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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to York County

J. Ernest Kinard, Jr., Circuit Court Judge

CARLOS LUIS PINALES MEJIA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002283

JOHNSON PETITION FOR WRIT OF CERTIORARI

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did plea counsel's failure to advise Petitioner of forensic and physical evidence supporting Petitioner's accident defense prior to the guilty plea hearing violate Petitioner's right to the effective assistance of counsel pursuant to the United States Constitution?

STATEMENT

Petitioner was charged with possession of cocaine (2006-GS-46-3312), possession of cocaine with intent to distribute (2007-GS-46-02858), possession of cocaine with intent to distribute within proximity of a school (2007-GS-46-2859), murder (2008-GS-46-3480), and possession of a firearm during the commission of a violent crime (2008-GS-46-3480A). App. 124-125; App. 127-128; App. 130-131; App. 133-134. The charges were not indicted, but Petitioner waived presentment to the grand jury. App. 7, line 21 – App. 8, line 2. On February 11, 2013, Petitioner appeared before the Honorable Michael Nettles regarding the charges. Willy Thompson represented the state, and Harry Dest represented Petitioner. App. 1. As part of a plea deal, Petitioner entered a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) to voluntary manslaughter, a lesser-included offense of murder, and guilty pleas to the drug charges. The firearm charge was dismissed as part of the plea agreement. App. 4, lines 4-24. The parties negotiated a cap of twenty years with the ability of Petitioner to request less time. App. 5, lines 8-9. Ultimately, Judge Nettles sentenced Petitioner to fifteen years' imprisonment for voluntary manslaughter, fifteen years' imprisonment for the proximity charge, ten years' imprisonment for possession with intent to distribute, and three years' imprisonment for possession of cocaine. He ordered all sentences to be served concurrently. App. 42, lines 1-21; App. 126; App. 129; App. 132; App. 135.

Petitioner applied for post-conviction relief on December 5, 2013. App. 68-81. On August 4, 2014, the matter proceeded to an evidentiary hearing before the Honorable J. Ernest Kinard. W. Michael Hemlepp, Jr. represented Petitioner, and J. Rutledge Johnson represented the state. App. 88. By an order filed on October 7, 2014, Judge Kinard denied Petitioner relief. App. 116-123. Petitioner filed a timely notice of appeal. This petition for a writ of certiorari follows.

ARGUMENT

Plea counsel's failure to advise Petitioner of physical and forensic evidence supporting Petitioner's accident defense to the murder charge prior to the guilty plea hearing violated Petitioner's right to the effective assistance of counsel pursuant to the United States Constitution.

Relevant facts

Amber Schiavone, the deceased, and Petitioner were friends at the time of the deceased's death. The deceased was a drug addict and Petitioner helped facilitate drug deals for her. During the early morning hours of January 30, 2008, the deceased and two of her friends arrived at Petitioner's apartment seeking drugs. The deceased entered Petitioner's apartment alone, but she remained in contact with her friends by phone. App. 10, line 2 – App. 11, line 2. Sometime later, when the friends were unable to reach the deceased by phone, they knocked on Petitioner's apartment door. One of them was armed with a pistol. Petitioner, who was also armed, answered the door and informed the friends that the deceased had left. App. 11, lines 2-17. Later that day, Petitioner left for the Dominican Republic. App. 11, lines 21-22; App. 13, lines 7-9. Around 4:40 p.m., Petitioner's girlfriend found the deceased dead in the hallway in the apartment she shared with Petitioner. App. 12, lines 4-22.

During the guilty plea hearing, plea counsel informed the judge that Petitioner steadfastly maintained that the deceased died as the result of an unintentional shooting. According to Petitioner, the deceased requested to see his gun. Although Petitioner was agreeable to her looking at the gun, the deceased snatched it from him and the gun went off. App. 27, line 8 – App. 30, line 25.[1]

[1] Petitioner passed a polygraph examination regarding the accidental shooting death. App. 31, lines 1-11.

According to plea counsel, there were "two ways to look at the facts ... two ways to argue the facts." Plea counsel explained the duplicitous nature of the state's evidence to the plea judge. According to plea counsel, "the state would argue that there [was] no gun power [sic] residue on her hands." However, plea counsel interviewed the trace evidence expert from SLED who said long sleeves would interfere with gunshot residue (GSR) landing on a person's hands. The undisputed evidence in the case was that the deceased was wearing a long-sleeved shirt at the time of the shooting. Further, the expert did not test the deceased's clothing for GSR. App. 31, line 15 – App. 32, line 6. The plea judge noted the photograph of the deceased showed "not only the long sleeves but the sleeves covered up her hands." App. 32, lines 8-9. Plea counsel emphasized this undisputed evidence corroborated "the possibility of there being no gun powder resident present." App. 32, lines 12-14.

Additionally, plea counsel had interviewed the pathologist who indicated there were no signs of a struggle or fight prior to the shooting. Further, the pathologist found no signs of defensive wounds during his examination of the deceased's body during the autopsy. The pathologist also indicated it was "possible that it could have been an unintentional shooting." Thus, plea counsel explained "it can be argued both ways." App. 32, lines 14-24.

At the PCR hearing, Petitioner admitted he was aware of the GSR testing and the test results, but he was unaware of plea counsel's conversation with the trace evidence expert who explained why the GSR test results may be negative for the deceased and the photographic evidence showing the deceased was wearing a long-sleeved shirt at the time of her death. App. 95, line 11 – App. 96, line 16. Petitioner testified that had he known of the corroborating evidence prior to the plea, he would not have entered an Alford plea to voluntary manslaughter. App. 96, line 17 – App. 97, line 3.

On the other hand, plea counsel claimed that he shared his conversation with the trace evidence expert with Petitioner. App. 108, lines 3-4; App. 110, lines 15-18. Plea counsel explained the evidence "could be viewed two very different ways." App. 108, lines 13-14. Further, plea counsel sensed the trace evidence expert "would have been more on the side that you would expect to find something on her hands" based on their conversation. App. 108, lines 15-17.

At the conclusion of the PCR hearing, the judge found the case bottomed on whether plea counsel told Petitioner "about the residue situation." App. 113, line 24 – App. 114, line 1. The PCR judge further found that if Petitioner were "not advised of the residue results, he would be entitled to a trial." However, the PCR judge found that plea counsel advised Petitioner based on the PCR judge "having dealt" with plea counsel and plea counsel's "good recollection" of the case. App. 114, lines 4-8. Thus, the PCR judge denied Petitioner relief. App. 114, line 11.

In the order denying Petitioner relief, the PCR judge found plea counsel provided effective assistance by advising Petitioner of all of the charges and the potential sentences and by negotiating with the state in Petitioner's best interest. The judge found Petitioner "made the decision of his own accord with the help of learned counsel." Additionally, the PCR judge found Petitioner's "testimony regarding counsel's ineffectiveness is not credible while also finding counsel's testimony is credible." App. 121.

Discussion

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the

outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). In order to show ineffective assistance of counsel as a ground for relief, 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, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 243-244 (1969). The record must show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege." State v. Patterson, 278 S.C. 319, 322, 295 S.E.2d 264, 265 (1982) overruled on other grounds State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). Entering a guilty plea results in a waiver of several constitutional rights; therefore the Due Process Clause requires that defendants enter into guilty pleas voluntarily, knowingly, and intelligently. Burnett v. State, 352 S.C. 589, 591, 576 S.E.2d 144, 145 (2003).

In order for a defendant to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)(citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). The judge must question the defendant about the possible punishment that could be imposed. Id. at 434-435.

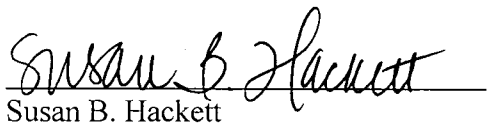
It was undisputed that Petitioner maintained his innocence at all times. Petitioner was steadfast in his assertion that the shooting death of the deceased was an accident. Petitioner entered an Alford plea to the charge of voluntary manslaughter because plea counsel advised him that the prosecution had overwhelming evidence of his guilt. Petitioner was unaware that the physical and forensic evidence in the case supported his defense of accidental shooting. Although no GSR was found on the deceased's hands, which would have supported Petitioner's defense of an accidental shooting completely, the absence of GSR was explained easily by the deceased wearing a long-sleeved shirt. This evidence would have come from the state's own expert and would have been undisputed because of the photographic evidence of the deceased wearing a long-sleeved shirt at the time of her death – a shirt with sleeves so long they covered the deceased's hands. Petitioner testified unequivocally that had he been aware of the forensic and physical evidence supporting his defense and that had he been aware of the evidence, he would not have entered a plea pursuant to Alford to the offense.

Plea counsel was aware of Petitioner's accident defense. Yet, plea counsel withheld valuable information from Petitioner concerning the easy explanation for why the deceased did not have GSR on her hands and how the evidence could have been used to support the accident defense. In light of plea counsel withholding valuable information, Petitioner was unable to enter a voluntary, knowing, and intelligent plea to the charge of voluntary manslaughter. Plea counsel's failure to disclose this crucial information resulted in deficient performance prejudicial to Petitioner.

CONCLUSION

Petitioner respectfully requests this Court grant the writ and order full briefing on the issue presented.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO YORK COUNTY
J. ERNEST KINARD, JR., CIRCUIT COURT JUDGE

CARLOS LUIS PINALES MEJIA,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Carlos Luis Pinales Mejia 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 August 4, 2014. In her opinion, seeking certiorari from the order of dismissal is without merit.

3. Pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), she has 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 Carlos Luis Pinales Mejia.

Respectfully submitted,

Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

This 27th day of April, 2015

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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 J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Carlos Luis Pinales Mejia, #354376, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 27th day of April, 2015.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of April, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.