

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

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S.C. Supreme Court

STACY RAYSOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000428

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Counsel erred in failing to object to the resentencing judge's refusal to consider petitioner's mitigation evidence during the resentencing hearing because the exclusion of such evidence denied petitioner of his right to a fair resentencing proceeding.

STATEMENT

Petitioner Stacy Raysor pled guilty to voluntary manslaughter during the August 2001 term of the Richland County General Sessions Court before Judge L. Casey Manning. Petitioner was sentenced to imprisonment for a period of twenty-nine years. App 1-50. Petitioner appealed, but the appeal was dismissed by the South Carolina Court of Appeals. App. 53-53. See State v. Raysor, Unpublished Op. No. 2002-UP-765 filed (S.C. Ct. App. December 11, 2002). App. 52-53. Petitioner was represented by Hemphill Pride at the plea proceeding and Tara S. Taggart on direct appeal.

On December 8, 2003, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 54-60, App. 66-71. On July 22, 2004, the respondent filed a return requesting that a hearing be held in response to petitioner's PCR action. App. 72-76. Then, petitioner filed two amended PCR applications with the Clerk's Office on January 6, 2005, and January 7, 2005, respectively. App. 61-65.

A PCR hearing was held on September 11, 2006, at the Richland County Courthouse before Judge John C. Hayes, III. Petitioner was present at the hearing and represented by Joshua Hendrick. App. 77-96. The sole issue raised at the PCR hearing was counsel's error in failing to object to the trial judge's meeting with the solicitor and the deceased's family members ex parte prior to the plea proceeding sans the presence of petitioner or petitioner's counsel at that meeting. On September 12, 2006, Judge Hayes issued an order granting post-conviction relief to petitioner via a resentencing proceeding on the ground that the trial judge's ex parte meeting held with the solicitor and the deceased's family members sans petitioner or petitioner's counsel violated petitioner's Sixth Amendment right to counsel per Locklear v. Harvey, 273 S.C. 58; 245 S.E. 2d 293 (1979). App. 98-99.

The respondent appealed the PCR judge's order and filed a petition for writ of certiorari in the case. On July 13, 2009, the South Carolina Supreme Court issued an order dismissing the grant of the respondent's petition for writ of certiorari as improvidently granted. App 143-144.

Thereafter, a resentencing hearing was held during the February 2010 term of the Richland County General Sessions Court before Judge G. Thomas Cooper, Junior. App. 100-127. Petitioner was present at the hearing and represented by Nicole Singletary. Petitioner was resentenced by Judge Cooper to imprisonment for a period of twenty-five years. Petitioner did not appeal his resentencing proceeding. On January 18, 2011, petitioner filed a second PCR application with the Richland County Office of the Clerk of Court. App. 129-133. The respondent filed a return dated February 8, 2012. App. 134-139.

A PCR hearing was convened on September 10, 2012, at the Richland County Courthouse before Judge J. Ernest Kinard. App. 141-166. Petitioner was present at his PCR hearing and represented by Robert C. Fitzsimons. On February 1, 2012, Judge Kinard issued an order denying petitioner's allegations of ineffective assistance of resentencing counsel. App. 166-172.

Petitioner appealed Judge Kinard's order of dismissal issued in the case. This petition follows.

ARGUMENT

Counsel erred in failing to object to the resentencing judge's refusal to consider petitioner's mitigation evidence during the resentencing hearing because the exclusion of such evidence denied petitioner of his right to a fair sentencing proceeding.

In the case, at bar, petitioner was accused of suffocating his wife to death. App. 22, l.13–16.

During the resentencing hearing, counsel apprised the resentencing judge of petitioner's evidence in mitigation in the case. For example, counsel explained that petitioner had been remorseful throughout his incarceration and that his SCDC records showed no disciplinary actions against him since his incarceration commenced in 1999. Also, counsel added further that petitioner had made positive improvements since his incarceration which was evidenced by his employment in the SCDC library. Also, counsel mentioned that he had been seeing his daughter bi-weekly and has continued to write to her as well. App. 115, l. 1-p. 119, l. 10.

The solicitor argued at the resentencing hearing that the mitigation information presented should not have any impact upon petitioner's new sentence on the ground that the new sentence should be based only on what happened in 1999 when petitioner's manslaughter conviction was obtained rather than what happened to him at SCDC from 1999 to 2010. App. 122, l. 22-p. 123, l. 10. The resentencing judge ruled on the issue of whether to consider petitioner's mitigation evidence as follows:

THE COURT: As the solicitor said, this slate is wiped clean. I have to evaluate this case on what I've heard today, not on what – frankly not on his disciplinary record at the Department of Corrections –and I tend not to have considered that in my judgment in this case. App. 26, lines 3-9.

During the PCR hearing, trial counsel testified that she did not object to the resentencing judge's refusal to consider petitioner's evidence in mitigation since this was a discretionary matter

for the judge's consideration and because this was not an appealable issue. Also, counsel stated that her goal was to obtain a time served sentence or a sentence of ten years or fifteen-to-twenty years. App. 125, lines 1-4; App. 154, l. 8-p. 157, l. 17.

The PCR judge ruled that counsel's failure to object to the resentencing judge's refusal to entertain petitioner's mitigation evidence at the resentencing hearing did not constitute ineffective assistance of trial counsel. App. 166 -172.

In order to receive a fair sentencing proceeding, a sentencing judge should know all the material facts of a case and is required to listen and give serious consideration to any information material to punishment. State v. Franklin, 267 S.C. 240; 226 S.E. 2d 896 (1976). Hayden v. State, 283 S.C. 121; 322 S.E. 2d 14 (1984). Also, in determining a proper sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed. State v. Brouwer, 346 S.C. 375; 550 S.E. 2d 915 (2001). Note that jurors are allowed to consider mitigating evidence and adaptability to prison life in capital cases. Sigmon v. State, 403 S.C. 120; 742 S.E. 2nd 394 (2013). See also Skipper v. South Carolina, 476 U.S. 1 (1986), and its progeny. Compare also the case of State v. Simms, 131 S.C. 422, 127 S.E.840 (1925), where the Court held that the defendant to be sentenced had a right that everything appertaining to the case, in any way of evidence affecting the case, be addressed. Also, the sentencing judge does not have to abide by the solicitor's wishes, as this resentencing judge believed, in that he is free to alter, amend, or modify a prior sentence at resentencing. State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981):

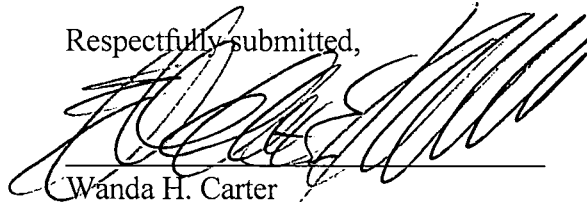
Therefore, counsel's error in failing to object the resentencing judge's refusal to consider petitioner's mitigation evidence was tantamount to ineffective assistance of counsel in violation of the Sixth Amendment. See also, Strickland v. Washington, 466 U.S. 668 (1984). Petitioner was

prejudiced because of counsel's error as this denied him the right to a fair sentencing proceeding in the case. Had the resentencing judge reviewed petitioner's evidence in mitigation, a reasonable probability exists that petitioner would have received a more favorable or lenient sentence at the resentencing hearing, or in the alternate, the issue would have been preserved for appellate review.

CONCLUSION

Based on the foregoing argument, petitioner requests that his petition be granted and full briefing allowed on the issue raised above in the case.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
J. Ernest Kinard, Jr., Circuit Court Judge

STACY RAYSOR,

PETITIONER,

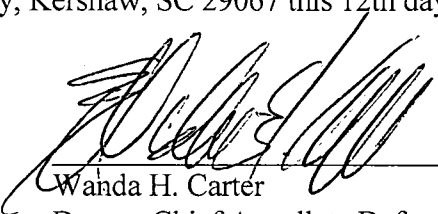
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

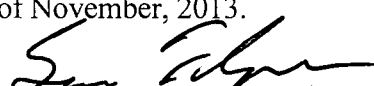
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Megan Harrigan, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Stacy Raysor, #277550, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067 this 12th day of November, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of November, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.