

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Dec 03 2024

S.C. SUPREME COURT

Certiorari to Newberry County

Honorable B. Alex Hyman, Circuit Court Judge

MATTHEW L. JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000923

PETITION FOR WRIT OF CERTIORARI

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUES PRESENTED

1. Whether the PCR properly granted petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), where undisputed evidence showed petitioner did not knowingly, voluntarily, and intelligently waived his right to a direct appeal?

2. Whether the PCR court erred finding trial counsel was not ineffective for failure to call key eyewitnesses at trial where petitioner raised self-defense but no witnesses testified on his behalf regarding self-defense?

STATEMENT

On September 7, 2018, a Newberry County grand jury indicted petitioner for attempted murder. App. 1. Petitioner's case was called to trial before the Honorable Donald B. Hocker, and a jury on March 26, 2019. App. 3. At trial, petitioner was represented by Charles Verner and the state was represented by Dale Scott and Taylor Daniel. App. 3.

The jury found petitioner was not guilty of attempted murder but guilty of assault and battery of a high and aggravated nature. App. 602, ll. 17-22. Judge Hocker sentenced petitioner to fifteen years and three months' imprisonment. App. 619, l. 23—620, l. 1.

Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 623-30; 646-47. On November 27, 2023, an evidentiary hearing was held before the Honorable B. Alex Hyman. App. 648-86. Petitioner was represented by Ashley McMahan and the state was represented by assistant attorney general Zachary Jones. App. 648.

On May 21, 2024, Judge Hyman signed an order granting belated appellate review pursuant to *White v. State*, and denying relief as to all other claims. App. 687-96. The PCR court found petitioner was entitled to belated review of his direct appeal issues where defense counsel acknowledged he should have filed an appeal and was surprised to learn he had not filed an appeal. Additionally, counsel for the state conceded at the hearing, based on defense counsel's testimony, review pursuant to *White* was warranted. Therefore, the PCR court found petitioner established he did not voluntarily and intelligently waive his right a direct appeal. App. 695.

The PCR court found defense counsel was not ineffective for failure to call eyewitnesses James Casey Gregory (Casey) and James Peterson (James) to testify at trial. The court found James was not present at the physical altercation and his testimony "mostly" concerned the

undisputed fact petitioner had an earlier verbal confrontation with alleged victim Antonio (Tony) Jackson. The court found Casey's testimony was "largely cumulative to other testimony presented at trial" and did not explain who initiated the physical confrontation. The court further found (Casey's) testimony was "of limited probative value" where Casey testified he did not see the fight between petitioner and Tony. The court stated, "[f]or these reasons the [c]ourt finds [petitioner] has not met his burden of proving he was prejudiced by [c]ounsel's failure to call [James] and [Casey]." App. 692-94.

Petitioner now files this petition simultaneously with a brief addressing the direct appeal issues, as required by Rule 243, SCACR.

ARGUMENTS

1. The PCR properly granted petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), where the undisputed evidence showed petitioner never knowingly, voluntarily, and intelligently waived his right to a direct appeal.

Relevant facts

At his evidentiary hearing, petitioner testified he asked defense counsel to file an appeal on his behalf and counsel “assured [him] that he would” file an appeal. App. 659, ll. 7-10. Defense counsel testified he was “surprised” to learn he had not filed an appeal for petitioner. Counsel went on to say he believed his failure to file an appeal on petitioner’s behalf was “objectively wrong.” App. 675, ll. 4-24.

At the conclusion of the hearing counsel for the state conceded petitioner was entitled to belated review pursuant to *White*. App. 682, ll. 12-19.

Discussion

“To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” *Simuel v. State*, 390 S.C. 267, 271, 701 S.E.2d 738, 739-740 (2010); *Clark v. State*, 396 S.C. 164, 719 S.E.2d 708 (2011). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738 (1967).” *Simuel* at 270.

“The appropriate scope of review of this Court is that any evidence of probative value is sufficient to uphold the PCR judge’s findings.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989).

The PCR court’s grant of belated review pursuant to *White* is supported by the testimony from the evidentiary hearing. As the PCR court found, there was no evidence of a knowing,

intelligent, and voluntary waiver of petitioner's right to an appeal. The evidence in the record supports the court's conclusion that petitioner is entitled to belated review of his conviction pursuant to *White*.

2. The PCR court erred finding trial counsel was not ineffective for failure to call key eyewitnesses at trial where petitioner raised self-defense but no witnesses testified on his behalf regarding his defense.

Relevant facts

On June 6, 2018, Antonio (Tony) Jackson was at Lake Murray spending the day with family and friends. Tony's fiancé, Ashleigh Cockrell, their child and her children shared with another man¹ were present, as well as her two sisters Alexis Cockrell and Ayleah Cook. Also, at the lake were Ashleigh and Tony's close friends, John and Ashley Platts. There were two other young men, NB and JB, in the area who were not with Tony's group but knew Tony from spending time at the lake. Around 8pm, a two physical fights erupted. One fight between petitioner and Tony and another between petitioner's mother and Ashleigh and her sisters. After the fight Tony was taken to the hospital to treat knife wounds.

At trial the state's theory of the case was that petitioner had a verbal confrontation earlier in the day with alleged victim, Tony Jackson, after he hugged one of Ashleigh's daughters. The state alleged the two left with an understanding but later in the day petitioner returned to the lake unprovoked, looking for a fight and attacked Tony with a knife.

Trial testimony

The state called *seven* eyewitnesses, including Tony, to the incident. Relevant portions of their testimonies are summarized below. Defense counsel called *one* witness on petitioner's behalf. That witness, Christy Eigner, was not present during the incident.

Ashleigh Cockrell, Tony's, fiancé, testified about the incident. App. 78-140. Ashleigh testified on June 6, 2018, she and her family were spending the day at Lake Murray. App. 84, l.

¹ Russell (RJ) Severance is the father of two of Ashleigh's children. Severance is a good friend and one-time roommate of petitioner. App. 79, ll. 14-25.

1—85, l. 12. Early in the afternoon she was at the lake with Tony her three children and their friend, her sister Alexis and her children, and Ashley Platts and her kids App. 86-88. At some point Ashleigh noticed petitioner standing on the dock. App. 93, ll. 14-21. She heard Tony say “hey man what are you doing hugging my daughter.” Ashleigh looked up and saw one of her girls hugging petitioner and Tony approaching. App. 94, l. 16—95, l. 12. Ashleigh explained to Tony that her daughter knew petitioner through the child’s father, Severance. App. 96, l. 10—97, l. 3. She testified Tony and petitioner had a tense exchange but it was short and the two men shook hands at the end. App. 96, ll. 1-16. She denied that anyone screamed at or threatened petitioner. App. 97, l. 4—98, l. 2.

Later in the afternoon Ashley Platts’ husband John Platts and Ashleigh’s sister Ayleah Cook joined them at the lake. App. 88, ll. 9-24; 99, l. 15—100, l. 11. Ashleigh testified that as her group was packing up to leave she saw a woman—later identified as Sheila, petitioner’s mother—walking up with her hands in the air yelling. Alexis approached Sheila and said “we got kids up here, take that back down the hill.” Then Ayleah got involved and warned Sheila not to “come at” Alexis. Ashleigh testified Sheila hit Ayleah. Ashleigh said that she and Alexis had to pull Sheila off their sister App. 105-09. During cross-examination Ashleigh admitted she hit Sheila but denied knowing Sheila had her teeth knocked out during the fight. App. 132, l. 16—133, l. 5.

Ashleigh testified the next thing she remembered was petitioner walking straight at Tony. App. 109, ll. 10-16. She noticed other men came with petitioner but they did not get involved and just stayed close to their car. App. 111, ll. 4-21. Ashleigh testified as soon as petitioner and Tony got close petitioner “started swinging.” She stated, “they were just both throwing licks back and forth.” App. 112, ll. 3-8. She did not realize Tony had been stabbed until the two men

broke apart and she saw blood on Tony. App. 112, ll. 11-24.

Ashleigh's sister, Alexis Cockrell, testified next for the state. App. 142-81. Alexis's testimony was essentially the same as Ashleigh's on all relevant points. Alexis denied any threats or obscenities were yelled at petitioner during the first encounter between Tony and petitioner. App. 148, l. 11—149, l. 16. She testified petitioner's mother, Sheila, threw the first punch at her sister. App. 155, ll. 1-23. Alexis saw the fight between Tony and petitioner and agreed the fight was "mutual." App. 162, ll. 20-25. She did not see who threw the first punch between Tony and petitioner. App. 156, ll. 13-18. Alexis testified when they realized Tony was hurt she tried to tackle petitioner so they could take care of Tony. App. 158, ll. 12-22; 163, ll. 14-17.

Ashleigh's sister Ayleah Cook also testified for the state. App. 182-202. Ayleah said she was not present for the first confrontation between petitioner and Tony. App. 184, ll. 6-8. She said she was already in the car ready to leave the lake when she heard Sheila yelling at her sister Alexis. Ayleah said the yelling prompted her to get out of the car. App. 186, l. 10—187, l. 11. Ayleah approached Sheila and told her not to get in her sister's face. She said that is when Sheila hit her. App. 189, ll. 3-6. Ayleah insisted no one hit Sheila and Sheila started the physical fight. She admitted she fought back. App. 189, l. 7-20. Ayleah did not remember knocking any of Sheila's teeth out. App. 11-18.

Ayleah denied that petitioner got involved in her fight with his mother. She testified she did not see any of the fight between petitioner and Tony. App. 192, ll. 1-13; 197, ll. 5-12.

Next, John Platts testified. App. 203-44. John said his wife and he were good friends with Ashleigh and Tony and their families spent time together. App. 206, ll. 14-24. John testified he got to the lake around two or three in the afternoon. App. 204, ll. 3-10. John first

saw petitioner when he arrived at the lake. Petitioner was on the phone and seemed to be having an argument with the person on the other end. App. 208, ll. 3-23.

John saw the women fighting but testified at the same time petitioner was coming towards he and Tony “looking dead at Tony.” App. 216, l. 11—216, l. 3. He said as petitioner walked he had his hands behind his back. John testified by the time Tony and petitioner were close petitioner took a swing. App. 217, ll. 4-14. He denied petitioner had any involvement in the fight between the women. App. 217, ll. 15-23. John contended petitioner threw the first punch at Tony, “without a doubt.” App. 218, ll. 7-12; 223, ll. 1-7. He said the men with petitioner did not get involved in the fight just stood at the car. App. 219-220. John denied getting involved in the fight. App. 236, ll. 17-24.

During cross-examination counsel pushed back on John’s version of the incident and pointed out inconsistencies in his trial testimony and his written statement and statements made that were recorded on Deputy Corey Cook’s body worn camera. App. 225-31. John admitted he told police the two men with petitioner had weapons, although he did not mention that during his testimony on direct. App. 226, ll. 2-25. When asked about his earlier statement that he and Tony were trying to break up the women who were fighting he did not give a direct answer but averred that they “didn’t really actually have to.” App. 230, l. 24—231, l. 7.

The following day two minor brothers N.B. and J.B., both present at the lake during the fight, testified. App. 246-307. The important parts of their testimony were essentially the same. Both young men knew Tony and his family well from spending time at the lake. App. 248, ll. 18-20; 264, ll. 15-21; 265, ll. 3-7; 298, ll. 9-11. N.B. testified petitioner did not get involved in the women’s fight. App. 259, ll. 1-6. Both testified petitioner started the fight with Tony. App. 259, ll. 5-21; 290, ll. 20-23; 293, ll. 6-22.

PCR testimony

At petitioner's evidentiary hearing two witnesses, James Peterson and James Gregory were called to testify. Their testimonies are summarized below.

James Peterson testified that he was with petitioner during the first confrontation at the lake. James testified there were between 30-40 people around. He said half of the people there were arguing with petitioner. App. 660, l. 15—661, l. 13.

James (Casey) Gregory testified he was with petitioner during the second confrontation at the lake in June 2018. App. 662, l. 24—663, l. 15. Casey testified when they pulled up at the lake there were already people out there and the fighting began instantly. App. 663, ll. 14-20. Casey said Tony and others rushed petitioner as soon as they arrived at the lake. App. 663, ll. 18-25. Casey testified when they arrived petitioner's mother was being beaten up by some people and as soon as petitioner got out of the car he got jumped on by a "few" people. App. 664, ll. 7-14.

Discussion

Defense counsel was ineffective for failing to call witnesses that would support petitioner's legitimate claim of self-defense. Petitioner was prejudiced where the only evidence presented of self-defense was through the recording of the police interview of petitioner. The jury was shown no corroborating evidence or testimony and had only the state's witnesses' accounts of the incident to consider during deliberation.

To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different. *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992). A reasonable probability is

a probability sufficient to undermine confidence in the outcome of trial. *Strickland v. Washington*, 466 U.S. 668 (1984).

In *Walker v. State*, our Supreme Court held trial counsel was required to interview defendant's former girlfriend as a potential alibi witness; and counsel's failure to interview her prejudiced defendant. 407 S.C. 400, 756 S.E.2d 144 (2014). In that case the Court reversed the Court of Appeals' reversal of the PCR court's grant of PCR. In reversing, the Court found the Court of Appeals "read *Glover*² to broadly and failed to adhere" to the standard of review. *Id.* at 406, 756 S.E.2d at 146-147.

In *Glover*, the Court held defendant was not denied effective assistance of counsel where trial counsel failed to contact alibi witnesses. *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). In that case the Court found there was no prejudice where neither witnesses PCR testimony established an alibi defense. *Id.* at 498, 458 S.E.2d at 540. Additionally, the Court found defendant did not establish prejudice where the other witnesses he claimed could provide an alibi were not called at his PCR hearing. *Id.*

Defense counsel's failure to call defense witnesses that could support the defense theory of self-defense was deficient. It was not reasonable to rely solely the recording of petitioner's statement to police to support his claim of self-defense where there were other witnesses to call at trial that were not biased toward alleged victim, Tony. Additionally, the witness defense counsel did call was not present for the incident and while she gave helpful context to the situation her testimony was not probative of the disputed fact of petitioner's claim of self-defense or defense of his mother.

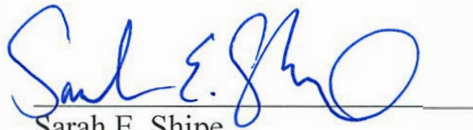
Defense counsel's deficiency prejudiced petitioner where the jury did not have any

² *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995).

evidence to consider that supported his claim of self-defense or defense of others. Petitioner admitted to being present and fighting with Tony. The only issue at trial was whether petitioner injured Tony while defending himself and his mother, Sheila. Defense counsel called no witnesses to support petitioner's claim of self-defense or defense of his mother. James's testimony at the evidentiary hearing was that there were several people verbally attacking petitioner. While he was not present at the later fight his testimony, like Eigner's, testimony would have given additional context to the relationships of the parties involved and the situation that later resulted in a physical fight. Casey's testimony at the evidentiary hearing was that as soon as petitioner exited the vehicle he was jumped. This version is a very different account than what the jury heard at trial. Had defense counsel called James and Casey the result of trial would have been different.

CONCLUSION

Petitioner respectfully requests this Court affirm the PCR court's decision that he is entitled to a belated direct appeal. Petitioner likewise requests that this Court grant his petition for writ of certiorari and allow full briefing on the allegation of ineffective assistance of counsel, reverse the charges against him, and remand the case for a new trial.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of December, 2024.