

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Spartanburg County
J. Derham Cole, Circuit Court Judge

HAZELL STOUDEMIRE III,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-000784

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR court erred in finding that Petitioner's guilty pleas were entered knowingly, voluntarily, and intelligently where Petitioner's plea counsel did not provide him with his discovery prior to his guilty pleas and where Petitioner was unaware at the time he pled guilty of many crucial facts that would have impacted his decision to plead guilty?

STATEMENT

Indictments

On March 25, 2011, Petitioner Hazell Stoudemire, III was indicted by the Spartanburg County Grand Jury for (1) murder; (2) possession of a weapon during the commission of a violent crime; and (3) attempted murder. App. 141-142; 144-145. Petitioner was subsequent indicted on January 9, 2012 for attempted armed robbery. App. 147-148.

Guilty Pleas

On February 14, 2012, Petitioner pled guilty to (1) accessory after the fact to murder; (2) accessory after the fact to attempted murder; and (3) attempted armed robbery before the Honorable Roger L. Couch. App. 1-4. Petitioner waived presentment to the grand jury on the accessory charges. App. 4, ll. 15-16. Petitioner was represented by Timothy M. Ray, and the State was represented by Deputy Solicitor Derrick B. Balsa. App. 1.

Petitioner was only seventeen years old when he pled guilty, and he had only finished school through the middle of the ninth grade. App. 9, ll. 12-18. The State presented the factual basis for the guilty plea. Petitioner was sixteen years old when the alleged offense occurred. The State alleged that Petitioner's cousin, Teddy Byers, recruited Petitioner to participate in an armed robbery. Petitioner rode out to the targeted trailer with Byers, Charvus Nesbitt, and Jonathan Petty and was armed with a gun. The State alleged that Petitioner was the second person to enter the trailer armed with a weapon. In a statement to law enforcement, Petitioner asserted that he was going to attempt to buy

marijuana from the decedent in order to get the marijuana in sight so that they could steal the marijuana and any money the decedent might have had on him. App. 14, ll. 2-16.

The next thing Petitioner knew was that Charvus Nesbitt began shooting. Petitioner did not know why Nesbitt had begun shooting. Petitioner panicked and fled through a back window. While fleeing, he dropped the weapon that he had brought to the trailer. App. 13, l. 17 – 14, l. 3.

Petitioner's family learned that Byers and Nesbitt were going around saying that Petitioner was the shooter, and therefore, Petitioner's family confronted him. Petitioner broke down and told his family what happened and he went to the police department and gave a voluntary statement. App. 15, ll. 9-18.

The State agreed that Petitioner had not fired any weapon. It was determined that the gun Petitioner dropped had not fired any rounds. DNA forensics excluded any possibility that Petitioner had held another gun found at the scene. App. 14, l. 19 – 15, l. 4.

Petitioner's plea counsel asked Judge Couch to consider giving Petitioner a sentence suspended to ten years due to Petitioner's very cooperate behavior with law enforcement. App. 18, ll. 18-23. Judge Couch sentenced Petitioner to (1) twenty years suspended to fifteen with probation for five years for the attempted armed robbery; and (2) fifteen years each for the two accessory charges, with all sentences to run concurrent. App. 25, ll. 13-17; 143; 146; 149. Petitioner did not file a direct appeal.

Application for Post-Conviction Relief and Evidentiary Hearing

Petitioner filed an application for post-conviction relief ("PCR") on July 2, 2012. App. 28-39. The State filed its Return and Motion to Dismiss on or about July 24, 2013. App. 40-46.

An evidentiary hearing was held before the Honorable J. Derham Cole on October 4, 2013. App. 47. Petitioner was represented by Grace G. Knie and Christopher Brough. Id. The State was represented by Assistant Attorney General Suzanne H. White. Id. Petitioner and his plea counsel both testified at the hearing. App. 52-94.

At the beginning of the hearing, Petitioner moved to amend his PCR application to include an allegation of an involuntary guilty plea. The State consented to the amendment, and Judge Cole allowed Petitioner to proceed on this allegation. App. 52, ll. 9-20.

Petitioner testified that after he turned himself in to the police department, he retained plea counsel to represent him. Petitioner asserted that plea counsel did not review with him the evidence against him before he pled guilty. App. 54, ll. 8-25. The discovery consisted of 612 pages which Petitioner did not see before he pled guilty. App. 55, ll. 1-9. Petitioner testified that plea counsel only discussed with him some of the statements written by some of the witnesses. App. 55, ll. 8-9.

Petitioner asserted that plea counsel did not discuss with him prior to his guilty pleas the fact that he had never been identified by anyone as the shooter, that none of the witnesses interviewed at the trailer park where the incident occurred could identify him; that none of the witnesses in the home where the incident occurred could identify him, that his co-defendants' original statements did not name him, and that there was gunshot residue on the decedent's hands. App. 55, l. 13 – 56, l. 9; 65, ll. 2-8; 111-112.

Petitioner further testified that while he was only sixteen years old at the time of the incident, his three co-defendants ranged in age from twenty-five years to thirty-four years of age. App. 69, ll. 18-24. Petitioner had never met the deceased before he went over to the trailer and never anticipated that a murder might occur. App. 69, l. 25 – 70, l. 9.

After his guilty plea, Petitioner learned that eight shots were fired and that the decedent himself had recently fired a weapon. He was not aware of this when he pled guilty even though his plea counsel was in possession of this evidence. Petitioner did not receive this discovery until about fourteen months after he was sentenced. App. 70, l. 13 – 71, l. 17.

Plea counsel acknowledged that Petitioner had asked him about his discovery before he pled guilty but that plea counsel discouraged Petitioner from taking and keeping his discovery documents at the jail. App. 80, l. 23 – 81, l. 20. Plea counsel testified that he delivered Petitioner's discovery to him after his guilty plea. App. 81, ll. 19-20.

Order of Dismissal

On April 7, 2014, Judge Cole filed his Order of Dismissal denying Petitioner's PCR application. App. 131-140. Judge Cole ruled that Petitioner's guilty pleas were entered knowingly and voluntarily with a full understanding of the charges and consequences of the plea to each charge despite the fact that Petitioner was not given his discovery prior to his guilty pleas and despite the fact that at the guilty plea hearing, Petitioner was unaware of many critical facts that would have impacted his decision to plead guilty. App. 137-139.

This petition for a writ of certiorari follows.

ARGUMENT

The PCR court erred in finding that Petitioner's guilty pleas were entered knowingly, voluntarily, and intelligently where Petitioner's plea counsel did not provide him with his discovery prior to his guilty pleas and where Petitioner was unaware at the time he pled guilty of many crucial facts that would have impacted his decision to plead 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, 90 S.Ct. 1463, 1474 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him).

“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Specifically, “the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Holden v. State, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

Furthermore, “[a] defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a 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.” Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009) (citing Hill v. Lockhart, 474 U.S. 52, 57-58 (1985)); see Ray v. State, 303 S.C.

374, 401 S.E.2d 151 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made in light of the erroneous advice given by plea counsel).

In this case, plea counsel's performance was deficient, as it fell below an objective standard of reasonableness. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). Specifically, Petitioner's plea counsel did not review the 612 pages of discovery with Petitioner before he pled guilty. Petitioner was unaware of many critical facts that would have influenced his decision to plead guilty, including the fact that he had never been identified by anyone as the shooter, that none of the witnesses interviewed at the trailer park where the incident occurred could identify him, that none of the witnesses in the home where the incident occurred could identify him, that his co-defendants' original statements did not name him, and that there was gunshot residue on the decedent's hands indicating that the decedent himself had fired a weapon. App. 54, ll. 8-25; 55, l. 1 – 56, l. 9; 65, ll. 2-8; 70, l. 13 – 71, l. 17; 111-112. Plea counsel acknowledged that he did not provide Petitioner with his discovery prior to Petitioner's guilty pleas. App. 80, l. 23 – 81, l. 20.

Petitioner therefore entered his guilty pleas without full knowledge of the facts of the case, rendering his guilty pleas involuntary. Petitioner was moreover denied his right to participate in his defense. Accordingly, the PCR court erred in finding that plea counsel provided effective assistance of counsel and that Petitioner's guilty pleas were knowing and voluntary. Petitioner is entitled to post-conviction relief and to a new trial.

CONCLUSION

For the reasons set forth herein, Petitioner Hazell Stoudemire, III 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 20th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
J. DERHAM COLE, CIRCUIT COURT JUDGE

HAZELL STOUDEMIRE III,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Hazell Stoudemire, III 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 4, 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 Hazell Stoudemire, III.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender
ATTORNEY FOR PETITIONER

This 20th day of October, 2014.

STATE OF SOUTH CAROLINA
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HAZELL STOUDEMIRE III,

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CERTIFICATE OF SERVICE

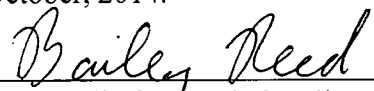
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Hazell Stoudemire, III, #349731, at Tyger River Correctional Institution this 20th day of October, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of October, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021.