

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Oct 15 2024

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Diane Schafer Goodstein, Circuit Court Judge

DE'ANDRE MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000598

JOHNSON PETITION FOR WRIT OF CERTIORARI

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Deputy Chief Attorney for Capital Appeals

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QUESTION

Did the PCR court err in denying relief because petitioner never saw the crucial piece of evidence proving his alibi and would not have pled guilty if he had?

STATEMENT

Petitioner was indicted in Charleston County for murder and on July 27, 2018, pled guilty to voluntary manslaughter before the Honorable R. Markley Dennis. App. 1. Judge Dennis sentenced petitioner to thirty years' imprisonment. App. 72-73. Petitioner did not appeal.

On September 11, 2019, petitioner filed a PCR application. App. 75. On November 3, 2022, a hearing was held before the Honorable Diane S. Goodstein. App. 89. Lauren T. Mims and Samantha J. Weidauer represented the State and James K. Falk represented petitioner. App. 89. On March 18, 2024, Judge Goodstein denied the application and this petition for certiorari now follows. App.154.

ARGUMENT

The PCR court erred in denying relief because petitioner never saw the crucial piece of evidence proving his alibi and would not have pled guilty if he had.

At the PCR hearing, petitioner explained he had an alibi for the incident. App. 99-101. The 911 call came in at 3:32 AM. App. 101. Petitioner was staying at a hotel nine miles from the crime scene. App. 101.

PCR counsel showed petitioner a key swipe log from the hotel that was in the discovery plea counsel had. App. 100-05. App. 151. The log shows a key card swipe at 3:22 AM DST on the morning the crime was committed. App. 151. The event description on the log says, “Card rejected, Valid card.” App. 151.

The police claimed a video showed the truck used in the crime at 3:27 AM. App. 105. Petitioner explained the key swipe showed him nine miles away five minutes earlier. App. 100-05. It was “clearly impossible” for petitioner to travel between the crime scene and the hotel in five minutes. App. 105.

Petitioner discussed the key swipe alibi with plea counsel. App. 116. She told him it was not viable because daylight savings time made the key log off by one hour. App. 116. But plea counsel never showed petitioner the actual log. App. 127. Petitioner emphatically testified at the hearing he would have insisted on a trial had he seen the log. App. 128.

Plea counsel attended the trial of petitioner's co-defendants and came away convinced there was “a 99 percent chance we were going to lose the trial.” App. 132-33. She said the problem was a video showing petitioner and the testimony of the co-defendants that he was at the crime scene. App. 131-33. She explained the key card did not help because petitioner’s father, who also stayed at the hotel, was not a good witness. App. 130-32. She had limited recall about

the daylight savings time problem. App. 131. She relied on her investigator to determine the validity of the alibi. App. 131.

The State called plea counsel's investigator who claimed petitioner "had no alibi." App. 145. He looked at the videos from the hotel and they did not show petitioner. App. 145. As for the card swipe, it could have been "a drunk person walking down the hall." App. 145. On cross-examination, however, the investigator admitted that not all of the cameras at the hotel were archiving correctly. App. 148. When asked if petitioner could have come in and out of the hotel, the investigator admitted, "It's possible." App. 148.

"Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). The PCR court denied relief, finding that petitioner "did not introduce any credible evidence (through, for example, the testimony of one of his alleged alibis) of what counsel would have uncovered upon a further investigation and thus did not prove prejudice." App. 157-58. This holding was an error of law and showed the PCR court did not appreciate the nuance of petitioner's legal claim. Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011) (holding errors of law can require reversal in PCR cases). "The longstanding test for determining the validity of a guilty 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 (1985) (internal quotations omitted).

"Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Id. (internal quotations omitted). In Taylor v. State, 422 S.C. 222, 227, 810 S.E.2d 862, 864 (2018), plea counsel gave the defendant erroneous advice regarding deportation if he pled guilty. The

failure to give correct advice made the defendant's decision to plead guilty involuntary. Id. See also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing).

Similarly, in Robinson v. State, 422 S.C. 78, 84, 810 S.E.2d 32, 35 (2018), the lawyer gave the defendant erroneous advice regarding sentencing. The defendant had been adamant about wanting a trial, but pled based on his attorney's advice to avoid a life sentence. Id. Giving a defendant incorrect advice on the law's applicability to the facts of a case also constitutes reversible ineffective assistance of counsel. Sellner v. State, 416 S.C. 606, 612, 787 S.E.2d 525, 528 (2016). In Sellner, plea counsel told the defendant that he could only be convicted of armed robbery. Id. The defendant handed the bank teller a note demanding money and saying he would shoot her if she did not comply. Id. A prior case found that a threat of violence of a firearm that was not corroborated by any representation of possessing a firearm was insufficient for armed robbery. Id. Plea counsel's advice was deficient and the defendant's conviction was reversed on appeal from the PCR. Id.

Plea counsel erred in dismissing petitioner's defense of alibi without showing him the crucial piece of evidence that could have proved it. The PCR court erred in accepting her testimony and that of the investigator that appellant could not prove his alibi defense. The error is a legal one, because petitioner was not required to prove his alibi was valid in the PCR hearing. Petitioner's burden was to show that he would not have pled guilty. Petitioner vociferously testified that had he seen the key swipe log instead of merely discussing it with his lawyer, he would have insisted on going to trial. This evidence satisfies the prejudice prong in a guilty plea PCR. The court erred in imposing the requirement that petitioner prove his alibi

instead of proving only that he would have proceeded to trial had he seen this evidence. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's conviction.

s/David Alexander
David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 15th day of October, 2024.

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Counsel for De'Andre Murphy 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 hearing before Judge Diane Schafer Goodstein, which was held on Nov. 3, 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 De'Andre Murphy.

Respectfully Submitted,

s/David Alexander

David Alexander

Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 15th day of October, 2024.

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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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.”

s/David Alexander

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This 15th day of October, 2024.