

RECEIVED

Apr 02 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Walton J. McLeod, IV, Circuit Court Judge

DAESHAUN ALEXANDER FORREST,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO.2024-000860

PETITIONER PETITION FOR WRIT OF CERTIORARI

Daeshaun Alexander Forrest

P.O.Box 2039

Ridgeland,S.C.29936

ISSUED PRESENTED

Did the PCR court err in by denying to remand the Petitioner case back to the PCR Court for Post-Conviction relief (PCR) Court's Erroneous failure to make a definitive ruling as to whether trial counsel was ineffective in failing to adequately investigate mental competence at the time the crime were committed.

STATEMENT OF THE CASE

Petitioner was indicted during the November 2015 term of the Charleston County grand jury for attempted murder, possession of a weapon during the commission of a violent crime and discharging firearms into a dwelling. App.61-62; App. 67-69; App-74. On October 13, 2017, Petitioner appeared before the Honorable R. Markley Dennis. Petitioner was represented by Melisa Gay. The State was represented by Edward Regin "Ted" Corvery, III. App 1. The hearing was originally scheduled to address the bondsman's request to come off Petitioner's bond, along with two motions Counsel Gay had filed regarding that request, but eventually turned into a guilty plea hearing with sentencing deferred to a later date. App.3.5.

Prior to reciting the facts of the incident, the State alleged that on May 4th 2015, Shatario Copeland 1 was staying in North Charleston at the Stayover Lodge Hotel. Petitioner called Copeland that day and was upset as the two appeared to discuss a dispute over money. Approximately an hour-and-a-half to two hours after the call an individual the State believed to be Petitioner is seen entering the front door of the hotel in dark clothing and distinctive pants. That person is seen tying a bandana around his face before proceeding to Copeland's room. Once at the room the person takes out a revolver and fires twice through the window into the room before the gun jams. The person un-jams the gun and then fires twice more into the room before retreating off-camera. App.21,2.2-App.22,1.3.

During the hearing Petitioner entered standard guilty pleas to the weapons charge and discharging firearms into a dwelling. Help to the attempted murder charge pursuant to North

Copeland was Petitioner's uncle-in-law and was familiar with Petitioner. Copeland told police that he knew it was Petitioner who shot at him based on Petitioner's voice as well as his hairstyle and clothing in the video. App

Carolina v. Alford. 2 Judge Dennis informed Petitioner of each charge against him and the possible penalties. App.8,1.6-App.10,1.24. He confirmed that Petitioner was satisfied with Counsel Gay, that Counsel Gay had fully investigated the case, and that she had shared the results of the investigation with Petitioner. App. 13,1.24-App. 15,1.25. Judge Dennis reviewed the constitutionally protected rights Petitioner would be waiving by entering a guilty plea and ensured that Petitioner was not under the influence of any substances, or acting under threat or promise to plead guilty. App. 16,1. 1-App. 20, 1.19. Judge Dennis accepted Petitioner's guilty pleas 3 and deferred sentencing until the following week. App.27,11. 12-13. The parties reconvened before Judge Dennis for Sentencing on October 18, 2017.App.29 Judge Dennis sentenced Petitioner to five years on the weapons charge, ten years on the discharging firearms into a dwelling charge, and thirty years provided upon the service of eighteen years on the attempted murder charge. Petitioner was given two and half years of pre-trial credit. App 56, 1.4-App.57, 1.24; App. 60; App 66; App.72.

A notice of appeal was filed on Petitioner's behalf but the appeal was dismissed for failure to provide a sufficient explanation pursuant to Rule 203 (d)(1) (B) (iv). The remittitur was issued on May 18, 2018. Petitioner filed the present PCR application on November 13, 2020, alleging ineffective assistance of counsel and involuntary guilty plea. App. 79-90. The State filed a return and motion to dismiss for failure to comply with the statute of limitations on October 29, 2021. App.91-99. On December 6,2021, the Honorable Roger M. Young,Sr., signed a conditional order of dismissal finding that Petitioner had failed to timely file his PCR application. App.100-106. PCR Counsel Tommy Thomas filed a reply to the conditional order

2 400 U.S.25 (1970).

3 Judge Dennis initially declined to take the plea. App.22,1.9-App.23,1.11.

Of dismissal on December 20, 2021. Counsel Thomas Argued that Petitioner was entitled to equitable tolling based on an investigation by Tricia Blanchet which discovered that Petitioner had hired William Thrower had passed away prior to working on or filing the application. App. 107-116. On November 4, 2022, a hearing on the State's motion to dismiss was held before the Honorable Diane S. Goodstein via Web Ex. App. 117. Judge Goodstein determined that Petitioner was entitled to equitable tolling of the statute of limitations and issued a written order to that effect on May 25, 2023. App 137, 1.18-App.144, 1.20; App.148-152.

On March 12, 2024, an evidentiary hearing was convened before the Honorable Walton J. McLeod, IV. App.153. Petitioner was represented by Counsel Thomas. The State was represented by Bryan Hall. App. 153. Petitioner testified that Counsel Gay was hired approximately ninety days before the plea, that he met with her once during that time, and only spoke with her seventy-two hours before his trial.⁴ Petitioner was represented by Counsel Thomas. The State was represented by Bryan Hall. App. 153. Petitioner testified that Counsel Gay was hired approximately ninety days before the plea, that he met with her once during that time, and only spoke with her seventy-two hours before his trial.⁴ App.161. 1.2-App.162, 1.7. Petitioner testified that he only saw the videos and statements seventy- two hours prior to trial and saw one of the "main videos" on the day of his plea. App.16, 11.19.23. The "main video" showed the shooter prior to placing the bandana on his face, but Petitioner stated that it was not him in the video. App. 165, 1.13-App. 166, 1.12.

Petitioner maintained he never told Counsel Gay that he wanted to enter a plea and that Counsel Gay conducted plea negotiation with Charleston County and two other counties where he had pending charges without first speaking to him. App. 160.1.21-APP. 161 , 1.1; 163, 11.7-13; App. 167, 11. 9-16. He stated plea negotiations only came up because Sumter County was willing to run any sentence he would receive concurrent to the Charleston County Charges

⁴ Petitioner's case was first up for trial the upcoming Monday. App.23,11.9.16. which would avoid the possibility of Sumter serving him with life without parole notice App. 166, 1. 13-App. 167, 1.4 He believed he was pleading for a range of zero to twenty years and did not realize his highest sentencing exposure was

thirty years and did not realize his highest sentencing exposure was thirty years. He also not understand what the Alford plea procedure really meant. App. 169, II. 2-24. Petitioner testified that he pled guilty because he was scared. H didi not want to plead because he "strongly felt" that he could have beaten his charges at trial App. 172, 11. 1.-13. He testified that Counsel Gay pressured him into the plea and gave him no other option. App. 17, II 5-13.

On cross=examination Petitioner again stated that it was not him on the video. App.177, 11. 12-19. He confirmed that counsel Gay told him it was in his best interest to plead guilty to avoid facing life without parole on his other charges and he conceded that he ultimately made the decision to enter the plea. Petitioner stated that he could not dispute what was in the plea transcript but clarified that he was "in a fog the whole time" and did not understand anything that was occurring on the day of the plea.App.178,11.3-App 179,1.4.On redirect examination, Petitioner stated that he did not want to enter the plea. App. 182, 11.23-25. Veronica Forrest, Petitioner's mother, testified that she was in the room with Petitioner, Counsel Gay, and Petitioner's girlfriend Desire when they viewed the video of the person without the bandana around his around his face. She testified that she thought the video would hurt Petitioner, even though she did not believe it was petitioner in the video. She also testified that she did not want Petitioner to accept the plea because they were supposed to be going to trial. App. 183, 1. 21-App. 187, 1.22. Ms. Forrest stated that Petitioner was not in his right mind during the plea, that he was emotional, very confused, and did not have enough time to make a rational decision. App. 188, 1. 1-App.190, 1.12. On cross-examination she testified that after Counsel Gay "drilled" them with the information about a possible life sentence, she told Petitioner to take the plea. App. 193, II. 3-8.

Counsel Gay testified that although she had not been on the case for very long, she had met with Petitioner enough to have gone the issues in his case forf every long, she had discussed the possibility of Petitioner facing life without parole in other counties if he went to trial on the Charleston charges. App. 119, 1. 19-App. 201, 1.6. She testified that Petitioner's family identified the person in the video as him prior to the plea. App. 202, 1.8; App. 209, ii. 4-8. Counsel Gay testified that although she had not been on the case. She confirmed she discussed the of possibility of petitioner facing life without parole in other counties if he went to

trial on the Charleston charges. App. 199,1.19 ,App.201, 1.6 She testified that Petitioner's family identified the person in the video as him prior to the plea. App. 202 , 1.10-App. 203, 1,8; App. 209, ll. 4-8. Counsel Gay testified that she explained an Alford plea to Petitioner and that the benefit of the plea was that the solicitor's in the other counties had agreed to run any sentences concurrently to the Charleston charge which meant he would avoid a life sentence. App 205, 11.13-25. During cross-examination counsel Gay testified that she was prepared to go to trial, but after she saw the video of the shooter without a bandana on she told Petitioner that, in her professional opinion, a jury would find him guilty. She explained that a plea was in his best interest and the plea was set up so that Petitioner could say he was not guilty, still enter a plea, and avoid a life sentence in his other pending criminal case. App. 210, 11. 4-21; App 222, 1.7- App. 222,1.7- App.223,1.5.

The PCR court took the matter under advisement. App. 233, 1, 25.-App. 234, 1. 1. An order of dismissal was filed on May 9, 2024, finding that Petitioner had not met his burden of proof to show that his plea was ineffective. The Court also found that Petitioner could not establish the requisite prejudice. App.236-246.

The PCR court err in by denying to remand the Petitioner case back to the PCR court for Post-Conviction relief (PCR) court's erroneous failure to make a definitive ruling as to whether trial counsel was ineffective in failure to adequately investigate mental competence at the time the crime were committed.

In Council v State 670S.E2d 356 Remand was required by Post-Conviction relief by (PCR) Court's erroneous failure to make a definitive ruling as to whether trial counsel was ineffective in failing to adequately investigate mental competence at the time the crimes were committed; Supreme Court reviewed PCR Court decisions pursuant to an "any evidence" standard and could not rule on the merits.

U.S.C.A. Const Amend . 6.

In light our holding, the question becomes whether this Court should rule on the merits of the Ineffectiveness of counsel issue. Because this Court reviews PCR

decisions pursuant to an "any evidence" standard, we find it is procedurally proper to remand this issue for the PCR judge to make a definitive ruling on remand, the PCR judge to make a definitive ruling. On remand, the PCR **368 Court shall consider the evidentiary record established at the prior PCR hearing in addition to any relevant evidence admitted on remand.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari to allow Court to rehear this issue based on the petitioner ground trial counsel was ineffective in failing to adequately investigate mental competence at the time the crimes were committed.



Daeshaun Alexander Forrest

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 28 DAY OF March

20 25. Virginia Robinson

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES March 2 April 21, 2031

