

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

TONY PAUL MEDFORD,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000818

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX 1

ISSUE PRESENTED 2

STATEMENT 3

ARGUMENT 4

CONCLUSION 10

ISSUE PRESENTED

In this case where Petitioner proceeded to jury trial on a murder charge and only pled guilty to voluntary manslaughter after trial counsel rested without calling witnesses, did the PCR judge err in refusing to find that the Alford plea was rendered involuntary based on trial counsel's failure to call co-defendant Danny Ray Crisp as a witness to testify that after the shooting he saw a .45 caliber gun on the floor in the backseat of the car where the decedent had been, in support of Petitioner's statement to police that he shot in self defense?

STATEMENT

In March of 2011, the Spartanburg County Grand Jury indicted Petitioner Medford for murder, indictment #2011-GS-42-1821. On January 9, 2012, Medford proceeded to jury trial before the Honorable J. Derham Cole. Matthew Shealy and Clay Allen represented Medford. Michael Morin prosecuted the case. After the State and the Defense rested but before closing arguments, Medford changed his plea from not guilty and entered a negotiated guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Pursuant to the negotiation, Judge Cole sentenced Medford to fifteen (15) years. Medford did not appeal his sentence and conviction.

On October 8, 2012, Medford filed an application for post conviction relief [PCR]. The State filed a return on October 2, 2013. On January 13, 2015, an evidentiary hearing was held before the Honorable Deadra L. Jefferson. Christopher D. Brough represented Medford at the PCR hearing. Suzanne H. White represented the State. In a written order signed April 2, 2015, Judge Jefferson denied relief and dismissed the application. A timely notice of intent to appeal was served on April 13, 2015. This petition for writ of certiorari follows.

ARGUMENT

In this case where Petitioner proceeded to jury trial on a murder charge and only pled guilty to voluntary manslaughter after trial counsel rested without calling witnesses, the PCR judge erred in refusing to find that the Alford plea was rendered involuntary based on trial counsel's failure to call co-defendant Danny Ray Crisp as a witness to testify that after the shooting he saw a .45 caliber gun on the floor in the backseat of the car where the decedent had been, in support of Petitioner's statement to police that he shot in self defense.

Medford was charged in the fatal shooting of Richard "Rick" Hayes. Prior to trial Medford asserted that he was immune from prosecution pursuant to S.C. Code S16-11-440(c) and the judge held an immunity hearing. (App. pp. 8-80). Medford testified at the immunity hearing that on the night of the shooting Hayes asked Danny Crisp for a ride to Tonya's house to get pills to make methamphetamine. (App. p. 11, line 22 – p. 12, lines 1-17). Crisp agreed to drive. Medford, who is paralyzed from the waste down, was in the front passenger seat and Hayes was in the backseat. (App. pp. 10-12). Medford testified that Hayes was angry because, among other things, he believed that Medford knew but did not tell Hayes that his wife Nicki had been unfaithful. (App. p. 13, line 15 – p. 14, lines 1-25). Medford testified that after leaving Tonya's house, Hayes became more angry and threatened Medford. (App. p. 16, line 10 – p. 17, lines 1-25). Medford testified, "And I turned around and looked at him. When I did, he was pointing the gun at me. And so I just ducked, pulled my gun out and shot it." (App. p. 18, lines 9-12). When Medford fired, Hayes dropped his gun and then got out of the car. (App. p. 19, lines 13-25). Danny Crisp then pulled off and instructed Medford to throw both guns out. (App. p. 21, lines 1-13). At the conclusion of the immunity hearing the judge found that Medford was not entitled to immunity finding that the issue was a question of fact for the jury to determine. (App. p. 80, line 9 – p. 81, lines 1-16). The judge stated:

I'm not convinced by the greater weight of the evidence that he did entertain a reasonable belief that it was necessary, because apparently there's some issue about

a legitimate question in this case as to whether or not Mr. Hayes did, in fact, have a weapon and whether or not he, in fact, threatened the defendant with it and whether or not the defendant's response to any belief was a reasonable belief.

(App. p. 81, lines 7-14).

At trial Detective Allen Wood with the Spartanburg County Sheriff's office testified that Medford gave a statement admitting to shooting Hayes. "He looks back over his shoulder. He says he saw a flash of chrome. Seeing that flash of chrome he felt like his gun was out. So he – he shoots." (App. p. 160, lines 10-12). Medford described the gun that Hayes had as a .45 nickel plated or stainless steel. (App.p. 160, lines 17-19). Medford told Detective Woods that after the shooting he threw his gun, a .22, out the window over a concrete bridge. (App. p. 159, lines 1-22). The police did not find the .45 gun. (App. p. 161, lines 4-7). According to the detective, Medford did not mention getting rid of the .45.

Officer David Brandon Howard with the crime scene unit testified that he recovered four unfired .45 rounds in the roadway where Hayes' body was found. (App. pp. 188-189; p. 190, lines 23-25). Paramedics found an ammunition clip in Hayes' pocket. (App. p. 140, lines 10-16). Both Medford and Danny Crisp were eventually arrested in connection with the shooting. (App. p. 174, lines 3-6). Crisp was charged with accessory after the fact (App. p. 33, lines 20-21) and pled guilty to misprision of a felony. (App. p. 307, lines 9-10; 20-24). Crisp was not called as a witness at trial.

During the PCR hearing Medford testified to a statement given by Danny Crisp. "He said in his statement that, after he heard the gunshot, he stopped the vehicle and I reached into the back seat and grabbed Rick's gun and pulled it into the front seat and said man, he just pulled his gun on me." (App. p. 293, lines 15-18). Medford testified that the result of the case would have been different

had the jury heard that the deceased had a gun, rather than just a clip and rounds. (App. p. 294, lines 1-6; p. 297, lines 16-21).

Medford testified that counsel told him they could not call Danny Crisp as a witness. “He [trial counsel] had –also told me that if Danny didn’t take the stand, that we was gonna call Danny to the stand to show that they was two guns involved in this case, and the next morning, when he came over there, was telling me about this plea deal, he said that we couldn’t take, we couldn’t call Danny to the stand now because Danny was subpoenaed by the State.” (App. p. 294, line 25 – p. 295, lines 1-6).

Trial counsel testified at the PCR hearing that he believed Danny Crisp’s testimony was not sufficiently helpful to justify losing closing argument. (App. p. 321, line 11 – p. 322, 323, lines 1-13). Trial counsel testified, “He [Danny Crisp] would have testified, I assume, he would of testified consistently that there was a gun in the floorboards. He couldn’t testify as to the firing – who fired what, who pulled what gun, that sort of thing.” (App. p. 321, lines 16-19). Trial counsel testified that the solicitor told him the State had made a deal with Crisp in exchange for his testimony. (App. p. 321, line 20 – p. 322, lines 1-5). Trial counsel additionally testified, “. . . I believe Mr. Crisp’s testimony would not have been an – allowed good and there would have been issues with his representation, whether he would of actually testified at all.” (App. p. 330, lines 11-14).

Danny Crisp testified at the PCR hearing. (App. pp. 308-316). Crisp testified:

We was driving up the road and on – we went to Tonya’s and Rick went in, got something, whatever, and on the way back Rick and Paul started arguing, and next thing I know I hear a gunshot, and I stopped the vehicle. Rick got out and we left and all I can remember him saying is why you shooting a gun in my car or something to that effect, and Paul says he pulled a gun on me, and, and I told Paul, Paul he was full of, full of mess.

(App. p. 312, lines 11-18). When asked if he saw any other guns, Crisp testified, “I did. I seen – he - Paul had pulled a .45 out of the back floorboard of my vehicle.” (App. p. 312, lines 19-21).

When asked if the gun he saw in the floorboard could have been the .22 gun that Medford used Crisp answered, “No, cause Paul Medford still had the gun in his hand.” (App. p. 315, lines 3-5). Crisp admitted telling Medford to throw both guns out. (App. p. 315, lines 6-11). Crisp admitted that he did not see Hayes pull the gun on Medford. (App. p. 314, lines 17-19). Crisp, however, testified, “My understanding is that if, if a gun is in its holster or wherever you’re carrying it, it don’t come out unless you pulled it and the gun was in the floorboard when he got out of my vehicle.” (App. p. 315, lines 21-24).

The PCR judge found that trial counsel had a valid strategic reason not to call Mr. Crisp as a witness as Crisp’s testimony was not worth losing final closing argument. (App. p. 333, lines 22-24). The PCR judge noted that Crisp did not see what happened and his statement to Medford that he was full of mess implied that Crisp did not believe Medford’s statement that Hayes pulled a gun first. (App. p. 334, lines 11-18). In the order of dismissal the PCR judge wrote, “Additionally, this Court finds Counsel’s reasons for not calling Crisp to be reasonable, when Crisp could only testify that he heard, but did not see, a gunshot and saw a gun on the backseat floorboard and his statement was generally uncontroverted.” The PCR judge erred. Crisp’s testimony about seeing a gun on the backseat floorboard was critical evidence in support of Medford’s statement that Hayes pulled a gun and Medford only shot in self defense. As noted by the trial judge at the conclusion of the immunity hearing, “apparently there’s some issue about a legitimate question in this case as to whether or not Mr. Hayes did, in fact, have a weapon.” (App. p. 81, lines 9-11). Trial counsel was ineffective in failing to call Danny Crisp as a witness to verify that Hayes had a gun. When counsel failed to call Crisp as a witness, Medford had no choice but to enter an Alford plea.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v.

Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). “A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea ‘may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.’ ” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “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.’ ” Hill, 474 U.S. at 56, 106 S.Ct. 366 (quoting North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)).

“The second, or ‘prejudice,’ requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. at 59, 106 S.Ct. 366. “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, 413, 683 S.E.2d 471, 474 (2009).

Counsel’s representation fell below an objective standard of reasonableness. Counsel was deficient in failing to call Danny Crisp as a witness to support self-defense. The failure to call Crisp was not a **valid** trial strategy as Crisp provided critical testimony that the deceased had a gun, supporting Medford’s statement to the police that he shot in self defense. An attorney’s performance is not immunized from 6th Amendment challenge by simply labeling the actions as “trial strategy.” Kellogg v. Scurr, 741 F.2d 1099, 1102 (8th Cir. 1984).

The Alford plea was rendered involuntary by counsel’s deficient performance. There is a reasonable probability that, but for counsel's errors, Medford would not have pled, but would have insisted on continuing with trial. Medford entered his Alford plea only after trial counsel rested without calling Danny Crisp as a witness. Medford was deprived of his Sixth Amendment right to effective assistance of counsel.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of October, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Deadra L. Jefferson, Circuit Court Judge

TONY PAUL MEDFORD,

PETITIONER,

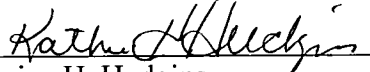
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire this 19th day of October, 2015.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of October, 2015.

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

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

TONY PAUL MEDFORD,

PETITIONER,

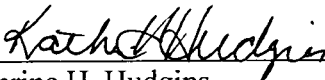
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Alicia Olive, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Tony Paul Medford #349218, Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 19th day of October, 2015.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of October, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022