

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Orangeburg County
Maite Murphy, Circuit Court Judge

SEAN ECHOLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001909

JOHNSON PETITION FOR WRIT OF CERTIORARI

TIFFANY L. BUTLER
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR judge err by finding that defense counsel provided effective representation where Petitioner wanted a jury trial, but counsel had not investigated Petitioner's case nor prepared for trial, and Petitioner pled guilty to avoid a potential sentence of life without parole?

STATEMENT OF THE FACTS

On September 12, 2011, an Orangeburg County Grand Jury indicted Petitioner for armed robbery and attempted murder. App. 87 – 90. On April 11, 2013, Petitioner pled guilty to armed robbery and assault and battery, first degree, before the Honorable Edgar W. Dickson. App. 1. Andrew J. Brown represented Petitioner. Sarah A. Ford represented the State. App. 1.

Judge Dickson sentenced Petitioner to fifteen years' imprisonment for armed robbery and ten years' imprisonment for assault and battery, first degree. App. 10. The sentences were to run concurrently. App. 10. Petitioner did not appeal his guilty plea.

On July 25, 2013, Petitioner filed a PCR application. App. 12 – 19. On October 9, 2013, Respondent filed its Return requesting an evidentiary hearing. App. 20 – 25. A PCR hearing was held on May 29, 2014 before the Honorable Maite Murphy. App. 26. Jonathan D. Waller represented Petitioner. Megan Harrigan Jameson represented the State. App. 26.

On August 18, 2014, Judge Murphy issued an order of dismissal. App. 76 – 85. Petitioner appealed the judge's order. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred by finding that defense counsel provided effective representation where Petitioner wanted a jury trial, but counsel had not investigated Petitioner's case nor prepared for trial, and Petitioner pled guilty to avoid a potential sentence of life without parole.

Guilty Plea

According to the State's version of the facts, on or about June 26, 2011, Petitioner and his co-defendant, Richard Sprinkle, entered the home of Robert Rumph and James Wright in Orangeburg County, South Carolina. App. 6, lines 10 – 13. While in the residence, Petitioner and Sprinkle assaulted the victims. App. 6, line 14. Wright was hit in the head several times with a gun, while Rumph was cut "six or seven places over his body" with a knife. App. 6, lines 15 – 16. Petitioner and Sprinkle stole money from both victims and left the residence in Rumph's car. App. 6, lines 17 – 19.

Petitioner testified against Sprinkle at trial the day before Petitioner pled guilty. App. 6, lines 22 – 25.

PCR Hearing

Petitioner testified at the PCR hearing. Petitioner explained that he wanted to proceed to trial, but he did not think defense counsel "was doing what [he] needed him to do." App. 40, lines 10 – 11. Petitioner recalled meeting with counsel six times. Petitioner asserted that counsel only discussed Petitioner's pending federal charges during five of the meetings, not his Orangeburg County charges. App. 34.

Petitioner stated that he told counsel he "didn't want 15 years," but counsel told him that a negotiated plea "was only to keep from pleading to a natural life sentence." App. 43, lines 7 – 15.

Petitioner did not think counsel was prepared to go to trial and did not feel comfortable proceeding to trial because of the way counsel was handling his case. App. 44, lines 4 – 10.

Defense counsel also testified at the PCR hearing. Counsel agreed that he met with Petitioner on several occasions. App. 60 – 61. However, counsel recalled discussing Petitioner’s Orangeburg County charges with him “every time.” App. 61, line 1. Counsel stated that he discussed the elements of the charge and possible defenses, “but there wasn’t really any good defenses.” App. 61 – 62.

Counsel explained that the State agreed to not notice Petitioner for life without parole if he agreed to testify against his co-defendant. App. 63, lines 5 – 11. Counsel stated that Petitioner agreed to testify and was aware that the State was offering only a fifteen-year negotiated sentence. App. 64, lines 13 – 25. Counsel could not recall whether Petitioner asserted that he had a strong alibi defense or whether he hired an investigator to work on Petitioner’s case. App. 62, line 19 – App. 63, line 1.

Order of Dismissal

The PCR judge found that Petitioner’s allegations were without merit. App. 82. The judge found that counsel’s performance was not deficient because he advised Petitioner “of all aspects of the State’s plea offer.” App. 83. The judge stated that Petitioner did not establish any “resulting prejudice” and “there [was] no reasonable probability that he would have insisted on going to trial absent Counsel’s advice.”

Discussion

The PCR judge erred by finding that defense counsel provided effective representation. Petitioner wanted a jury trial, however, counsel had not investigated Petitioner’s case nor prepared for trial. Petitioner only pled guilty to avoid a potential sentence of life without parole.

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). In the context of a guilty plea, a court will conduct a two-prong test when determining whether defense counsel's assistance was ineffective. Hill v. Lockhart, 474 U.S. 52, 58 (1985) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel's performance was deficient. Hill, 474 U.S. at 58 – 59. 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, 474 U.S. at 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))).

Second, the applicant must show that he was prejudiced by counsel's deficient performance during the guilty plea process. Hill, 474 U.S. at 59. Specifically, the applicant must show that "but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Id. 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).

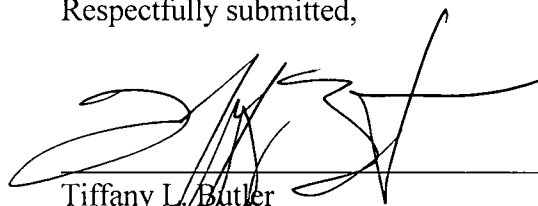
Here, Petitioner wanted to exercise his right to a jury trial. However, counsel failed to fully prepare for trial. Counsel failed to hire an investigator to confirm Petitioner's version of the facts and explore whether Petitioner had a viable alibi defense. Due to counsel's lack of preparation, Petitioner feared a sentence of life without parole had he gone to trial and been convicted with unprepared counsel. Therefore, Petitioner was forced to plead guilty without fully evaluating the advantages and disadvantages of entering a guilty plea instead of proceeding to trial.

But for counsel's deficient and ineffective representation, Petitioner would not have pled guilty and would have insisted on going to trial.

CONCLUSION

For the reasons argued above, Petitioner Sean Echols respectfully requests this Court to grant his petition for writ of certiorari.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of April, 2015.

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IN THE SUPREME COURT

CERTIORARI TO ORANGEBURG COUNTY
MAITE MURPHY, CIRCUIT COURT JUDGE

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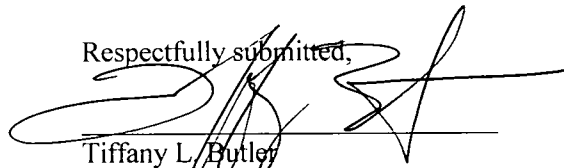
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sean Echols 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 May 29, 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 Sean Echols.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of April, 2015

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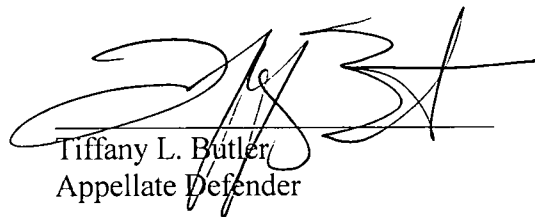
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CERTIFICATE OF SERVICE

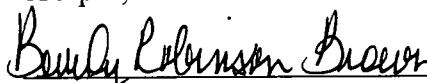
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Clay Mitchell, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Sean Echols, #282720, at Kirkland Correctional Institution this 8th day of April, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of April, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 9, 2024