

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

Certiorari-PCR
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2025-000869
Lower Case No. 2022-CP-32-03461

David Fredshun Gates, Petitioner,

vs.

The State of South Carolina Respondent.

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Did the Post Conviction Relief Judge err in finding a conflict of interest did not exist as a matter of law when one defendant told the lawyer for himself and the applicant that the applicant was not guilty and the drugs in question belonged to him?

Statement of the Case

Procedural History

On March 22, 2021, the grand jury for Lexington County indicted David Gates for trafficking 14 to 28 grams of heroin. App. at 60, ll 11-12.. On January 27, 2022 he entered a guilty plea “to trafficking heroin 4 grams of less, first offense.” App. at 57, ll 12-13.¹ The plea was a negotiated ten year sentence. He entered a plea with his brother, Ladarien Gates. They were both represented by Stanley Myers. App. at 57, ll 5-14. Mr. Gates and his brother were both sentenced to ten years imprisonment.

On October 11, 2022, Mr. Gates filed his Post Conviction Relief application. A hearing was held on March 22, 2024 before Judge J. Cordell Maddox. On August 16, 2024, Judge Maddox filed an order denying the application. A timely Rule 59e motion was filed on August 26, 2024. The 59e motion was denied on April 18, 2025. Mr. Gates filed his Notice of Appeal on May 16, 2025.

Factual History

On March 15, 2021, the Office of the Lexington County Sheriff, pursuant to a search warrant conducted a search at 125 Wild Bird Lane in Lexington County. During the search they found a glass jar with a trafficking amount of heroin. While David Gates had used the house Wild Bird Lane, it was not his primary residence. App. at 10, ll 12-22. Mr. Gates had previously been arrested on other drug charges. He had retained Stanley Myers to represent him on those charges. He then retained Mr. Myers to represent him on the new trafficking charges. App. at

¹ This was obviously an error on the part of the assistant solicitor as no crime exists for “trafficking heroin 4 grams or less.” See, South Carolina Code § 44-54-(e)(3).

10, 125 to 7, 12. As to the prior distribution charge, he was told the law enforcement agency had a video of the alleged sale, but he never saw the video. App. at 11, 124 to 12, 14. Mr. Myers informed him that the state was willing to let him plea to the trafficking charge and dismiss all the other charges in exchange for a 10 year plea.

While the charges were pending, Ladarien Gates also retained the services of Mr. Myers. Ladarien Gates informed Mr. Myers that the heroin found at the 125 Wild Bird address belonged to him and not his brother David. App. at 24, 11 19-25. Ladarien Gates heard Mr. Myers call the solicitor and tell him the heroin belonged to him. App. at 24, 11 1-11. Kyle Smith believed that Mr. Myers told him that Ladarien Gates was going to claim all the drugs. He stated that he thought he had enough evidence to go against both brothers for the trafficking charge. App. at 46, 11 8-17.

He further testified that when Mr. Myers informed him that Ladarien Gates was claiming the drugs in the Wild Bird address, he did not discuss with Mr. Myers any possible conflict of interest. App. at 50, 125 to 51, 16. Mr. Smith did not accept the theory that Ladarien Gates possessed the trafficking amount of drugs. App. at 51, 125 to 52, 12.

Standard of Review

As David Gates believes the conflict of interest involved in this case has been proven as a matter of law, the lower court erred as a matter of law in denying Mr. Gates relief. The standard of review is de novo. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)

Argument

Did the Post Conviction Relief Judge err in finding a conflict of interest did not exist as a matter of law when one defendant told the lawyer for himself and the applicant that the applicant was not guilty and the drugs in question belonged to him?

The United States Supreme Court has said, “Our decisions make clear that inadequate assistance does not satisfy the Sixth Amendment right to counsel made applicable to the States through the Fourteenth Amendment. A guilty plea is open to attack on the ground that counsel did not provide the defendant with ‘reasonably competent advice.’” *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980)(internal citations omitted). In this case, trial counsel had a conflict of interest between his two clients that caused the applicant not to have effective assistance of counsel.

When Ladarien Gates told Stanley Myers that the drugs David Gates was accused of possessing belonged to him, an obvious conflict arose. At that point, it was in the interest of David Gates to go to trial. It was not in the interests of Ladarien Gates to admit the drugs found at the 125 Wild Bird address belonged to him. The amount of drugs found would be a mandatory 25 year sentence for Ladarien Gates. Whether the state would continue to agree to the ten year sentence if Ladarien Gates claimed the drugs found at 125 Wild Bird is problematic at best. The testimony from the State is not clear as to whether Mr. Myers informed them that Ladarien Gates was claiming the drugs at 125 Wild Bird Lane. App. at 62, ll 8-17.

Regardless of what the State knew, once an actual conflict is established, ineffective assistance of counsel has been established. “The mere physical presence of an attorney does not fulfill the Sixth Amendment guarantee when the advocate’s conflicting obligations have effectively sealed his lips on crucial matters.” *Holloway v. Arkansas*, 435 U.S. 475, 490 (1978).

Concerning the establishment of a conflict of interest, this court has said, “An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant’s.” *Fuller v. State*, 347 S.C. 630, 633–34, 557 S.E.2d 664, 665 (2001). Here, once Ladarien Gates told Mr. Myers he possessed the drugs at 125 Wild Bird, Mr. Myers lips were sealed as to informing the judge that David Gates was not guilty. He stood moot as David Gates admitted to possessing drugs that Mr. Myers had information David Gates did not possess. David Gates was entitled to independent counsel to advise him as to whether the plea was in his best interest. David Gates accepting ownership of the drugs was in Ladarien Gates’ best interest.

In *Strickland v. Washington*, 466 U.S. 668, 692 (1984) the court said, “Prejudice is presumed only if the defendant demonstrates that counsel ‘actively represented conflicting interests’ and that ‘an actual conflict of interest adversely affected his lawyer’s performance.’” (internal citations omitted). The cases in South Carolina also hold prejudice is presumed once an actual conflict is established. “[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief.” *Staggs v. State*, 372 S.C. 549, 551–52, 643 S.E.2d 690, 692 (2007). See, also, *Lomax v. State*, 379 S.C. 93, 103, 665 S.E.2d 164, 169 (2008), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)(“Because Petitioner demonstrated an actual conflict of interest, she did not have to demonstrate prejudice in order to be entitled to post-conviction relief.”)

In *State v. Gregory*, 364 S.C. 150, 612 S.E.2d 449 (2005) this court found an actual conflict when the attorney representing Mr. Gregory also began to represent an assistant solicitor who had been prosecuting the case. Even after the trial judge ordered the assistant solicitor off

the case, this court still found an actual conflict and reversed the conviction without Mr. Gregory having to prove prejudice. Mr. Gregory perceived a conflict. The conflict in this case is even more obvious. To whom did Mr. Myers owe the duty of loyalty after Ladarien Gates told him the drugs at 125 Wild Bird were his drugs and not that of David Gates?

The United States Supreme Court in discussing the difficulty in proving prejudice once an actual conflict is established stated:

It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible. Thus, an inquiry into a claim of harmless error here would require, unlike most cases, unguided speculation.
Holloway at 490-91.

The trial judge placed undue emphasis to what was said at the plea. In *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001) the petitioner also entered a guilty plea and one can presume answered the same basic questions as to any guilty plea. Simply put, Ms. Thomas also admitted her guilt. This fact did not prevent this court from reversing the conviction based upon a conflict of interest as to her defense counsel.

In denying relief, the Post Conviction Relief judge found, "The record now reflects that the brothers' theories were consistent as related to Myers representation - they were not antagonistic with each other but consistent." App. at 92. The order then proceeds to cite to the plea record, which of course, made no mention of the fact that Ladarien Gates had told Mr. Myers he was responsible for the drugs at 125 Wild Bird. The court also stated, "The Court must find that the Applicant has failed to show that he cannot be bound by his representations under

oath that he agreed with the prosecutor's representations." App. at 94. The same could be said for the guilty plea of Ms. Thomas where she accepted ownership of the drugs at her plea. The same could be said for Ms. Lomax who entered a guilty plea to the drug charges against her. Both these women were granted relief by this court notwithstanding their admission at their guilty plea.

The Post Conviction Relief judge also erred in finding, "This Court does not find credible any of the reasons that Applicant or his brother has presented to be a 'cogent or and valid reason' to support being allowed to depart from the truth at the guilty plea." App. at 94. The lower court found the statement by Ladarien Gates as to his telling Mr. Myers the drugs at 125 Wild Bird were his to be credible. The lower court said, "The mere fact that his brother, through counsel Myers may have indicated in plea negotiations that Ladarien was willing to accept that the drugs were his does not make the dual representation an actual conflict of interest." App. at 95. This is simply not correct. The testimony shows the statement was made independent of any plea negotiations. The statement was made to Mr. Myers as part of his representation of both brothers. While the theory of the two brothers as to who actually owned the drugs may have been consistent, the obligation of Mr. Myers in representing both brother diverged once one of them told him the drugs were his. How does he permit one brother to plea guilty to the drugs the other brother told him belongs to him? When David Gates made the admission at the plea, was Mr. Myers obligated to inform the judge that David Gates was wrong? That alone is a conflict. Should he have informed he judge and the assistant solicitor the plea on behalf of David Gates needs to be an *Alford*² as David Gates did not possess the drugs. Would the trial judge have even

² *North Carolina v. Alford*, 400 U.S. 25 (1970)

accepted an *Alford* pleas under the circumstances?

The Fifth Circuit Court of Appeals has said, “We consider undivided loyalty of appointed counsel to client as essential to due process.” *MacKenna v. Ellis*, 280 F.2d 592, 599 (5th Cir. 1960), modified, 289 F.2d 928 (5th Cir. 1961). The record in this case does not establish undivided loyalty by Mr. Myers in representing David Gates. This court, citing the Fifth Circuit Court of Appeals has said, “[A]n actual conflict of interest occurs: ... when a defense attorney places himself in a situation inherently conducive to divided loyalties.... If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists.” *Duncan v. State*, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)(internal citations omitted)

As the Alabama Court of Criminal Appeals has stated, “The proper judicial analysis in conflict of interest cases does not focus on the actual effect of the conflict on a particular defendant's case but, rather, revolves around the judicial belief that the Sixth Amendment requires that a defendant may not be represented by counsel who might be tempted to dampen the ardor of his defense in order to placate his other client.” *Schultz v. State*, 481 So. 2d 456, 459 (Ala. Crim. App. 1985). In this case Mr. Myers was tempted to dampen his defense of David Gates to avoid further charges against his other client Ladarrien Gates.

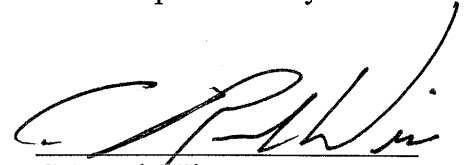
In *Gonzales v. State*, 419 S.C. 2, 795 S.E.2d 835 (2017), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) a new trial was granted on the basis of a conflict of interest even though trial counsel had no indication at the time of the trial that he had a conflict in representing Mr. Gonzales and the boyfriend of Mr. Gonzales mother, Dino Perez. The fact of a conflict existing did not arise until the original case was pending on direct appeal.

At that point, trial counsel learned that Mr. Gonzales was going to be a witness in federal court against Mr. Perez. Prior to that point, trial counsel had never been informed or had a belief that there was a conflict in representing Mr. Gonzales and Mr. Perez. Prior to or during trial nothing alerted trial counsel that either client would be testifying for or against the other client in any proceeding. Notwithstanding the fact that no evidence existed that the conflict of interest impacted the original trial on the methamphetamine trafficking charge, this court reversed the conviction due to the conflict of interest. In the present case, upon Ladarien Gates advising Mr. Myers the drugs at 125 Wild Bird belonged to him and not David Gates, a conflict existed. A conflict can exist even if one client wants to testify in favor of the other client. The conflict arises because testimony by Ladarien Gates, while helping David Gates, obviously hurts Ladarien Gates. This is a conflict of interest when both parties are represented by the same attorney. Because the loyalty of trial counsel was divided, David Gates is entitled to a new trial.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari and issue an order granting David F. Gates a new trial because of the conflict his plea attorney had in this case.

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