

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County

S.C. Supreme Court

J. Derham Cole, Circuit Court Judge

CHRISTINA HUDSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001858

JOHNSON PETITION FOR WRIT OF CERTIORARI

TIFFANY L. BUTLER
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ISSUE PRESENTED

Whether trial counsel erred by failing to adequately prepare Petitioner's case for trial, where counsel failed to review the discovery with Petitioner and failed to contact and interview witnesses who last saw Petitioner in the passenger seat of Heidi West's car, where counsel's inadequate preparation resulted in Petitioner pleading guilty instead of proceeding with trial?

STATEMENT OF THE FACTS

On February 23, 2012, a Spartanburg County Grand Jury indicted Petitioner for two counts of felony driving under the influence, causing great bodily injury, and one count of felony driving under the influence, causing death. App. 115 – 126.

On August 31, 2012, Petitioner pled guilty before the Honorable R. Ferrell Cothran, Jr. App. 1. Judge Cothran sentenced Petitioner to fifteen years imprisonment for the two counts of felony driving under the influence, causing great bodily injury, to run concurrent with twenty years imprisonment for felony driving under the influence, causing death. App. 49. Robert Hall represented Petitioner. Barry Barnette represented the State. App. 1. Petitioner did not appeal her guilty plea or sentence.

On December 14, 2012, Petitioner filed a PCR application. App. 52 – 59. Respondent filed a return on March 3, 2014 requesting an evidentiary hearing. App. 60 – 64. On April 10, 2014, a PCR hearing was held before the Honorable J. Derham Cole. App. 65. Leah B. Moody represented Petitioner at the hearing. Suzanne H. White represented the State. App. 65.

On July 25, 2014, Judge Cole issued an order of dismissal. App. 113. Petitioner appealed Judge Cole's order. This petition for writ of certiorari follows.

ARGUMENT

Trial counsel erred by failing to adequately prepare Petitioner's case for trial, where counsel failed to review the discovery with Petitioner and failed to contact and interview witnesses who last saw Petitioner in the passenger seat of Heidi West's car, where counsel's inadequate preparation resulted in Petitioner pleading guilty instead of proceeding with trial.

Guilty Plea

According to the solicitor, at approximately 4:45 pm on January 30, 2012, Petitioner was driving down Drayton Road, Spartanburg County, at a high rate of speed in Heidi West's car. App. 7, lines 14 – 18. West was the passenger. App. 7, line 24.

While "going at a high rate of speed," Petitioner hit Doctor Adam Visk, who was inside his vehicle. App. 7, lines 22 – 24. Petitioner's car bounced off of Visk's car and went across the center line to the other side of the four lane highway. App. 7, lines 23 – 25. Once Petitioner crossed the center line, she collided head-on with David and Shirley Sayre's vehicle. App. 8, lines 4 – 5. Shirley Sayre died in the accident. App. 8, line 6. David Sayre and Heidi West were severely injured. App. 8, lines 7 – 8.

Petitioner's blood alcohol concentration was 0.129 percent. App. 8, line 19. Marijuana and "Servatine along with THC and Klonopin" were found in her system. App. 8, lines 21 – 22.

PCR Hearing

Petitioner testified during the PCR hearing. She explained that defense counsel did not review her discovery with her. App. 75, lines 9 – 13. She stated that all defense counsel did was tell her that "[they] went across the center line and hit another car head on" and that she should plead guilty or get fifty-five years at trial. App. 72, lines 5 – 9. Petitioner also stated that she wanted counsel to contact witnesses who were the last people to see Petitioner and West in the car.

App. 78, line 24 – App. 79, line 14. She explained that she pled guilty to her charges because she “was scared of taking it to a jury trial.” App. 82, line 9.

Pamela Beth Earnhart, Petitioner’s stepsister, also testified. App. 86. Earnhart stated that one night when Petitioner was staying with her, Heidi West called Petitioner around 8:00 pm. App. 87, lines 15 – 17. West picked up Petitioner from Earnhart’s house that night, and Earnhart did not see Petitioner until after the accident when she was in the hospital. App. 87, lines 17 – 19; App. 88, lines 1 – 5. According to Earnhart, West was driving the night she saw them. App. 88, line 1.

Defense counsel recalled that he met with Petitioner three times before the plea date. Counsel could not recall whether Petitioner gave him names of witnesses to contact, but he could remember speaking with her mother. Counsel stated that Petitioner’s mother told him there were witnesses who could testify that Petitioner was not driving at the time of the accident. App. 93, line 23 – App. 94, line 2. However, the time period in which the witnesses had seen West driving “would have been long before the accident and were not . . . close in time to the accident.” App. 94, lines 6 – 8. Counsel also explained that Dr. Visk identified Petitioner as the driver and the E.M.T.s identified West as the passenger. App. 91, lines 4 – 20.

Order of Dismissal

Judge Cole considered Petitioner’s claims that defense counsel did not conduct an adequate pre-trial investigation or spend enough time with her as having no merit. App. 111. The judge concluded that Petitioner could not point to any specific matters that counsel “failed to discover, or any defenses that could have been pursued had counsel been more fully prepared,” Petitioner failed to show any prejudice. App. 112. Judge Cole dismissed Petitioner’s allegations. App. 112.

Discussion

Trial counsel erred by failing to adequately prepare Petitioner's case for trial. Counsel failed to review discovery evidence with Petitioner and failed to contact and interview witnesses who last saw Petitioner in the passenger seat of Heidi West's car. Because counsel was inadequately prepared, Petitioner chose to plead guilty instead of proceeding with her right to a jury trial.

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Hill v. Lockhart, 474 U.S. 52 (1985) (citing Strickland v. Washington, 466 U.S. 668 (1984)). When a defendant challenges a conviction on the ground that counsel was ineffective, the question becomes, "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result," Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 686; see Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). Pursuant to Strickland v. Washington, a court will conduct a two-prong test when determining whether trial counsel's assistance was ineffective. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel's performance was deficient. Strickland, 466 U.S. at 687. In analyzing this prong, a court will use an objective standard of reasonableness. *Id.* Under this prong, "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (quoting Strickland, 466 U.S. at 688).

Second, the applicant must show that counsel's "deficient performance prejudiced the defendant to the extent that 'there is a reasonable probability that, but for counsel's unprofessional

errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. at 688).

The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury.” Brady v. United States, 397 U.S. 742, 758 (1970). Accordingly, the Court “take[s] great precautions against unsound results.” *Id.* An “unsound result” occurs when a criminal defendant does not knowingly, voluntarily, or intelligently plead guilty. Boykin v. Alabama, 395 U.S. 238 (1969).

Therefore, in the context of a guilty plea, whether counsel was “deficient” turns on whether the guilty plea was entered voluntarily, knowingly, and intelligently. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). See 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))).

To show that the defendant was prejudiced by counsel’s deficient performance during the guilty plea process, he must show that “but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” Hill, 474 U.S. 52 at 59. When a court is evaluating 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).

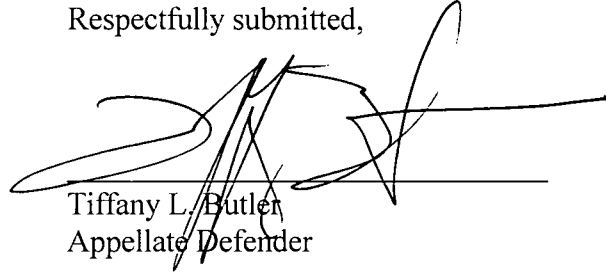
Here, counsel admitted that he met with Petitioner on no more than three occasions. Counsel did not remember whether Petitioner had given him names of individuals who had seen Petitioner in the passenger seat of West’s car. Considering the severity of Petitioner’s charges and the amount of prison time that she was exposed to, three meetings with defense counsel were insufficient.

Petitioner did not fully understand the nature and quantity of evidence that the State would present at trial. Further, because counsel did not interview the witnesses who could have aided in Petitioner's defense, counsel did not conduct a thorough investigation. Had counsel adequately investigated and prepared Petitioner's case, there is a reasonable probability that Petitioner would not have pled guilty and would have exercised her right to a jury trial.

CONCLUSION

For the reasons argued, Petitioner Christina Hudson respectfully requests this Court to grant her petition for writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tiffany L. Butler', is written over a horizontal line. The signature is stylized and somewhat illegible due to its cursive nature.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

CHRISTINA HUDSON,

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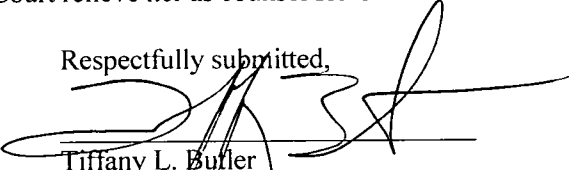
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christina Hudson 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 April 10, 2014. 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 Christina Hudson.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

This 16th day of March, 2015

STATE OF SOUTH CAROLINA
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Certiorari to Spartanburg County
J. Derham Cole, Circuit Court Judge

CHRISTINA HUDSON,

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RESPONDENT

CERTIFICATE OF SERVICE

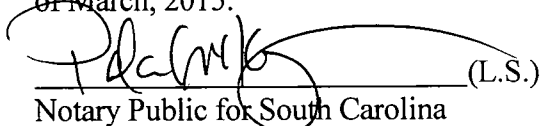
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire and Christina Hudson, #352247, at Leath Correctional Institution this 16th day of March, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of March, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.