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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Brian M. Gibbons, Circuit Court Judge

LONNIE MILLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000351

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding plea counsel provided effective representation where she failed to have her client evaluated for sleep apnea which would have been a mitigating factor at his plea?

STATEMENT

In 2017, Petitioner Lonnie Miller was indicted in Aiken County for two counts of failing to stop a motor vehicle at an accident scene involving death, one count of failure to stop at a scene with a personal injury, and two counts of reckless homicide. App. 186-200. On February 16, 2018, petitioner pled guilty before the Honorable Doyet A. Early, III. App. 1. J. Strom Thurmond, Jr. represented the State. App. 1. Maureen O. Floyd represented petitioner. App. 1. Judge Early accepted the plea and sentenced petitioner to the maximum sentence for leaving the scene, twenty five years' imprisonment. App. 70. Judge Early sentenced petitioner to ten years' imprisonment on the other counts, with all sentences running concurrent. App. 70. Petitioner did not appeal.

On December 13, 2017, petitioner filed a PCR application. App. 72. He amended the application on January 2, 2020. App. 89. On July 16, 2024, the Honorable Brian M. Gibbons held a hearing. App. 92. Nancy Fennell represented petitioner and Cruise Mitchell represented the State. App. 92. Judge Gibbons denied PCR relief from the bench. App. 166. On January 23, 2025, the court entered a written Order of Dismissal. App. 175. This petition follows.

ARGUMENT

The PCR court erred in finding plea counsel provided effective representation where she failed to have her client evaluated for sleep apnea which would have been a mitigating factor at his plea.

This prosecution arose from a tragic automobile accident in which two highway construction workers were killed by petitioner's car. Plea counsel's statements at the plea hearing contradicted the strategic reason she claimed at the PCR hearing for not having petitioner evaluated for sleep apnea. At the PCR hearing, she told the court that if petitioner had medical records establishing he had sleep apnea, or had a sleep study done, it "[a]bsolutely" would not have helped petitioner at the plea hearing. App. 156-58. But six years earlier at the plea hearing, she told the judge that petitioner fell asleep and that he had sleep apnea. App. 26. Despite this clear contradiction, the PCR court credited plea counsel with a valid strategic reason for not having a sleep study done and denied relief. App. 181-82.

The Guilty Plea

The accident happened at 8:32 AM. App. 14. Petitioner's car was travelling at 59 mph in a 45 mph zone. App. 14. His car left the road and hit three Department of Transportation workers, killing two of them. App. 14. Petitioner's car then veered back onto the road without slowing down to miss the DOT truck. App. 14. Petitioner fled the scene. App. 14-15.

The police quickly found petitioner's car, but could not locate petitioner. App. 15-16. The solicitor told Judge Early that petitioner "turned himself in at approximately 4:30 PM . . . some 8 hours after the incident and well beyond the protocols for any sort of DUI investigation. App. 16. He then told the court that petitioner told the police he either blacked out or had sleep apnea. App. 16.

The solicitor then gave Judge Early petitioner's criminal history which included an abysmal driving record and multiple drug convictions. App. 18-21. Judge Early was particularly interested in the fact that petitioner was on probation for possession of Xanax at the time of the accident. App. 20-21. The solicitor argued that petitioner's statements about either blacking out or falling asleep were inconsistent with "paying for breakfast with exact change some 20 minutes beforehand." App. 21. He continued by stating that petitioner's waiting eight hours to turn himself in was far more consistent with someone trying to avoid a drug test than someone with sleep apnea. App. 21-22. Judge Early asked the solicitor, "Any medical records to verify he has sleep apnea?" App. 22. The solicitor replied, "Not that we've been provided." App. 22.

Plea counsel began her presentation by telling the judge that petitioner was remorseful and came to her office on the day of the accident. App. 25-26. Once she learned what happened, plea counsel arranged with the solicitor for petitioner to turn himself in. App. 26. She drove him to the sheriff's office herself. App. 26.

Plea counsel then told the judge that where the accident happened was "a clear shot. And what happened is he fell asleep." App. 26. Judge Early interrupted and asked why petitioner fell asleep at 8:00 in the morning. App. 26. Plea counsel replied, "He suffers from sleep apnea and also—" App. 26.

Judge Early asked for medical records to support her claim that petitioner had sleep apnea. App. 26. Plea counsel responded, "No, Your Honor. He had applied for social security and did not have medical insurance, but he has been advised that the symptoms that he had was sleep apnea. . . ." App. 26. Plea counsel explained petitioner told the police about his sleep apnea and he "was trying to figure out what happened" and that he remembered hitting something, but did not realize that he hit human beings until he heard ambulances. App. 26-27.

Judge Early replied, “Ms. Floyd, I find that almost impossible to believe.” App. 27. The judge further questioned how petitioner could have been sufficiently awake to flee the scene and hide evidence if he was so drowsy from sleep apnea. App. 27-28. The court said, “the main reason they don’t turn themselves in is so they don’t have to take a blood test or a breathalyzer or a toxicology test.” App. 29-30. Judge Early continued:

Because of the consequences of hitting someone under the influence is, as you know and I know substantially greater than just a reckless homicide case. And to me, that’s the only reason, not the only reason, **but the most logical reason that you would flee, was to avoid having to be tested.**

App. 30 (emphasis added). As the judge continued to press plea counsel on possible drug use, she again fell back on petitioner possibly having sleep apnea. App. 33. When Judge Early gave petitioner the maximum sentence for fleeing the scene, he stated, “I believe you’re truly sorry. I believe you’re remorseful. But society demands that I send a message that if you’re going to drive in a reckless manner and fail to stop and render aid, **fail to stop so appropriate tests can be done, a message has to be sent.**” App. 70 (emphasis added).

The PCR Hearing

By the time of petitioner’s PCR hearing, he had been diagnosed with “severe obstructive sleep apnea” and entered those medical records into evidence. App. 169. Petitioner testified that at the time of the accident, he would wake up constantly, sometimes “gagging and choking for air.” App. 117. He told plea counsel that he believed he had sleep apnea and he needed to have a sleep study done. App. 117. She led petitioner to believe that the sleep study would happen, but it did not. App. 117-19. Petitioner’s mother also testified at the PCR hearing about petitioner’s troubles staying awake around the house, in the bathroom, and in cars around the time of the accident. App. 138-140.

Plea counsel testified she was convinced that petitioner “must have fallen asleep” before the accident. App. 147. She and her husband mapped petitioner’s route to exclude other causes such as obstructed views and the sun being in petitioner’s eyes. App. 144-45. They excluded these causes. App. 144-45.

Plea counsel admitted petitioner told her he thought he had sleep apnea. App. 148. She added, “but he had no records to back it up.” App. 148. She opined at the PCR hearing that a sleep apnea diagnosis would not “have helped him at all in this case because he would have known not to drive with his record.” App. 148-49.

Petitioner’s counsel asked whether, especially given Judge Early’s comments during sentencing, evidence of sleep apnea would have been a mitigating factor. App. 156. Contradicting what she told Judge Early during the guilty plea, she answered:

Absolutely not, because there were no medical records. They were not medical records that existed prior to this, and I was not aware of him falling asleep while driving or falling asleep on the toilet or falling asleep in the bathtub. None of that was explained to me by him or his mother. Okay? So I had no way of knowing that that was an issue. . . . If it were an issue and he had relayed that to the doctor doing the testing, that he had fallen asleep driving before, that would have been like a knife in our heart that he was reckless by driving, knowing that he falls asleep while driving. Okay?

And so praise the Lord that we didn’t have a sleep test because he—if he had told that to the doctor, that would have been—that would have taken away, I think, some of his remorse and culpability. **It would have upped his culpability** because he knew he shouldn’t have been driving. . . .

App. 156-57 (emphasis added). Judge Gibbons accepted plea counsel’s rationale that a diagnosis of sleep apnea would not have helped petitioner’s case because the cause of the accident was irrelevant to petitioner fleeing the scene. App. 180-82.

Discussion

It was clear from the colloquy at the plea hearing that Judge Early suspected that the story about sleep apnea was only an excuse to hide intoxication. Plea counsel recognized this at the time of the hearing and told Judge Early petitioner had sleep apnea, but could not back up the claim without medical records or without having had a sleep study performed. The PCR court erred in accepting plea counsel's complete 180 degree turn into claiming that sleep apnea—the mitigation she urged at the plea hearing—would have hurt petitioner. Plea counsel speciously claimed at the PCR hearing that having sleep apnea would have “upped his culpability” more than being intoxicated. While both plea counsel and the PCR court were correct that a sleep apnea diagnosis would not have been a defense to fleeing the scene, it would have been powerful mitigating evidence contradicting Judge Early's strong suspicion that petitioner fell asleep because he was intoxicated.

“A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution.” Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). To establish a claim for ineffective assistance of counsel, a PCR applicant must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668 (1984). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating

evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (emphasis added).

Judge Early repeatedly asked for medical records to establish sleep apnea. At the PCR hearing, plea counsel did not seem to understand that it was her duty to conduct a mitigation investigation and obtain the records or a sleep study as she blamed petitioner for not having the diagnosis or the records. Failing to conduct a proper mitigation investigation is deficient performance.

As for prejudice, petitioner’s diagnosis of “severe obstructive sleep apnea” after he was incarcerated satisfies part of this prong. App. 169. The other part of the prejudice analysis is shown by the plea judge’s conviction that intoxication rather than sleep apnea was the cause of the accident. Petitioner’s delay in turning himself in gave credence to this belief and plea counsel knew at the time it was important to defeat this strong suspicion. She knew it was important because she tried to use sleep apnea as a mitigating factor. Plea counsel just failed to do the necessary work to provide the plea judge with the documentation to prove it.

In a guilty plea setting, “the prejudice analysis is limited to the outcome of the plea process—whether but for counsel’s deficiency, the defendant would have declined to plead and instead proceeded to trial.” Frierson v. State, 423 S.C. 257, 263, 815 S.E.2d 433, 436 (2018). Petitioner stated that he was prepared to move forward in PCR despite the only relief the court could grant was a new trial. App. 109-10. Had plea counsel gotten petitioner tested for sleep apnea, it would have affected his decision to plead guilty. App. 121. Where petitioner had no defense to leaving the scene, the only hope he had was to plead guilty and present mitigating evidence that would convince the judge to give him a sentence less than the maximum. Plea

counsel's deficient performance deprived petitioner of this chance. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.



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ATTORNEY FOR PETITIONER

This 4th day of November, 2025.