

2011-185148

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Williamsburg County

William Jeffrey Young, Circuit Court Judge

JAMEL ALEXANDRETTE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in advising petitioner that he was “on his own” with respect to matters of defense because this meant that the state’s case was not subjected to any true adversarial testing.

STATEMENT

Petitioner Jamel Alexandrette pled guilty to murder during the May 2007 term of the Williamsburg County General Sessions Court before Judge R. Ferrell Cothran. Petitioner was sentenced to imprisonment for a period of thirty years. App. 1-40. Petitioner was represented by Legrand Carraway at the plea proceeding. Petitioner did not appeal his conviction and sentence.

On February 26, 2008, petitioner filed a PCR application with the Williamsburg County Office of the Clerk of Court. App. 42-60. The respondent filed a return dated July 2, 2008, requesting that a hearing be held in response to petitioner's PCR action. App. 61-65.

A hearing was convened on October 26, 2010, at the Williamsburg County Courthouse before Judge W. Jeffrey Young. App. 67-89. Petitioner was represented by Charles T. Brooks at the PCR hearing. On January 25, 2011, Judge Young issued an order of dismissal in the case. App. 91-96.

Petitioner appealed Judge Young's order of dismissal. This petition follows.

ARGUMENT

Trial counsel erred in advising petitioner that he was “on his own” with respect to matters of defense because this meant that the state’s case was not subjected to any true adversarial testing.

During the plea proceeding, the solicitor explained the facts of the case. Apparently, a male came to petitioner’s home on June 12, 2006, proposing to do yard work for a fee, and afterwards, there was an agreed upon time by which this male was to return to the home to do the work. A problem arose when the male returned to the house earlier than expected and as a result, petitioner’s wife called him (petitioner) to report the early arrival. The inference is that petitioner was not happy about this man appearing at his house in his (petitioner’s) absence. At some point later on, petitioner encountered this man at the local grocery store where they both punched each other and then gunshots were fired. The man was shot to death and petitioner was charged with murder. App. 24, l. 15 – p. 26, l. 10.

During the PCR hearing, petitioner testified as follows about his desire for a trial by jury:

A: Well, ...I was basically forced to plead guilty. I wanted to go to trial but [trial counsel] stated that he was not going to represent me...[and] I was on my own if I went in there [for a jury trial]. I had no way of winning if I went to trial. [Trial counsel] said they wouldn’t believe nothing I said out of my mouth.

App. 70, ll. 9-13.

A: [Trial counsel] discouraged me in a lot of ways. And by [trial counsel] telling me, you know, he talked to the Judge...[and] there’s no way I’m going to win....[and] no one will believe what I say because of my charges I already had in the past..[and]...[trial counsel] basically just told me he not going to represent me at all. [Trial counsel said] if I go to this trial, I’m on my own.

App. 73, ll. 11-17.

Petitioner stated that he was coerced into pleading guilty based on what was in effect the equivalent of his attorney's failure to represent him, and that he really desired a trial by jury in the case. App. 70, l. 9; App. 71, ll. 20-23; App. 72, ll. 7-16; App. 73, ll. 3-7. Petitioner stated that "[counsel] kept pushing it on me to plead guilty...[and] saying you know you might as well go ahead and plead guilty because...that's what the family wanted...and the Court is going to go with what the family wanted..." App. 78, ll. 1-9. Petitioner stated that he believed that he would not have been convicted of murder had he been afforded a trial by jury. App. 78, l. 1 – p. 79, l. 2. Regarding the question of whether he wanted to risk a jury trial, petitioner answered as follows:

A: I don't think I would have been convicted of murder, Ma'am.

Q: Okay. But you didn't want to take that risk, would that be accurate?

A: I wanted to take the risk but not alone. I needed an attorney with me.

App. 78, l. 22 – p. 79, l. 2.

Trial counsel testified during the PCR hearing and explained that there was no self defense for "shoot[ing] this guy five times" (App. 87, ll. 14-15), and that he believed petitioner would have been found guilty in the event of a trial and sentenced to more time than he received in exchange for his plea. App. 86, l. 15 – p. 87, l. 18. However, it was acknowledged that with respect to a self defense claim, there might have been an opportunity to have proven self defense in the case where the story was that the victim was the one who was armed with a gun and that petitioner had no gun. App. 88, l. 10 – p. 89, l. 2.

An accused has the right to counsel per the Sixth and Fourteenth Amendments to the United States Constitution, which in turn compels the states to provide counsel to defendants who cannot afford legal representation. Gideon v. Wainwright, 372 U.S. 335 (1963). In addition, counsel must

provide effective legal representation in criminal case. Hill v. Lockhart, 484 U.S. 52 (1985). Moreover, the failure to subject the state's case to any meaningful adversarial testing can constitute a constructive denial of counsel, which would also be tantamount to deficient legal representation where prejudice is presumed. Frett v. State, 298 S.C. 54, 378 S.E.2d 249 (1988); Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006); United States v. Cronin, 466 U.S. 648 (1984); Strickland v. Washington, 466 U.S. 668 (1984). Here, it appeared that trial counsel whole-heartedly accepted the state's case as completely meritorious and failed to investigate into and develop matters of defense on petitioner's behalf. Counsel's advice to petitioner was in effect that an adversarial testing of the state's case was not possible and informed petitioner that the case was totally indefensible.

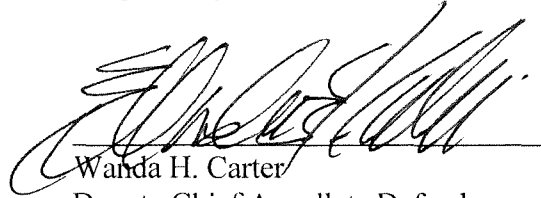
Clearly, counsel performed deficiently in petitioner's case as he was not an advocate for his defense. Rather, counsel was in effect an advocate for the state and vouched for the state's case. Thus, counsel's representation in petitioner's case was below the standard of competence demanded of criminal attorneys because he neglected to subject the state's case to any scrutiny or challenge and failed to entertain matters of defense. Moreover, the lack of adversarial testing meant that the prejudice petitioner suffered due to counsel's error was presumed. Petitioner had a right to plead not guilty and subject the state to its burden of proving him guilty beyond a reasonable doubt. Doyle v. Ohio, 426 U.S. 610 (1976).

The PCR court erred in denying petitioner's allegation that he received ineffective assistance of counsel where counsel's legal assistance was in effect nonexistent. This violated petitioner's Sixth Amendment right to effective assistance of counsel in the case. See Hill v. Lockhart, 484 U.S. 52 (1985).

CONCLUSION

Based on the foregoing argument, petitioner requests that the Court grant the petition and allow full briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line. The signature is stylized and cursive.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of September, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County
William Jeffrey Young, Circuit Court Judge

JAMEL ALEXANDRETTE,

PETITIONER,

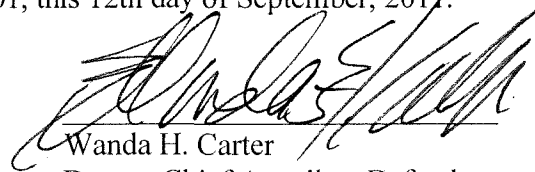
V.

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 Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of September, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of September, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.