STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Kershaw County

Robert E. Hood, Circuit Court Judge

MARKELLE JAMAR REID,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000745

JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner's guilty plea was rendered involuntary because plea counsel failed to fully explain self-defense and voluntary manslaughter, in derogation of petitioner's Sixth Amendment right to effective assistance of counsel?

STATEMENT

On February 20, 2008, petitioner was indicted by a Kershaw County grand jury for murder. App. 125. On July 27, 2009, petitioner pled guilty before the Honorable G. Thomas Cooper, Jr. App. 1. Barney Giese, John Meadors, and Joanna McDuffie represented the State. App. 1. Jack Swerling represented petitioner. App. 1. The plea was for a negotiated sentence of thirty years' imprisonment. App. 26, ll. 15 – 20. Judge Cooper accepted the plea and deferred sentencing. App. 28, l. 20 – 30, l. 9. On May 26, 2011, Judge Cooper held a sentencing hearing. App. 32. Dan Johnson and Brett Perry represented the State and Mr. Swerling represented petitioner. App. 32. Judge Cooper sentenced petitioner to thirty years' imprisonment. App. 37, ll. 8 – 12. Petitioner did not appeal.

On March 26, 2011, petitioner filed a PCR application. App. 39. On November 19, 2013, a hearing was held before the Honorable Robert E. Hood. App. 54. Megan E. Harrigan represented the State. App. 54. Tara Dawn Shurling represented petitioner. App. 54. Judge Hood denied petitioner's application from the bench and directed the State to prepare a proposed order with time for objection by petitioner. App. 109, l. 14 – 110, l. 5. On March 5, 2014, Judge Hood's order denying petitioner's PCR application was filed. App. 112. This petition follows.

ARGUMENT

Petitioner's guilty plea was rendered involuntary because plea counsel failed to fully explain self-defense and voluntary manslaughter, in derogation of petitioner's Sixth Amendment right to effective assistance of counsel.

Petitioner's guilty plea was rendered involuntary and unknowing because trial counsel failed to ensure he completely understood his defense and a possible lesser-included defense. Petitioner testified that had he fully understood his chances of receiving a self-defense or voluntary manslaughter instruction, he would not have pled guilty and proceeded to trial. App. 74, ll. 3 – 17. Petitioner stated that plea counsel failed to "talk to me like he's my lawyer." App. 74, ll. 11 – 17. Petitioner elaborated: "He just had me shook up. I hadn't seen him, I only seen him about four times, he just had me shook up. I really didn't know too much about the law so I just ain't really know what to do." App. 74, ll. 11 – 17.

Petitioner saw a fight break out between rival gangs. App. 65, l. 25 – 66, l. 11. Petitioner fired a warning shot in the air. App. 66, ll. 12 – 15. He then saw the decedent reaching for what he thought was a weapon. App. 66, ll. 16 – 20. Petitioner admitted he did not see a weapon, but was aware of evidence in the case that the decedent's friends removed his gun after his death. App. 66, l. 19 – 67, l. 6.

Plea counsel testified, "I don't know where self-defense would even possibly come in in this situation." App. 96, ll. 6 – 19. He saw "different problems with self-defense and being without fault in bringing on the difficulty, retreat and all of those other issues." App. 96, ll. 6 – 19. However, plea counsel admitted that he knew petitioner had "always said he thought he was reaching for a gun." App. 96, ll. 6 – 19. Plea counsel called the idea of self-defense "ludicrous" even though petitioner saw the decedent reach for a gun. App. 100, ll. 20 – 24.

Plea counsel's failure to fully advise petitioner regarding self-defense and voluntary manslaughter constituted ineffective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." Padilla v. Kentucky, 130 S.Ct. 1473, 1480-81 (2010) (internal quotations omitted). "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." Hill v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012).

This Court has found deficient performance where attorneys provided erroneous advice that induced a guilty plea. In Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989), the defendant's trial attorney told him he would be eligible for parole after serving ten years when, in reality, defendant would have to serve twenty years. Id. at 457-58, 377 S.E.2d at 339. This Court found such advice deficient and reversed the PCR court. Id.; see also Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991) (reversing guilty plea on PCR where attorney misadvised defendant on maximum exposure at sentencing). Similarly, in this case, plea counsel failed to fully advise petitioner on self-defense and voluntary manslaughter and this constituted deficient performance under Hill and Strickland.

Petitioner also can prove that he was prejudiced by trial counsel's ineffectiveness. In order to prove prejudice under Strickland in a plea context, "a defendant must show the outcome of the plea process would have been different with competent advice." Lafler, 132 S.Ct. at 1384. "[A] petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla, 130 S.Ct. at 1485. "If there is any evidence in the record from

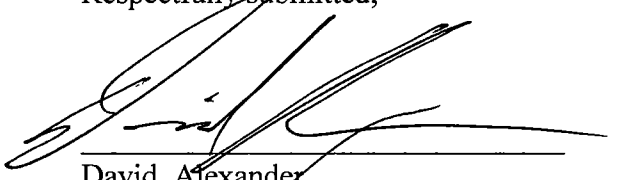
which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984). "To mitigate murder to voluntary manslaughter, sudden heat of passion, while it need not dethrone reason entirely, must be such that would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." State v. Niles, 400 S.C. 527, 535, 735 S.E.2d 240, 245 (Ct. App. 2012) (internal quotations omitted).

Petitioner's testimony regarding a fight breaking out and seeing the decedent reaching for what he thought was a weapon would have satisfied the any evidence standard to receive both a self-defense charge and a manslaughter charge. Instead of fully explaining this and presenting it as a realistic opportunity, plea counsel scared petitioner into pleading guilty. Petitioner testified that had he fully understood these legal concepts as related to the facts of his case, he would not have pled guilty. For these reasons, petitioner's guilty plea must be set aside.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari with the ultimate relief of a new trial for petitioner.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO KERSHAW COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

MARKELLE JAMAR REID,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Markelle Jamar Reid states:

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

2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on November 19, 2013. In his opinion seeking certiorari from the order of dismissal is without merit.

3. He 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 him as counsel for Markelle Jamar Reid.

Respectfully submitted,

David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of October, 2014

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IN THE SUPREME COURT

Certiorari to Kershaw County

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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 Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Markelle Jamar Reid, #346234, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 8th day of October, 2014.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

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

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.