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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

SAMUEL J. JETER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002619

PETITION FOR WRIT OF CERTIORARI

SUSAN B. HACKETT
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR judge err in concluding that Petitioner was not entitled to relief due to a failure to present evidence to support his claim that plea counsel failed to investigate where the record is clear that Petitioner presented two documents indicating he was not perpetrator?

STATEMENT

In June 2011, a Spartanburg County grand jury indicted Petitioner for criminal domestic violence of a high and aggravated nature. App. 76 – 77. On September 15, 2011, Petitioner was indicted for distribution of crack cocaine. App. 79 – 80. On November 17, 2011, Petitioner entered guilty pleas to both charges before the Honorable J. Mark Hayes, II. Ryan McCarty represented the state, and James Cheek represented Petitioner. App. 1. Petitioner did not file a notice of appeal. App. 26.

On January 6, 2012, Petitioner filed an application for post-conviction relief (PCR). App. 25 - 31. An evidentiary hearing convened on June 26, 2013 before the Honorable R. Lawton McIntosh. Howard Kinard represented Petitioner, and Suzanne White represented the state. App. 36. By order filed on November 7, 2013, Judge McIntosh denied Petitioner relief from his convictions and sentences. App. 69 - 75.

Petitioner filed a timely notice of appeal. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred in concluding that Petitioner was not entitled to relief due to a failure to present evidence to support his claim that plea counsel failed to investigate where the record is clear that Petitioner presented two documents indicating he was not perpetrator.

Relevant Facts

At the PCR hearing, Petitioner introduced two exhibits found in his plea counsel's file showing the state's evidence indicated another person had committed the drug offense. App. 49, line 5 – App. 50, line 19; App. 67 – 68. The first document showed the Spartanburg Public Safety Department engaged in an undercover operation “to purchase crack from Tywan.” App. 67. The police used a confidential informant, #462, to purchase \$50 worth of crack from an individual named Tywan. App. 67. A statement apparently generated by the confidential informant showed the drugs were purchased from Tyrell. App. 68. Neither of the investigative materials pointed to Petitioner's guilt. Petitioner never saw those exculpatory documents or discussed them with plea counsel. App. 52, lines 9 – 19. Petitioner testified he was never known as Tyrel or Tywan. App. 52, lines 1 – 8. Further, Petitioner testified he would not have pled guilty if he had known about the exculpatory evidence. App. 52, lines 20 – 23; App. 56, lines 4 – 8.

Plea counsel admitted that he had received the documents referencing two different names as the suspect. Plea counsel further admitted that he never reviewed the exculpatory evidence with Petitioner. App. 64, lines 4 – 9. Plea counsel attempted to explain away the exculpatory evidence at the PCR hearing:

Q. And in regards to, uh, the paperwork that they've got here, is that anything that had concerned you or that you thought would be a defense to these charges if ya'll had gone to trial?

A. No, I had no concern about that, that's Tyrell sitting right over there. Uh, nobody selling drugs goes down the street use their

own name, they use a street name or somebody else's name. You would not approach anybody using your own name out there on the street, that's ridiculous.

App. 59, line 22 – App. 60, line 5.

Despite clear exculpatory evidence in the record and the unequivocal testimony from plea counsel and Petitioner that Petitioner never saw the documents, the PCR court held Petitioner “offered no testimony or evidence to support his claim that counsel failed to sufficiently investigate the charges.” App. 73.

Discussion

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove that counsel’s performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers. Boykin v. Alabama, 395 U.S. 238,

243-244 (1969). The record must show with certainty that the plea is “an intentional relinquishment or abandonment of a known right or privilege.” State v. Patterson, 278 S.C. 319, 322, 295 S.E.2d 264, 265 (1982) overruled on other grounds State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Judges are required to give the defendant an explanation of the defendant’s waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). Entering a guilty plea results in a waiver of several constitutional rights; therefore the Due Process Clause requires that defendants enter into guilty pleas voluntarily, knowingly, and intelligently. Burnett v. State, 352 S.C. 589, 591, 576 S.E.2d 144, 145 (2003).

“‘[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.’” Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014)(quoting Strickland, 466 U.S. at 691)). “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). A reviewing court examines whether defense counsel’s failure to investigate was reasonable. Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013)(citing Wiggins v. Smith, 539 U.S. 510, 522-523 (2003)).

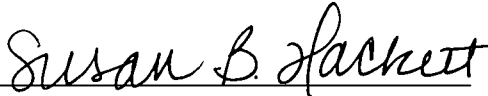
Petitioner offered sufficient evidence at the PCR hearing to prove plea counsel’s performance was deficient where counsel failed to advise Petitioner of the exculpatory evidence and failed to conduct any additional investigation of the exculpatory evidence. The police documents describing the undercover drug buy exculpated Petitioner as the drug dealer. At a minimum, plea counsel should have advised petitioner of the documents to conform with reasonable professional norms. Additionally, plea counsel should have conducted an independent investigation into the

alleged crime. See Thompson v. State, 251 S.C. 593, 598, 164 S.E.2d 760, 762 (1968)(finding a guilty plea was voluntary where plea counsel made a full investigation of the facts in the case and advised the defendant concerning his plea of guilty). Petitioner proved plea counsel's performance prejudiced Petitioner because Petitioner testified he would not have pled guilty if he had known about the exculpatory evidence.

CONCLUSION

Petitioner respectfully requests this Court reverse the decision of the lower court and grant him relief.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of June, 2014.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

SAMUEL J. JETER,

PETITIONER,

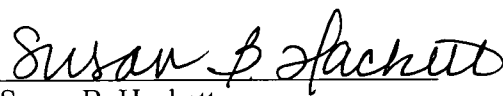
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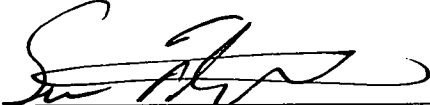
CERTIFICATE OF SERVICE

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 Suzanne H. White, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Mr. Samuel J. Jeter #242979, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 23rd day of June, 2014.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of June, 2014.


_____(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.