

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
William H. Seals, Jr., Circuit Court Judge

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SEP 17 2014

S.C. Supreme Court

THOMAS E. VANHOOSE, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-002788

JOHNSON PETITION FOR WRIT OF CERTIORARI

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the PCR court erred in finding that Petitioner's guilty plea was knowing, voluntary, and intelligent where plea counsel failed to investigate the origins of the murder weapon and the discrepancies in the co-defendants' confessions and where Petitioner was unaware of the discrepancies when he pled guilty?

STATEMENT

Indictments

On July 21, 2011, Petitioner Thomas E. Vanhoose, Jr. was indicted by the Florence County Grand Jury for (1) murder; (2) armed robbery; (3) possession of a weapon during the commission of a violent crime; and (4) criminal conspiracy. App. 154-157.

Guilty Plea

On December 13, 2011, Petitioner appeared before the Honorable Michael G. Nettles to plead guilty to the charge of murder, armed robbery, and criminal conspiracy. App. 1-47. Petitioner was represented by Scott P. Floyd and Vick Meetze, and the State was represented by Solicitor E.L. Clements, III. App. 1.

Pursuant to the plea, the State dismissed the charge of possession of a weapon during the commission of a violent crime. App. 3, ll. 15-18. The State informed Judge Nettles that Petitioner was pleading guilty to murder without any recommendation. The State recommended that the armed robbery and conspiracy sentences run concurrent to the sentence for murder. App. 3, ll. 3 – 15.

The State provided the factual basis for the plea. On August 31, 2010 in Florence County, Jimmy L. Springs, II was found dead by his family in his home. He had been shot on the left side behind the ear. Law enforcement found a .25 caliber shell and began to investigate the case. On September 9, 2010, law enforcement received an anonymous tip from Crimestoppers. The caller stated that he had been contacted by Petitioner who apparently revealed that he had been involved in the incident at Springs' house. App. 7, l. 21 – 9, l. 1.

Investigator Chad Collins spoke with Petitioner. Petitioner originally told Investigator Collins that he and a friend went to Springs' house to buy cocaine. Dylan Lee had driven the two over to the Springs' house in Lee's vehicle. Petitioner said while he was inside the house, Springs handed him a gun and Petitioner was playing with it and it went off striking Springs. Petitioner said he ran out of the house. App. 9, ll. 9-21.

Petitioner then gave a second video recorded statement. This time he said that he and Dylan Lee went to Springs' house a second time on the night Springs was killed. Travis Lee drove Dylan Lee and Petitioner to the house. When they arrived, Petitioner and Dylan Lee knocked on the door and Springs let them inside. They told Springs they wanted to buy some more cocaine. When Springs began to weigh out the cocaine, Petitioner said that Dylan Lee pulled out a gun and told Springs to give him everything. Petitioner said he was reaching for the bag of cocaine when he heard a gunshot. Petitioner said he was scared and he ran out the door with Dylan behind him. Petitioner said that two days later, he and Travis and Dylan Lee went to Santee and dropped the gun in the lake while out on Dylan's boat. App. 10, l. 3 – 11, l. 12.

Petitioner then gave a third statement which the State believed was the truth. The State asserted that this third statement by Petitioner was corroborated by three other individuals who had been charged in the case – Dylan Lee, Travis Lee, and Shane Matthews. Apparently, the four young men had met and agreed to go to Springs' house to rob him of the drugs and any money he may have had. Travis Lee said they met up at a tree near Springs' house and determined how they were going to get inside the house and who was going to carry the gun. According to the State, Petitioner carried the gun, and he and Shane Matthews got into the bed of Travis' truck while Travis drove by Springs' house and

dropped them off. Travis said he went back to his sister's house to wait on them. Travis stated that Petitioner and Dylan showed up several minutes later, and they divided up the money. Petitioner allegedly received \$600-700 and used this money to pay Probation and Parole fines from being on probation. App. 11, l. 12 – 12, l. 16.

Investigators followed up with Probation and Parole and saw that Petitioner had paid approximately \$380 on his probation fees right after this time. Dylan Lee gave investigators a statement and stated he was the one who provided Petitioner with a .25 caliber gun. App. 12, l. 17 – 13, l. 2.

Investigators spoke with Petitioner a third time and he allegedly admitted that the incident at the Springs' residence resulted from prior planning. Petitioner apparently admitted to being dropped off by Travis Lee and going in the residence with Shane Matthews. Petitioner also allegedly admitted to having the gun and firing the gun at Springs. He stated that Shane Matthews grabbed the bag of cocaine and money and they ran out of the house. They were picked up by Dylan Lee. App. 13, ll. 5 – 23.

Judge Nettles accepted Petitioner's guilty plea. App. 19, ll. 3-8. Judge Nettles sentenced Petitioner to (1) 30 years for murder; (2) 30 years for armed robbery; and (3) 5 years for criminal conspiracy. The sentences were ordered to run concurrent. App. 47, ll. 1 – 20; 158-160. Petitioner did not file a direct appeal.

Application for Post-Conviction Relief and Evidentiary Hearing

On December 3, 2012, Petitioner filed his application for post-conviction relief ("PCR"), asserting, among other things, that his plea counsel failed to adequately investigate his case. App. 49-55. The State filed its Return on or about March 13, 2013. App. 57-60.

On October 8, 2013, an evidentiary hearing was held before the Honorable William H. Seals, Jr. App. 61-109. Petitioner was represented by Helen T. McFadden, and the State was represented by Assistant Attorney General Joshua L. Thomas. App. 61. Petitioner and his plea counsel, Scott Floyd and Vick Meetze, testified at the hearing. App. 65-109.

Scott Floyd testified that he took over Petitioner's case from attorney Jack Lawson who had become sick. App. 68, l. 17 – 69, l. 3. Floyd testified that he reviewed the file and noticed discrepancies in the confessions of the four co-defendants – Petitioner, Travis Lee, Dylan Lee, and Shane Matthews. Floyd could not recall if he ever discussed the discrepancies with Petitioner. App. 69, l. 10 – 71, l. 9. Floyd acknowledged that there were discrepancies in the statements as to where the gun actually came from – whether Dylan Lee actually brought the gun or whether Springs owned the gun used to shoot him. App. 76, l. 25 – 77, l. 24. Floyd said he never followed up on Dylan Lee's assertion as to whether he purchased the gun and never tried to find the person that sold Dylan the gun. App. 77, l. 21 – 78, l. 10.

Floyd also acknowledged that a jury would have likely found Petitioner's statement that Dylan Lee was the actual shooter credible if it was determined that Dylan Lee was the one who actually purchased and brought the gun to Springs' house. App. 78, l. 21 – 79, l. 5. Floyd further admitted that the discrepancies in the co-defendants' confessions could have been exploited to try to obtain a favorable result for Petitioner in a jury trial. App. 70, ll. 15-18.

Meetze testified that he believed it was Petitioner's desire not to have a jury trial, so he moved forward with the guilty plea process. App. 103, ll. 16-23. Meetze also testified that Petitioner never conveyed to him that he wanted a trial. App. 105, ll. 15-18.

Petitioner testified that he only met with Floyd and Meetze one time together and then once with each of them separately. App. 97, ll. 15-18. He testified that he never told them that he absolutely did not want to go to trial. App. 97, ll. 9-11. Petitioner further testified that his plea counsel did not discuss with him the discrepancies in the various statements regarding the gun. App. 97, ll. 22 – 24.

Order of Dismissal

Judge Seals filed his Order of Dismissal on December 10, 2013, concluding that Petitioner had not established any constitutional violations or deprivations that would require the court to grant his PCR application. Therefore, Judge Seals dismissed Petitioner's PCR application with prejudice. App. 138-145. Judge Seals more specifically found that Petitioner's plea counsel had not been ineffective for failing to investigate the origins of the murder weapon. App. 143-144.

This petition for writ of certiorari follows.

ARGUMENT

The PCR court erred in finding that Petitioner’s guilty plea was knowing, voluntary, and intelligent where plea counsel failed to investigate the origins of the murder weapon and the discrepancies in the co-defendants’ confessions and where Petitioner was unaware of the discrepancies when he pled guilty.

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results.” Brady v. United States, 397 U.S. 742, 758 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238 (1969). Therefore, in the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000); see also Hill v. Lockhart, 474 U.S. 52, 56 (1985) (“The longstanding test for determining the validity of a guilty plea is ‘whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.’ ” (quoting North Carolina v. Alford, 400 U.S. 25, 31(1970))). “The second, or ‘prejudice,’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. 52 at 59. In other words,

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.

Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (quoting Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)); see also Hill, 474 U.S. at 59 (footnote omitted).

Petitioner’s plea counsel admitted at the evidentiary hearing that they never investigated where the murder weapon actually came from and never investigated the

discrepancies in the co-defendants' confessions. “[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011).

Petitioner testified that his plea counsel never made him aware of these discrepancies. Therefore, when Petitioner pled guilty, he was unaware that these discrepancies could have been exploited to a jury to cast doubt on the State’s theory that Petitioner was the person who intentionally shot Springs. Lacking this critical information, Petitioner entered a guilty plea which was unknowing, involuntary, and unintelligent. Accordingly, Petitioner is entitled to a new trial.

CONCLUSION

For the reasons set forth herein, Petitioner respectfully requests this Court to grant his Petition for Writ of Certiorari with the ultimate relief of a new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO FLORENCE COUNTY
WILLIAM H. SEALS, JR., CIRCUIT COURT JUDGE

THOMAS E. VANHOOSE, JR.,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Thomas E. Vanhooose, Jr. states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on October 8, 2013. In her opinion seeking certiorari from the order of dismissal is without merit.

3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Thomas E. Vanhooose, Jr.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of September, 2014.

STATE OF SOUTH CAROLINA
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William H. Seals, Jr., Circuit Court Judge

THOMAS E. VANHOOSE, JR.,

PETITIONER,

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CERTIFICATE OF SERVICE

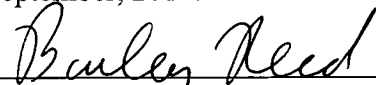
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Joshua L. Thomas, Esquire and Thomas E. Vanhoose, Jr., #348984, at Lee Correctional Institution this 17th day of September, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of September, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.