

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County

Edgar W. Dickson, Circuit Court Judge

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MAY - 8 2014

S.C. Supreme Court

LOUIS SHEPPARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002488

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in ordering (rather than advising) petitioner not to testify in his defense at trial because this denied him of the right to present his case in self-defense despite the possibility of being impeached because per State v. Rivera¹ an accused cannot be denied the right to testify even if his testimony would have been prejudicial or against his best interest as the deprivation of this right constituted a structural error that would require automatic reversal.

¹ 402 S.C. 225, 741 S.E.2d 694 (2013).

STATEMENT

Petitioner Louis Sheppard was convicted of assault and battery with intent to kill per jury trial held during the July 2007 term of the Dorchester County General Sessions Court before Judge Diane S. Goodstein. App. 1 -210. Petitioner was sentenced to imprisonment for a period of life without parole pursuant to S.C.Code Ann. Section 17-25-45. Marva Hardee-Thomas represented appellant at trial, and Assistant Solicitors Donald W. Sorenson and Russell D. Hilton appeared on behalf of the state.

On July 26, 2010, petitioner filed a PCR application with the Dorchester County Office of the Clerk of Court and an amended PCR application with the clerk on March 11, 2011. App. 211 – 216. The respondent filed a return dated February 4, 2011, requesting that a hearing be held in response to petitioner's PCR action. App. 217 – 222.

A PCR hearing was convened on August 30, 2011, at the Dorchester County Courthouse before Judge Edgar H. Dickson. App. 224 – 265. Petitioner was present at the PCR hearing and represented by Charles T. Brooks, and Assistant Attorney General Robert S. Corney appeared on behalf of the state.

On November 1, 2013, Judge Dickson issued an Order of Dismissal in the case. Petitioner appealed Judge Dickson's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in ordering (rather than advising) petitioner not to testify in his defense at trial because this denied him of the right to present his case in self-defense despite the possibility of being impeached because per State v. Rivera² an accused cannot be denied the right to testify even if his testimony would have been prejudicial or against his best interest as the deprivation of this right constitutes a structural error that would require automatic reversal.

The trial in this case consisted of the testimony of inmate James Holmes, who was stabbed, and two SCDC correctional officers (Brian Bellamy and Carvin Elmore), who stopped the fighting between Holmes and petitioner, and SCDC nurse Carlita Jenkins.

At trial, James Holmes³ testified that he was inside the Ashley Unit of Lieber Correctional Institution where he was housed on October 10, 2005, and had been watching a college football game on television when he suddenly felt “something jabbing [him and] sticking [him] in the back” and that he turned around and saw petitioner using a shank (knife) to stab him. Holmes stated that he put petitioner in a headlock to stop him and that they tussled until prison guards Bellamy and Elmore separated them. App. 53, l. 9 – 59, l. 23; App. 63, lines 1-8; App. 64, l. 21 – p. 66, l. 13. App. 69, l. 17 – p. 71, l. 23; App. 91, l. 7 – p. 101, l. 4. App. 104, l. 10- p. 112, l. 15.

Petitioner neither testified at trial nor put up a case in his defense.

During the PCR hearing, petitioner complained about being denied the right to testify at trial and also about the fact that there was no case for the defense presented at trial. App. 235, l. 12 – 18. Petitioner stated that he had been afforded the opportunity to testify, then he would have

² 402 S.C. 225, 741 S.E.2d 694 (2013).

³ Holmes was serving a twenty-year sentence for his convictions of armed robbery, possession of a weapon during the commission of a violent crime, and financial transaction fraud and theft.

explained that it was inmate Holmes who became hostile and attacked and fought him, which meant that he (petitioner) used his weapon in self-defense to protect himself. App. 235, l. 19 – p. 238, l.

12. Petitioner testified that trial counsel (did not) want him to testify because his prior assault and battery and armed robbery charges would have surfaced, but that he wanted to testify nonetheless. App. 241, l. 12 – 23; App. 245, l. 13 – 22; App 247, l. 22 – p. 249, l. 14.

Trial counsel testified at the PCR hearing and explained that “[petitioner] did want to testify, but [that she] “**told**” him not to testify. App. 254, l. 15 – 25. The PCR judge ruled that petitioner informed the trial judge that he did not want to testify; and that as a result, counsel’s representation was not deficient. App. 271-273.

Petitioner had a right to testify at trial in order to explain that he acted in self-defense⁴ and was not guilty as charged. Criminal defendants have a right to testify in their own behalf under the Due Process Clause of the Fourteenth Amendment, the Compulsory Process Clause of the Sixth Amendment and the Fifth Amendment’s privilege against self-incrimination. Rock v. Arkansas, 483 U.S. 44 (1987). In Rock v. Arkansas, the Supreme Court held that an accused has a right to present his own version of the events in his own words.

A defendant’s right to testify at trial is paramount regardless of the consequences. See State v. Rivera, 402 S.C. 225, 741 S.E.2d 694 (2013). In Rivera, the Court reversed because the defendant

⁴ In a case of self-defense, the law to be charged is determined from the facts presented in the case. State v. Bryant, 336 S.C. 340, 520 S.E. 2d 319 (1999). If there is any evidence in the record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self- defense, then the accused is entitled to a charge on the law of self-defense. State v. Stone, 285 SC 386 330 S.E. 2d 286 (1985). In order to establish self-defense, the defendant must have been with- out fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed, and he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Moreover, when a one claims self-defense, the state is required to disprove the elements of self- defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012).

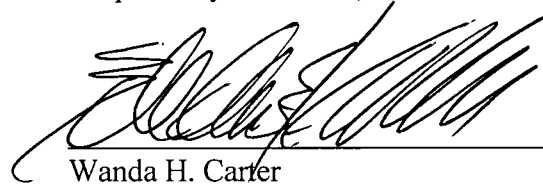
was deprived of the right to testify at trial, and held that the denial of the right to testify was not harmless error. The defendant in Rivera was found guilty of murder (suffocation of deceased) and sentenced to death, but at trial he wanted to testify “about the killing,” except that the trial judge prohibited him from doing so because he might have said “things, that would obviously not [have been] in his best interest.”

Clearly, counsel’s error in effect ordering petitioner not to testify at trial constituted deficient legal representation in violation of the Sixth Amendment’s guarantee regarding competent legal representation in a criminal case. See Strickland v. Washington, 466 U.S.668 (1984). Petitioner was prejudiced as a result, because but for the error, petitioner could have asserted his self-defense claim and his trial might have ended differently and an LWOP sentence might have been avoided.

CONCLUSION

Based on the foregoing argument, petitioner request that this Court grant his petition and allow full briefing on the above raised issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of May, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County
Edgar W. Dickson, Circuit Court Judge

LOUIS SHEPPARD ,

PETITIONER,

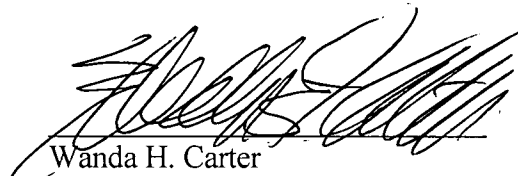
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

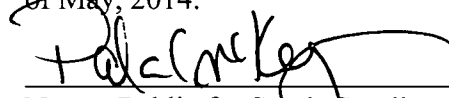
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Mr. Louis Sheppard #262090, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 8th day of May, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of May, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.