

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Richland County
Clifton Newman, Circuit Court Judge
App. Case No. 2013-000479

RECEIVED

DEC - 5 2013

S.C. Supreme Court

TREMON DOCTOR--PETITIONER,

-v-

STATE OF SOUTH CAROLINA--RESPONDENT,

PETITIONER'S PRO-SE JOHNSON

PETITION FOR WRIT OF CERTIORARI

Submitted Dec. 2, 2013
Columbia, S.C. 29210

Tremon Doctor
S.C.D.C. # 280808
B.R.C.I.
4460 Broad River Rd.
Columbia, S.C.
29210

STATEMENT OF THE CASE

Petitioner was indicted by the Richland County Grand Jury for the offenses of Murder, Carjacking and Armed Robbery, February 14, 2007.

On March 31, 2008 petitioner entered a plea of guilty to a lesser included offense from murder to voluntary manslaughter, carjacking, and armed robbery, before the Honorable J. Michelle Childs,

Petitioner was represented by Megan Lee and Micah Leddy. The State was represented by Kathryn Luck Campbell and Eden Hendrick.

Based on Counsel's advise petitioner entered a plea of guilty and Judge Child's sentenced petitioner to (25) twenty-five years on the voluntary manslaughter, (5) five years on the carjacking, and (10) ten years on the armed robbery, sentences were order concurrent.

Counsel for petitioner filed a timely notice of appeal and the appeal was perfected by the South Carolina Office of Indigent Defense.

Petitioner was represented by La Nelle C. Durant, Esquire. On November 3, 2008 Durant filed an Anders Brief pursuant to Anders v. California, 386 U.S. 738(1967). Petitioner did not file any pro-se filings.

On November 23, 2009, The South Carolina Court of Appeals dismissed the appeal, State v. Doctor, Op.No. 2009-UP-561 (CT.App. filed November 23, 2009).

On November 26, 2010, Petitioner filed an application for post-conviction relief ("PCR")(2010-C8-40-07502). On February 4, 2011, the State filed a Return. On February 14, 2012 an evidentiary hearing was convened before the Honorable Clifton B. Newman. Petitioner was present and represented by Charles T. Brooks, III. the State was represented by

Rob D. Corney. On February 27, 2013, Judge Newman issued a written order denying relief and dismissing the application. Brooks filed a timely notice of Appeal on behalf of petitioner. Petitioner was appointed Lalle C. Durant, Esquire to represent him on Certiorari. On October 23, 2013. Durant filed a Johnson petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201(1988).

Petitioner's pro-se petition is as follows:

ISSUE (I)

Did The PCR Court Err in Failing to Find Counsels Rendered Ineffective Assistance of Counsel, when counsels advised petitioner to enter a plea of guilty to two seperated incidents without conducting any pretrial Investigation, both factual and Legal.

FACTS

This case stems from two seperate unrelated incidents, (1) Petitioner was charged with carjacking and armed robbery and (2), the homicide of Brian Washington. Petitioner was represented by Megan Lee and Micah Leddy. Petitioner upon counsels advise entered a negotiated plea to an aggregate sentence of 25 years.

CARJACKING/ARMED ROBBERY:

During the PCR hearing Petitioner testified "The evidence that the State had against me only proved that I was present where a crime was committed, not that I was a participant in the actual crime. I have some warrants and statements from the co-defendant stating that I never took part in this crime, App.63,1-8. Petitioner testified the statements show that "I had nothing to do with this crime that was committed that

day." Petitioner testified that Keith Goins ("Goins) had nothing to gain by placing another person as his (Goins), co-conspirator. Petitioner testified Goins Statement four months later clearly shows that petitioner had nothing to do with the alleged robbery and carjacking, App.66,L.6-13; yet my attorney advised me to plead under the hands of one doctrine "Knowing that law enforcement officers had already issued warrants against the actual co-defendant, "App.66,L.13-16.

Petitioner testified; had my attorney explained to me a principle second is the one who is present at the scene aiding or abetting the principle first and that under the accomplice liability theory a person must personally committ the crime or be present at the scene of the crime and intentionally or through a common design aid, abet, or assist in the commission of the crime through some overt act to be liable as an aider or abbettor, the participant must be "Chargeable with the knowledge of the principal's conduct. Mere presence at the scene is not sufficient to establish guilt as an aider or abetter. I never would have pled guilty, but insisted on going to trial and have the state prove it's case against me, App.66,L.16-25-p-67,L.1-6.

Petitioner further testified he could have raised third-party guilt because Mr.Monroe had been charged as the co-defendant that conspired with Keith Goins to committ this crime and Keith Goins implicated him the night of the crimes in his statement to law enforcement officers, App.67, L.6-11.

MURDER

Petitioner testified that on August 1st 2005 a warrant was issued for the murder of Brian Washington, and at no time during his detention did

his counsel Ms. Lee discussed the elements or evidence that pertained to the murder charge, App.69,L.1-5.

Petitioner further testified that (after) having access to legal materials and law books, he found out he had a viable self-defense claim on the murder charge, App.69,L.5-8.

Petitioner testified he was not the one who brought on the difficulty as Washington (victim) came to his (petitioner's) residence, drunk, aggressive, using profane language.

Petitioner testified he asked Washington to leave his residence "several" times before Washington attacked him with a beer bottle; and therefore there several factors that petitioner could have considered "he was in apparent danger," App.69,L.8-14.

Petitioner testified there was evidence throughout the investigation by law enforcement that clearly suggest this was a self-defense case, App.69,L.19-21. Several witnesses even placed Washington in possession of the beer bottle throughout the incident, App.69,L.21-23.

Petitioner testified statements from State's witnesses (Sherry Arthur and Gary Moore) supported his position and testimony, App.69,L.23-25,-p70,L.1-2.

PCR Counsel asked Petitioner if he confidently felt that (if) he had gone to trial he would have been acquitted?; to which Petitioner replied: " I had enough evidence to be acquitted on all charges, App.70,L.18-21,

Petitioner testified counsels misadvised him because they failed to investigate the evidence they had. They "failed" to investigate the evidence they had right there. They had access to all this evidence, App.70,L.24-25-p71,L.1

Petitioner further testified the victim was a known drug, alcohol user that the victim was older, taller and outweighed Petitioner, and the victim was the aggressor, even after Petitioner repeatedly asked him to leave Petitioner's residence, App.71,L.9-11. Petitioner testified the victim pushed him, stating what he would do to Petitioner with the bottle and he charged Petitioner a second time, App.71,L.11-13.

Petitioner testified he was solely defending himself against the victim's aggressive advancements, but at [no] time did Ms. Lee confer with Petitioner about the possibility of self-defense, nor the castle-doctrine that had been passed during the time that it would have made Petitioner immune from prosecution of the murder charge, App.71,L.13-21.

Petitioner testified that it was [not] even conclusive he was the cause of the victim's death, App.71,L.22-23. Petitioner testified there was a 36-hour missing window that the victim could have sustained an injury that caused the victim's death, App.71,L.23-25.

Petitioner testified that on several occasions he tried to assist in his defense against the charges, yet Ms. Lee did not provide Petitioner with any assistance in formulating a defense. Rather Ms. Lee only presented the option of a plea, while Petitioner remained steadfast he wanted a trial, and had Ms. Lee informed Petitioner of what constituted self-defense, and explained the castle-doctrine, or even explained what the State alleged was the cause of death, Petitioner would have insisted on going to trial, App.72,L.18-25,-p.73,L.1-2.

Trial Counsel, Megan Lee, did not attend the PCR hearing because she

moved to England. Micah Leddy was second chair counsel. Leddy did testify during the PCR hearing, App.78,L.1-p.80,L.4. Leddy testified he and Lee advised petitioner to plead guilty because he was facing a life sentence if he proceeded to trial, as the two separate charges were from unrelated incidents and the State could have pursued separate trials, which ultimately could lead to a life sentence, based on two most serious charges if the jury convicted, App.80,L.5-25-p.81,L.1-5.

Leddy adamantly admitted petitioner wanted to proceed to trial, App. 83,L.1-18.

The PCR Court asked Leddy what petitioner's version of events was. Leddy testified that petitioner was either in the car as it got away or when he picked up the assailant later, but that petitioner wasn't aiding the guy, and didn't know about the robbery, App.89,L.7-13.

Leddy testified that he had been sworn in as a lawyer a couple of months before becoming involved with petitioner's case, App.89,L.19-25.

The following colloquy was recorded:

The Court: So, you're here testifying today and today and then the lawyer who is primarily Responsible is no longer practicing in the United States?

The Witness: That's right. She practices in England.

The Court: So what did you review to prepare for testimony here today?

The Witness: The transcript from the plea colloquy. I got contacted by the Public Defender's Office to ask if I had the file, and Teresa Christian, and I said no, I don't have the file, and so because normally Teresa would pull it and have it available, but it wasn't available so.

The Court: So you didn't have a file to review and

the Public Defender's Office doesn't
have one either?

The Witness: THAT's correct, that's my
understanding, App.90,L.1-19.

Subsequently, the Court asked Leddy whether or not they talked much about the manslaughter charge, to which Leddy replied "I was not prepared to go to trial on it the way I was on the--would have been on the armed robbery, App.90,L.25-p.91,L.1-4.

The PCR Court reminded Leddy that he was carrying the water for himself and Ms. Lee since she is not here so on this question whether or not this was a free and voluntary plea by the defendant being aware of all the defenses he could have raised at trial, App.93,L.8-13.

The Court asked petitioner "about this hand of one and not having any discussion at all with your lawyer and learning all this after you got to prison and started reading law books and all, are you--what are you claiming, that you didn't discuss any possible defenses during all the time the lawyers were representing you?"

Petitioner answered "they never discussed the defense with me at all, App.94,L.18-24.

The State asserted that the facts in the plea transcript as set forth by the Solicitor and then essentially agreed to by the Defense attorney prove in anyway are in line of what he's saying at this point in time as to how everything happened, and I know it's very difficult because Ms. Lee isn't here to testify as to what they actually discussed, App.99,L.16-23.

The PCR Court stated the Court was struggling with whether the Court

had enough information to even make a decision as to who's right and who's wrong on this PCR without Ms. Lee being here; App.102,L.3-7.

The PCR Court further noted that Petitioner's testimony pretty much was all about what Ms. Lee didn't do, and that Petitioner never even mentioned Mr. Leddy and that the PCR appears to be against Ms. Lee who is in England, App.102,L.9-14.

The State advised the PCR Court that if Ms. Lee's testimony is gonna be the thing that determines it, the record can be left open and try to get an affidavit from her. PCR counsel stated he couldn't cross-examine an affidavit, App.104,L.5-16.

PCR counsel reminded the Court that petitioner testified that Goins had given several statements saying that Petitioner was not involved in the carjacking, App.105,L.6-10.

The state made attempts to locate Ms. Lee that ultimately were unsuccessful, App.107,L.16-25-p.108,L.1-25.

The PCR Court Stated:

Of course, Mr. Doctor has all kinds of specific testimony, but from the other side, from Mr.Leddy you know, some vague recollection on what I would have done but then I didn't do anything regarding the murder charge because we weren't preparing that one for trial and we couldn't find the public defender's file, we can't find the public defender. I was just out of law school a few weeks, just gotten the bar for a few weeks you know, to preserve the integrity of the process I need to have something solid to go on in making a PCR decision, APP.111,L.15-25.

The PCR Court ultimately found Petitioner's ineffective assistance of counsel argument to be without merit and denied the application,App.

119. The Court further concluded that petitioner failed to prove prejudice from counsel's alleged deficient performance, and that petitioner failed to prove that but for counsel's deficiency, he would not have pled guilty but would have insisted on going to trial, App.120.

Discussion

Where ineffective assistance of counsel is alleged, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the proceedings cannot have produced a just result, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052; Butler v. State, 286 S.C. 441, 334 S.E.2d 813(1985).

The applicant must prove that counsel's performance was deficient and fell below an objective standard of reasonableness, 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. 117-118, 386 S.E.2d 624(1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding Johnson v. State, 325 S.C. 182, 480 S.E.2d 733(1997).

The applicant must show that there is a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

In the instant matter petitioner repeatedly testified if counsel would have investigated and utilized the evidence, i.e, the Statements of Keith Goins exonerating Petitioner he would not have pled guilty, but insisted on going to trial. Even second chair counsel Mr. Leddy testified Petitioner wanted a trial.

To establish counsel failed to adequately prepare for trial, the applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared, Jackson v. State, 329 S.C. 345, 495 S.E.2d 768(1998). Here Petitioner specifically pointed to statements from Keith Goins implicating another individual as his (Goins) co-conspirator and exonerating Petitioner.

Petitioner's testimony clearly implicates an "actual innocence" claim. Actual innocence is defined as factual innocence, Bousley v. United States, 523 U.S. 614, 622(1988). Petitioner is capable of and has established that the errors complained of has resulted in the conviction of an innocent person, Schulp v. Delo, 513 U.S. 298, 327 (1995).

The prejudice requirement focuses on whether counsels constitutionally ineffective performance affected the outcome, Hill, supra 474 U.S. 52, 59, 106 S.ct. 366(1985).

The voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the entry of the guilty plea and the record of the post-conviction hearing Stalk v. State, 375 S.C. 289, 652 S.E.2d 402(S.C.App. 2007) (citing Harris v. Leeke, 282 S.C. 131,133, 318 S.E.2d 360,361(1984)).

The PCR Court's determination was objectively unreasonable, as Ms. Lee whom the PCR Court concluded the actual PCR was being brought against was not present during the PCR hearing, nor could she even be located after the PCR Court left the record open to allow the State to secure her testimony as to what she did and did not do pertaining to the car-jacking and armed robbery charge, and subsequently the murder charge.

It should be noted that Mr. Leddy was not privy to any information relating to petitioner and the murder charge conversations between petitioner and Ms. Lee and the discovery and possible defenses petitioner could have presented at trial.

When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea and THE evidence presented at the PCR hearing, Roddy v. State, 339 S.C. 33, 528 S.E.2d 418,420(2000).

Here Plea counsels were ineffective and the PCR Courts order is objectively unreasonable as it is conclusively refuted by the record as a whole.

Conclusion

Wherefore, based on the foregoing Certiorari should be granted, or in the alternative the case be remanded for a new trial.

Respectfully Submitted,

/s/ Tremon Doctor

Tremon Doctor

pro-se

STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA-RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby Certifies he has served a true and correct copy of the enclosed pro-se Johnson Petition for Writ of Certiorari on Attorney for Respondent,

Ms. Megan Harrigan, Assistant Attorney General, P.O. Box 11549, Columbia, S.C. 29211, by placing the aforesaid in a properly addressed first-class postage affixed envelope and place in the U.S. Mail this 2nd day of December, 2013.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 2nd DAY OF December 2013

Susan H. Dyer

NOTARY PUBLIC

MY COMMISSION EXPIRES

My Commission Expires
March 5, 2018

RESPECTFULLY SUBMITTED

1/1 Tremor Doctor

TREMON DOCTOR

PRO-SE

IREMONS DDC TOR # 280808
B. R. C. I. Murray 254
4460 Broad River Rd.
Columbia, S.C. 29210

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The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court

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