

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Williamsburg County
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

2012-CP-45-0562
Appellate Case No. 2014-001582

GERLINE PRESSLEY,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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S.C. Supreme Court

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ISSUES PRESENTED

Whether probative evidence supports the PCR Court's finding that Counsel was not ineffective for failing to request a pretrial hearing to determine whether Petitioner was entitled to immunity under the Protection of Persons and Property Act, codified under S.C. Code Ann. 16-11-440, where Petitioner was on Victim's property.

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the October 2010 term of the Williamsburg County Grand Jury for attempted murder; assault and battery of a high and aggravated nature; possession of a weapon during violent crime; and assault and battery—second degree. (2010-GS-45-0231). William LeGrand Carraway, Esquire, represented Applicant. Applicant proceeded to trial and on May 17, 2012, Applicant was found guilty as indicted. The Honorable George C. James, Jr., sentenced Applicant to sixteen years imprisonment for attempted murder and five years imprisonment for possession of a weapon during violent crime; with all sentences to run concurrently. No direct appeal was filed.

Thereafter, Petitioner filed a timely application for PCR on October 23, 2012, alleging she was being held in custody unlawfully. Respondent made its Return on April 10, 2013, requesting that an evidentiary hearing be held on Petitioner's application.

On May 27, 2014, an evidentiary hearing on the matter was convened before the Honorable R. Ferrell Cothran, Jr., at the Sumter County Courthouse. By Order dated July 7, 2013, Judge Cothran denied and dismissed Petitioner's application with prejudice. Petitioner subsequently filed a Petition for Writ of Certiorari on March 4, 2015. This Return follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief court’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989).

In a post-conviction relief action, the Petitioner bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where an application alleges ineffective assistance of counsel as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether Petitioner’s attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S.Ct. 2052, 2064. The Petitioner must overcome this presumption in order to receive relief. Cherry, 300 S.C. 115, 386 S.E.2d 624.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, Petitioner must prove that counsel's performance was deficient. Under this prong, the court measures an attorney’s performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

ARGUMENT

Probative evidence supports the PCR court's finding that Counsel was not ineffective for failing to request a pretrial hearing to determine whether Petitioner would be entitled to immunity under the Protection of Persons and Property Act, codified under S.C. Code Ann. 16-11-440, where Petitioner was on Victim's property.

Petitioner argues the post-conviction relief (PCR) erred in finding that Counsel was not ineffective for failing to request a pretrial hearing to determine whether she would be entitled to immunity under the Protection of Persons and Property Act and for failing to properly develop a claim of self-defense. However, this argument is meritless; probative evidence supports the PCR court's finding that Counsel was not ineffective.

Counsel's decision not to pursue a pretrial hearing on whether Petitioner could claim immunity under the Protection of Persons and Property Act was reasonable. Counsel stated during the PCR evidentiary hearing that he did not request a hearing because Petitioner's version of events did not comply with the requirements to seek immunity under the Act. Petitioner relies specifically on section (c) of the Act which states:

(C) A person who is not *engaged in an unlawful activity* and who is attacked in another place where *he has a right to be*, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. 16-11-440(C). (emphasis added). Victim was deeded the property and obtained one hundred percent interest in the property in 2008. (App. p. 74 line 12-15| p. 75 line 5-8). Victim filed an application for eviction or an ejectment action against Petitioner in magistrate court to evict Petitioner and her two sisters. (App. p. 74 lines 2-8). The attempted murder of

Victim occurred on June 28, 2010. Since Victim had one hundred percent title to the property Petitioner had no legal right to be present on Victim's property. Furthermore, Petitioner was most certainly engaged in an unlawful activity when she was present on Victim's property in direct contradiction to the eviction order.¹ As a result, Petitioner cannot claim immunity under the Protection of Persons and Property Act where she had no legal right to be on the property and was violating a court order.

Regardless, Petitioner can show no prejudice as a result of Counsel's alleged deficiency because Victim's testimony and defendant's testimony was in direct conflict as to whether Victim attacked defendant. See State v. Curry, 406 S.C. 364, 372 752 S.E.2d. 263, 267 (2013) (finding murder defendant was not entitled to immunity from prosecution under Protection of Persons and Property Act, where testimony of defendant and eyewitnesses was in direct conflict as to whether victim attacked defendant).

In the instant case, Petitioner testified at trial that she was on Victim's property looking reclaim some trees she gave to her deceased mother. (App. p. 284 lines 3-8). Petitioner claimed Victim approached her and began to cuss at her and telling her to "get out of his yard." (App. p. 284 lines 11-15; App. p. 299 lines 13-15). Petitioner stated that Victim told her not to move, approached his mailbox, and retrieved a gun out of a bush located near the mailbox. (App. p. 284 lines 16-19; App. p. 302 lines 4-7). Petitioner stated she prayed to the lord to give her strength to knock it out of his hand. (App. p. 284 lines 20-24). Petitioner stated she was able to knock the gun out his Victim's hand and he began to run toward his trailer. (App. p. 284 line 23—p. 285 line 21). Petitioner stated she thought Victim was going into the house to get a pistol to kill her. (App. p. 285 lines 7-11). Petitioner stated she picked the gun up and began shooting at Victim until all the bullets were out of the gun. (App. p. 290 lines 7-11). Following the

¹During trial Victim's attorney stated Petitioner never voluntarily left Victim's property. (App. p. 78 lines 9-17).

shooting, Petitioner told police that she would feel “good” if the Victim died. (App. p. 293 lines 2-16).

In direct contradiction to Petitioner’s testimony, Victim stated that he did not see Petitioner when he arrived at his house. (App. p. 113 lines 11-15). Victim testified that he pulled up to his house, checked the mail, and walked up on his porch. (App. p. 113 lines 6-9). Victim stated he put his key in the door and heard a “pop” and was shot in the right arm. (App. p. 118 lines 13-22; p. 120 line 15-16).² Victim stated that he looked around to the left and saw Petitioner coming around from the house, walked up and started shooting. (App. p. 121 line 2-9). Victim stated Petitioner was holding a .22 caliber rifle in her hand. (App. p. 121 lines 13-14). Victim stated he fell down between the door and front porch chair.³ (App. p. 121 lines 16-19). Victim stated Petitioner came up the steps and continued to shot him while he was lying down. (App. p. 121 lines 16-19).⁴ Victim stated Petitioner ran out of bullets and proceeded to swing the gun barrel at him. (App p. 122 lines 18-24).

Victim stated he was able get into the yard and around his truck, while Petitioner chased after him swinging the gun. (App. p. 123 lines 20-23). Victim stated that he used the truck to hold himself up.⁵ (App p. 136 lines 4-9). Victim stated Petitioner swung the gun at him, missed, and Victim tackled her to the ground. (App. p. 124 lines 4-17). Victim stated the gun snapped into two separate pieces when he tackled Petitioner to the ground.⁶ (App p. 124 lines 16-23).

² Notably, the evidence introduced by the State corroborates Victim’s version of events. The State presented various photographs depicting Victim’s blood on his porch. Specifically, Victim’s blood covered various pieces of mail located on his porch. (App p. 132).

³ There was blood on Victim’s front porch chair. (App p. 135).

⁴ Victim’s blood was found on tubing located on his porch. (App p. 132-133). Victim’s glasses were located on his porch missing the lenses. (App p. 133-134).

⁵ There was blood located on the Victim’s truck. (App .p 135)

⁶ The State introduced the gun that Petitioner used to shot Victim. Notably, the gun was in two separate pieces. (App p. 127).

Victim stated Petitioner began hollering for Alberta Pressley⁷ to come outside and help her. (App p. 125 lines 9-19). Victim stated Alberta Pressley grabbed the barrel of the gun and began to strike him with it. (App. p. 126 lines 4-8). Victim stated Alberta claimed that they were going to kill him. (App. p. 126 liens 4-8), Victim stated he “rolled off” of Petitioner, grabbed the butt of the gun, and began to swing it at Petitioner, Alberta Pressley, and Margie Pressley. (App p. 130 line 19—p. 131 line 8). Victim stated the three women ran away, he went inside and called 911. (App p. 131 lines 5-11).

As noted above, the testimony of both Petitioner and Victim were in direct contradiction. Petitioner is not warranted immunity from prosecution under the Protection of Property and Persons Act, because Petitioner’s claim of self-defense presents a quintessential jury question.⁸ See Curry, 406 S.C. at 267, 752 S.E.2d at 372 (2013). As a result, Petitioner can show no prejudice for Counsel’s alleged failure to request a pretrial hearing to determine whether she would have been entitled to immunity.

Additionally, Petitioner attempts to argue that the testimony from additional family members would have further corroborated Petitioner’s claim that she feared for her life. To the contrary, the trial judge properly refused to charge the jury on self-defense because Petitioner had the opportunity to flee without losing her life or sustaining serious bodily injury. State v. Santiago, 370 S.C. 153, 160, 634 S.E.2d 23, 27 (2006) (finding murder defendant was not on his property and therefore had a duty to retreat and could have safely retreated). Here, Petitioner was not on her property and therefore had a duty to retreat. Taken in light most favorable to Petitioner, the record indicates Petitioner possessed the .22 caliber gun when she knocked it out

⁷ Alberta Pressley was a co-defendant in Petitioner’s trial and was ultimately found guilty of

⁸ Respondent would note, despite Counsel’s arguments, the Trial Court denied Petitioner’s request for a self-defense jury charge. Respondent respectfully submits that Petitioner would certainly not be entitled to immunity under the Act if she is not entitled to a self-defense jury charge.

of Petitioner's hands. (App. p. 284 lines 20-24). Petitioner then claimed that Victim began to run inside the trailer for another gun. (App. p. 284 line 23—p. 285 line 21). When Victim turned and ran towards his trailer, Petitioner could have easily fled without putting herself in imminent danger of losing her life or sustaining serious bodily injury. Instead, Petitioner shot Victim until she had no more bullets and then proceeded to beat him with the gun. (App. p. 290 lines 7-11). Since Petitioner had the opportunity to flee, she was not entitled to a self-defense jury charge. Any corroborative testimony presented by Victim's family members as to their tumultuous relationship with Victim would not have impacted Petitioner's right to a self-defense jury charge as Petitioner's belief that she would be killed was negated by her opportunity to flee with the gun.

CONCLUSION

For the foregoing reasons, the State submits that the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

DANIEL GOURLEY
Assistant Deputy Attorney General
Bar No. 100934

By: 
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April 20, 2015

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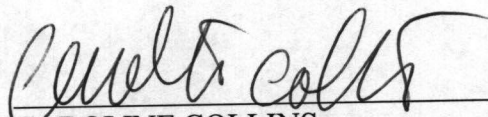
RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Wanda H. Carter, Esquire
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, SC 29201**

This 20th day of April, 2015


CAROLINE COLLINS
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

April 20, 2015

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S.C. Supreme Court

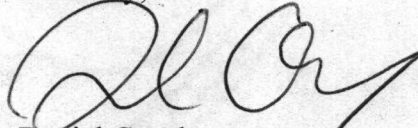
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Gerline Pressley v. State of South Carolina
Lower Court Case No.: 2012-CP-45-562
Appellate Case No.: 2014-001582

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,



Daniel Gourley
Assistant Attorney General
SC Bar No. 100934

DG/cc
Enclosures

cc: Appellate Defender Wanda H. Carter (2 copies)