seen infra, his co-counsel testified the plea offer did not come until the following morning and that petitioner had less than an hour to think about it, and to enter his plea. App. 287, l. 7 - 288, l. 12.

Laubshire testified that he never told petitioner he would get ten years or any number of years "other than he very well may get thirty years." App. 288, ll. 13-20. As to the facts of the case, Laubshire remembered that he learned that petitioner and decedent were involved in a fist fight. The decedent was winning the fight, and he was beating up petitioner. Petitioner pulled out a gun during the fight and he hit the decedent with the gun and then he shot him. Laubshire testified he was originally told the shooting was an accident, but he offered that this did not appear to him to be an accident to him. App. 308, l. 22- 309, l. 5.

As for self-defense, Laubshire admitted he filed a motion for immunity under the Castle Doctrine statute but he did not follow through with that motion for some unknown reason. App. 309, ll. 6-23.

Co-counsel Dolce testified that the plea offer in this case was not made until around 8:30 a.m. on the second day of trial. Petitioner pled guilty about an hour later. App. 328, l. 3- 329, l. 3.

ARGUMENT

The PCR court erred by ruling defense counsel did not coerce petitioner into pleading guilty by telling him he would receive a ten-year sentence if he pled guilty, and that a life sentence was probable if he was convicted following a jury trial since this was materially inaccurate sentencing exposure advice.

In Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991), our Supreme Court held that defense counsel was ineffective for misinforming Alexander about his sentencing exposure. In Alexander, the defendant pled guilty to trafficking in cocaine. He received a fifteen-year prison term.

In all, there were four indictments against Alexander, each containing two counts. The indictments were vague and appeared to involve overlapping greater and lesser charges. In actuality, Alexander faced two counts of trafficking in cocaine. His maximum sentencing exposure was seven to twenty-five years' imprisonment.

Alexander claimed that he only pled guilty because he was told if he was found guilty after a jury trial that he could be sentenced to life imprisonment. Our Supreme Court found that defense counsel's sentencing advice to Alexander was defective. Thus, Alexander met the first prong of Strickland v. Washington, 466 U.S. 668 (1984) and Hill v. Lockhart, 474 U.S. 52 (1985) regarding deficient performance.

As to the prejudice requirement, Alexander established but for trial counsel's misadvise as to sentencing, he would have pled not guilty. Therefore, trial counsel's improper sentencing advice induced Alexander's guilty plea, and that guilty plea had to be vacated. See Hinson v. State, 274 S.C. 456, 377 S.E.2d 338 (1989). (New trial granted where incorrect parole eligibility induced the guilty plea.)

Here, petitioner testified that defense counsel told him he likely faced a life sentence if he continued with his jury trial and was convicted of murder. While a life sentence was technically possible under the murder statute, S.C. Code Section 16-3-20 (A), the facts of this case as told to the judge by the solicitor indicated that petitioner and the decedent were involved in a fist fight. The decedent was getting the better of petitioner, and petitioner shot and killed the decedent after calling for help to no avail.

Further, defense counsel filed a motion for immunity, meaning counsel strongly believed that this was a self-defense case, and that petitioner may well be immune from prosecution. Even if petitioner was convicted of murder in this case, where the facts seemed to support a voluntary manslaughter conviction at worst, and where a self-defense claim loomed as a jury verdict matter, where absolute immunity had once been thought possible.

Further, petitioner testified that trial counsel told him he would get a ten-year sentence if he pled guilty, and when he weighed a claim of a ten year sentence versus a sentence of life without parole, it was not surprising that petitioner pled guilty. See Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000) (testimony showed Jackson would have gone to trial but for trial counsel's advice is sufficient to show he would have gone to trial but for the misadvise.).

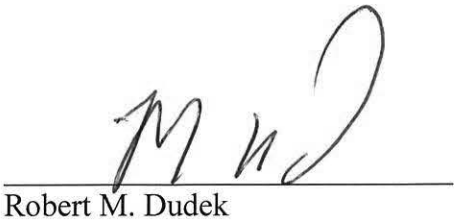
In Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000), our Supreme Court held that it would consider the entire record, including the guilty plea transcript and the evidence presented at the PCR hearing when determining legal issues relating to a guilty plea. In this case, the guilty plea record showed the state considered this incident to be a fist fight between petitioner and the decedent where petitioner was getting beat up by the decedent and the fight ended with petitioner shooting the decedent. The solicitor was correct that this was a very tragic incident – it also follows that it was not a cold-blooded murder.

Petitioner testified that defense counsel told him if he continued with this jury trial, he was likely to be sentenced to life imprisonment, which as explained above was highly unlikely, and it was bad sentencing advice. Conversely, petitioner was told if he pled guilty, he would receive a ten-year prison sentence, which was also inaccurate sentencing exposure advice.

In short, petitioner's guilty plea should be vacated given the guilty plea record and the PCR record, and his case remanded for a new trial. See Alexander v. State, supra.

CONCLUSION

By reason of the foregoing argument, petitioner's guilty should be vacated and this case remanded to the Lexington County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of September, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eddie Louis Bass states:

1. He is Chief 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 hearing before Judge George M. McFaddin, which was held on Oct. 13, 2022, 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 Eddie Louis Bass.

Respectfully Submitted,

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of September, 2024.

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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This 6th day of September, 2024.