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Mar 13 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

Honorable George M. McFaddin, Circuit Court Judge

ERICK M. WILLARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001837

JOHNSON PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUE PRESENTED

Did the PCR court err denying relief where defense counsel was deficient for failure to argue petitioner's alleged statement to police was based on an implied threat and was therefore not voluntary and petitioner was prejudiced by this deficiency where the critical evidence admitted against petitioner was the challenged statement he gave to police?

STATEMENT

On July 27, 2017, a Marion County grand jury indicted petitioner for trafficking cocaine, possession with the intent to distribute (PWID) cocaine base, PWID methadone, and PWID marijuana. App. 6, l. 8—7, l. 3; 275-277. On November 13-15, 2017, petitioner's case was called to trial before the Honorable William H. Seals Jr., and a jury. App. 1-194. Vick Meetze and Franklin Chandler represented petitioner. App. 1. FitzLee McEachin, assistant solicitor, prosecuted for the state. App. 1.

The jury found petitioner was guilty as indicted. App. 188, ll. 10-22. Judge Seals sentenced petitioner to concurrent terms of thirty years' imprisonment for trafficking cocaine, thirty years' imprisonment for PWID cocaine base, ten years' imprisonment for PWID marijuana, and twenty years' imprisonment for PWID methadone. Additionally, the judge imposed a fifty-thousand dollar fine for trafficking cocaine. App. 194, ll. 6-12; 278-281.

Thereafter appellate counsel filed an *Anders*[1] brief on petitioner's behalf arguing the trial court erred refusing to suppress petitioner's purported statement to police claiming ownership of the drugs when the statement was not recorded or corroborated by any other evidence other than testimony of another officer. App. 259. The South Carolina Court of Appeals affirmed petitioner's convictions and sentences on March 11, 2020. *State v. Willard*, Op. No. 2019-UP-062 (S.C. Ct. App. filed March 11, 2020).

Petitioner filed an application for post-conviction relief (PCR) on May 6, 2020. App. 197-203. An evidentiary hearing was held on December 14, 2022, before the Honorable George M. McFaddin Jr. App. 229-255. Joshua Bailey represented petitioner. App. 229. Assistant attorney general D. Russel Barlow II, represented the state. App. 229.

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[1] *Anders v. California*, 386 US 738 (1976).

On September 16, 2024, Judge McFaddin signed an order denying PCR. App. 257-274. The PCR court found petitioner failed to establish any constitutional violations or deprivations that required the grant of PCR. App. 265. The court found petitioner's allegations that trial counsel was ineffective for failure to: (1) move to suppress petitioner's statement as involuntary on the basis that police threatened all the subjects would be arrested unless someone claimed ownership of the drugs and (2) move to suppress the drugs found outside of petitioner's bedroom were without merit. App. 266. Specifically, the court found trial counsel credibly testified he did not have the basis to argue the statement should be suppressed because of an implied threat. App. 271. The court further found petitioner failed to overcome his burden to prove counsel's representation was deficient and any resulting prejudice noting petitioner provided no legal authority to support his allegation. App. 271.

This petition follows.

ARGUMENT

The PCR court erred denying petitioner relief where defense counsel was deficient for failure to argue petitioner's alleged statement to police was coerced and was therefore not voluntary and petitioner was prejudiced by this deficiency where the critical evidence admitted against petitioner was the challenged statement he gave to police.

Relevant facts

During pre-trial motions a *Jackson v. Denno*,[2] hearing was held to determine whether petitioner's alleged statement to police was admissible. App. 27-42. The state called officers Mark Collins and Aurelius Cribb to testify. App. 2; 27-36; 37-41. Both Collins and Cribb were officers with the Marion County Combined Drug Unit, and both were present during the March 2017, search of the Aster Road home that resulted in the arrest and indictment of petitioner in this case. App. 28, ll. 2-22; 37, l. 14—38, l. 10

Officer Collins testified that on March 3, 2017, he and other officers conducted a search pursuant to a warrant at petitioner's home on Aster Road. Collins stated during the search petitioner and other persons in the residence: Jean McBride, Michael Leggette, Leroy Owens, and Adrian Williams were handcuffed and held in a one room. Collins testified he advised all five together of their rights pursuant to *Miranda*.[3] App. 28, l. 17—29, l. 19.

He said petitioner stated he understood his rights and he volunteered to take responsibility for all the drugs found inside the house and the drugs found outside the house. App. 30, l. 14—31, l. 21; 32, ll. 5-7. After that no questions were asked of the remaining four persons in the home even though all agreed to speak to police. App. 32, ll. 2-4; 34, ll. 5-14.

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2 378 U.S. 368 (1964).

3 *Miranda v. Arizona*, 384 U.S. 436 (1966).

Collins admitted there was no recording of petitioner's alleged confession. App. 34, ll. 15-25; 35, ll. 17-25.

Officer Cribb also testified petitioner indicated he understood his rights after the *Miranda* warning was given. He claimed petitioner "took ownership of all the [drugs]" found during the search. App. 40, ll. 1-25.

Defense counsel moved to exclude petitioner's alleged statement arguing there was no corroborating evidence such as any audio or visual recording or any statement from the other persons present in the house during the search. App. 42, ll. 7-14. Without argument from the state the trial court ruled the statement admissible finding petitioner was properly warned and the statement was made freely and voluntarily. App. 42, ll. 15-18.

During defense counsel's opening statements, he declared the state could not prove its case beyond a reasonable doubt. He then said the following:

> They also may tell you that [petitioner] admitted ownership of these drugs. Again, you're not going to see a recording of that initially, no dash cam, no body cam, no audio recording. And the reason why is they don't want you to see the context of that admission. **They don't want you to know that they threatened [petitioner]. They [would] charge everyone in the house with the same crime innocent or not unless someone took ownership.** Being it was [petitioner]'s residence, [he] felt he had to [take ownership].

App. 51, l. 25—52, l. 8.

During trial, Officer Collins' testimony was essentially the same as his pretrial testimony. Over objection, he again claimed petitioner "spoke up" and took ownership of all the drugs found during the search "because he didn't want anybody else to go to jail." App. 99, ll. 3-11; 100, ll. 4-25. On cross-examination Collins admitted that had petitioner not taken responsibility for the drugs found the others in the home would have been arrested and charged for the drugs.

App. 102, ll. 1-7. However, Collins denied telling petitioner this and claimed petitioner volunteered to take responsibility without any questions being asked. App. 102, ll. 12-14. He denied telling petitioner that because it was his home the drugs found would be attributed to him regardless of what he said or did not say that day. App. 102, ll. 15-23.

Officer Cribb testified petitioner volunteered that all the drugs belonged to him before he was asked any questions by police. App. 118, ll. 6-25. Cribb admitted if petitioner had not taken full responsibility for the drugs all the persons present would have been arrested and charged with constructive possession of the drugs. App. 119, ll. 2-7; 120, l. 16—121, l. 9.

Other than law enforcement testimony the only other testimony offered by the state was the South Carolina Law Enforcement's (SLED) chemist, Ashley Bell, who analyzed the substances found during the search. App. 123-52. During closing, the state argued to the jury that petitioner, aware of his right to remain silent, chose to take responsibility for the drugs but was now recanting in an effort to avoid the consequences. App. 160, ll. 1-16.

At petitioner's PCR hearing he testified Aster Road was not "in [his] name," and no bills were in his name though he had a room in the home. App. 236, ll. 5-23. Petitioner stated he and the others were handcuffed and gathered in the living room during the search of the home. App. 237, ll. 7-19. Petitioner testified he believed everyone would be arrested that day because they were all handcuffed. App. 238, ll. 6-9. He said Collins questioned him about "some drugs" and he told Collins he did not know about anything other than what was in his room. App. 238, ll. 1-5. Petitioner insisted he only took responsibility for the "small amount" of drugs that were found in his bedroom. App. 238, ll. 10-14.

Defense counsel testified that officers from the Marion County drug unit searched the home where petitioner lived pursuant to a search warrant. He said the search warrant was issued

based on prior controlled purchases of drugs from that home. App. 246, ll. 18-23. Regarding petitioner's alleged statement, counsel said officers indicated that petitioner told them he was responsible for all the drugs found during the search. App. 248, ll. 5-18. Counsel testified his strategy at trial was reasonable doubt. He claimed petitioner never indicated and he never saw any coercion or intimidation based on the evidence. App. 248, ll. 21-25. Counsel contended it was "normal" for the police to imply that if no one took ownership of the drugs that all the persons present would be arrested. App. 149, ll. 1-7. He testified that, while he tried to have the statement excluded, he was not successful. App. 250, ll. 24.

Discussion

The PCR court erred finding counsel was not deficient for failing to argue the correct basis for having petitioner's alleged confession suppress. Petitioner was prejudiced by this failure where the alleged confession was critical to the state's case.

In order to prove ineffective assistance of counsel, petitioner must show "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Strickland*, 466 U.S. at 687-688.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Petitioner must prove "counsel's performance was deficient," meaning that it fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. *Cherry v. State*, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) *citing Strickland*, 466 U.S. at 688. "A reasonable probability is

a probability sufficient to undermine confidence in the outcome of the trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) *citing Strickland*, 466 U.S. at 668.

Counsel failed argue the correct basis for his motion to suppress and failed to get a ruling from the trial court on this specific objection which fell below reasonable professional norms. Counsel was deficient where he failed to properly object to petitioner's alleged statement to police. During the evidentiary hearing counsel denied that there was any coercion or implied threat involved in petitioner's alleged statement to police. However, counsel raised concerns of coercion during cross examination of both officers.

In *Jackson v. Denno*, 378 U.S. 368, 376 (1964), the United States Supreme Court held that "a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." To introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with *Miranda v. Arizona*, 384 U.S. 426 (1966). *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); *State v. Miller*, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007); *State v. Crawley*, 349 S.C. 459, 463, 562 S.E.2d 683, 685 (Ct. App. 2002). The waiver has two separate dimensions. It must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and it must be "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did totality of the circumstances surrounding the custodial statement defeat the defendant's will? *State v. Moses*, 390

S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

> Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted).

In looking at the totality of the circumstances in this case it is clear petitioner believed that if he did not take responsibility for the drug evidence found in his bedroom that everyone present in the home would be arrested. That fear was based in reality as admitted by the officers at trial. The officer's implied threat that all the persons in the house would be arrested rendered petitioner's alleged statement involuntary and thus inadmissible.

The only testimony given at petitioner's trial was law enforcement testimony including the chemist from SLED. Petitioner's alleged statement was the state's best evidence against petitioner. Petitioner was prejudiced where the statement was the crux of the state's evidence against him and had the statement been excluded the result of his trial would have been different.

CONCLUSION

Based on the foregoing argument, petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented.

Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of March, 2025.

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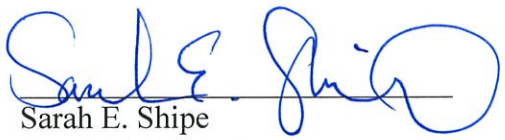
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Erick Maurice Willard 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 George M. McFaddin, which was held on Dec. 14, 2022, 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 Erick Maurice Willard.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

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This 13th day of March, 2025.

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CERTIFICATE OF COUNSEL

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."

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This 13th day of March, 2025.