

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Nov 20 2024

S.C. SUPREME COURT

Certiorari to Laurens County

Honorable Edward W. Miller, Circuit Court Judge

DANTE Z. WHEELER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000554

JOHNSON PETITION FOR WRIT OF CERTIORARI

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err finding defense counsel was not ineffective because counsel's performance was deficient where there were facts supporting a viable defense and petitioner was prejudiced where he pled guilty because of counsel's inaccurate advice rendering his guilty plea invalid?

STATEMENT

On December 17, 2018, a Laurens County grand jury indicted petitioner for burglary, first degree and possession of methamphetamine. App. 1-4. On November 14, 2019, petitioner pled guilty to burglary, third degree and possession of methamphetamine before The Honorable G. Thomas Cooper, Jr. App. 5-20. Tristan Shaffer represented petitioner and assistant solicitor, Wade Downtin, prosecuted for the state. App. 5. Judge Cooper sentenced petitioner to concurrent terms of three years' imprisonment. App. 18, l. 25—19, l. 4; 21-22.

Thereafter petitioner filed an application for post-conviction relief (PCR). App. 23-29; 38-39. An evidentiary hearing was held on March 7, 2023, before the Honorable Edward W. Miller. App 40-76. Ashley McMahan represented petitioner and assistant attorney general, Cruise Mitchell represented the state. App. 40.

On March 22, 2024, Judge Miller signed an order denying PCR. App. 77-85. Judge Miller found petitioner's allegation that defense counsel was ineffective for failing present evidence petitioner lived on the property and had permission to enter the home was without merit. App. 83. The court found defense counsel requested all relevant evidence and was prepared to go to trial and argue petitioner had permission to enter the home based on the homeowner allowing petitioner to live at the property. The court found credible counsel's testimony that he was adequately prepared to present and argue the defense that petitioner lived on the property where the burglary allegedly occurred. App. 83. Additionally, the court found petitioner failed to present any evidence of how additional preparation of counsel or more communication prior to his hearing would have resulted in a different outcome or that petitioner would have insisted on proceeding to trial. App. 84.

This petition follows.

ARGUMENT

The PCR court erred finding defense counsel was not ineffective because counsel's performance was deficient where there were facts supporting a viable defense and petitioner was prejudiced where he pled guilty because of counsel's advice rendering his guilty plea invalid.

Relevant facts

During petitioner's guilty plea hearing, the state alleged on August 30, 2018, police responded to a complaint of a break-in at the residence of Michael Boyd. Mr. Boyd's neighbor also called and reported a man walking around the residence with a flashlight. App. 12, ll. 18-24. When police arrived, they found petitioner. Petitioner told police he was living, with Boyd's permission, in a shed behind the Boyd residence. Boyd denied petitioner's claim of living on the property. Police reported the back door to Boyd's home had been opened and items were taken. Petitioner was found in possession of jewelry belonging to Boyd's daughter as well as a small amount of methamphetamine. Petitioner told police Boyd paid him with the jewelry for lawn services. App. 13, ll. 3-15.

The plea court asked petitioner if the facts recited by the solicitor were true and correct. Petitioner stated, "[n]ot exactly sir. I was at the residence of the household." Petitioner admitted he entered the home but contended he was living there and had permission to enter the home. App. 13, l. 17—14, l. 25.

After this discussion, the court found petitioner's guilty plea freely, voluntarily, and intelligently made. App. 15, ll. 1-3.

At the PCR hearing petitioner again contended he had permission to be in Boyd's home that night. He testified that had police body worn camera footage been obtained and presented it would show he had permission to be where he was the night of his arrest. App. 47-49. Petitioner

said he had permission to stay in the building outside and was allowed to enter the home to use the bathroom. He insisted defense counsel was aware of his arrangement with Boyd. App. 50-51. Petitioner testified that on the same day as his arrest he was served, while in jail, with an eviction notice from Boyd. App. 51-52; 86-87.

Petitioner testified he was never given bond in his case and stated he tried to have counsel relieved and new counsel appointed. App. 52-53.

Regarding his guilty plea petitioner testified that he wanted to go to trial but eventually told counsel he would plead guilty if sentenced to probation. Petitioner said he was then offered to plead guilty for a three-year sentence and agreed. App. 54-55; 65.

Counsel acknowledged petitioner wanted to go to trial. App. 67. Defense counsel testified he believed petitioner had a viable defense in his case and he was prepared to go to trial. App. 63. Counsel stated that in September 2019, petitioner told him he wanted to plead guilty. App. 63-64.

Discussion

The PCR court erred finding trial counsel was not ineffective because counsel's performance was deficient where petitioner testified there were provable facts supporting his defense at trial. Petitioner was prejudiced where he pled guilty because of counsel's erroneous advice and counsel's failure to obtain evidence to support his defense.

A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that the applicant was prejudiced by that deficiency. *Hill v. Lockhart*, 474 U.S. 52 (1985). Plea counsel is ineffective within the meaning of the Sixth Amendment only when the applicant satisfies both requirements. *Id.*

The two-part *Strickland v. Washington*, 466 U.S. 668, (1984) test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas, the first half of the *Strickland* test is nothing more than a restatement of the standard of attorney competence already set forth in *Tollett v. Henderson*, 411 U.S. 258 (1973) and *McMann v. Richardson*, 397 U.S. 759 (1970). The prejudice requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, to satisfy the prejudice requirement, the applicant must show there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 US at 58-59.

Counsel was deficient where he made an unreasonable decision not to pursue petitioner's viable defense instead advised petitioner to plead guilty. Petitioner testified that he would have pursued trial had counsel obtained the necessary evidence for his defense.

In many guilty plea cases, the "prejudice" inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. Similarly, where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial. *See, e.g., Evans v. Meyer*, 742 F.2d 371, 375 (C.A.7, 1984) ("It is

inconceivable to us ... that [the defendant] would have gone to trial on a defense of intoxication, or that if he had done so he either would have been acquitted or, if convicted, would nevertheless have been given a shorter sentence than he actually received”). As the Court explained in *Strickland*, these predictions of the outcome at a possible trial, where necessary, should be made objectively, without regard for the “idiosyncrasies of the particular decision maker.” *Id.* 466 U.S., at 695.

Petitioner was prejudiced where counsel failed to diligently pursue his valid defense resulting in petitioner pleading guilty. Had counsel fully investigated and obtained evidence in support of petitioner’s defense petitioner would have chosen a trial.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

A handwritten signature in blue ink, appearing to read "Sarah E. Shipe", written over a horizontal line.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of November, 2024.

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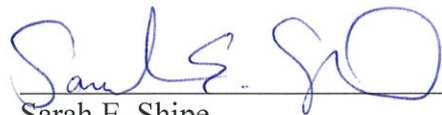
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dante Zachius Wheeler states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Edward W. Miller, which was held on March 7, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Dante Zachius Wheeler.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of November, 2024.

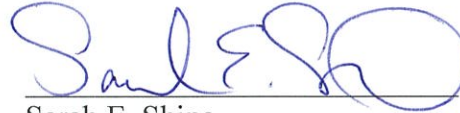
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for 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.”



Sarah E. Shipe
Appellate Defender

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This 20th day of November, 2024.