

ORIGINAL

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

REGINALD SHEFTALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000781

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in failing to submit a sentencing reconsideration motion and hearing request challenging petitioner's forty-year sentence on the grounds that such a sentence was excessive, and in effect the equivalent of a life sentence, and reflected little regard for the fact that petitioner's crimes stemmed from his mental illness, because the anticipated mental rehabilitation of petitioner would have resulted in his ability to re-enter society as a productive citizen much sooner.

STATEMENT

Petitioner Reginald Sheftall pled guilty to first degree burglary, attempted murder, and possession of a weapon during the commission of a violent crime during the December 2011 term of the Spartanburg County General Sessions Court before Judge J. Mark Hayes, II. Petitioner was sentenced to imprisonment for an aggregate term of forty years on his convictions. Petitioner was represented by Tonya Jones during the plea proceeding, and Assistant Solicitor Barry Joe Barnette appeared on behalf of the state. App. 1 – 38. Petitioner appealed, but his appeal was dismissed on March 8, 2012, for failure to present an explanation for appeal per Rule 203(d)(1)(B)(iv), SCACR.

On June 12, 2012, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. 40 – 48. The respondent filed a return dated July 24, 2013, requesting that a hearing be held in response to petitioner's PCR action. App. 49 – 53.

A PCR hearing was convened on January 14, 2015, at the Spartanburg County Courthouse before Judge Deandre L. Jefferson. Petitioner was present at the hearing and represented by Stephen L. Denton, and Assistant Attorney General Suzanne H. White appeared on behalf of the state. App. 55 – 116. On March 31, 2015, Judge Jefferson issued an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 118 – 147.

Petitioner appealed Judge Jefferson's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to submit a sentencing reconsideration motion and hearing request challenging petitioner's forty-year sentence on the grounds that such a sentence was excessive, and in effect the equivalent of a life sentence, and reflected little regard for the fact that petitioner's crimes stemmed from his mental illness, because the anticipated mental rehabilitation of petitioner would have resulted in his ability to re-enter society as a productive citizen much sooner.

During the plea proceeding, the solicitor apprised the plea judge of the facts in the case. Apparently, petitioner burst into his ex-girlfriend's apartment on June 9, 2010, in an effort to see the six week old baby they spawned together, and proceeded to hit her (ex-girlfriend) and shoot her with a gun. App. 11, l. 15 – p. 13, l. 14. Petitioner was sentenced to forty years on the burglary conviction, thirty years on the attempted murder conviction, and five years on the weapon conviction.

During the PCR hearing, petitioner testified that he did not realize until after his direct appeal was dismissed that trial counsel “failed to have a motion for reconsideration” presented to the plea judge. Apparently, petitioner wanted a sentencing reconsideration motion to be filed in the case because he indicated that but for counsel's omission in this regard, “[he] could of put in for one.” App. 99, lines 6 – 23.

Trial counsel addressed this issue at the PCR hearing as follows:

Q. Okay. Did you ever advise [petitioner] that he also had a, a right to file a motion to reconsider the sentence that he was handed?

A. I don't have a specific recollection of that.

Q. Is that part of y'all's packet to, that you would go through that, that as well with the client a plea, after a trial?

A. No, not all the time. Sometimes we would do, we would ask the client to or we would ask the judge to reconsider. We generally

didn't have a lot of luck with that. So I don't know if I advised [petitioner] of that or not. I – it's been years, yeah. So I don't have any independent recollection.

Q. Okay. Would it be – would you agree with me that, given that he received 40 years, that filing a motion to reconsider maybe should have been done?

A. Do I think it should have been done?

Q. Yes.

A. I don't really recall the specifics of that or if we talked about it because the question always says it's more and I do recall seeing that sentencing sheet had been changed and moved up. So always, when you have an issue of reconsidering, there's a chance you're gonna get more time. So I'm sure Mr. Cheek and I possibly talked about it. I just don't remember anymore. App. 71, l. 14 – p. 72, l. 16.

The PCR judge ruled that “petitioner failed to present any meritorious claim supporting his argument that counsel was obligated to file a motion for reconsideration of his sentence or that any such motion would have been successful.” App. 21.

Our United States Supreme Court has held that the two factors that must be considered in reviewing the reasonableness of a sentence are procedural reasonableness (statutory limits and guidelines) and substantive reasonableness per a review of the sentence under the totality of the circumstances. See Gall v. United States, 552 U.S. 38 (2007). See also, State v. Franklin, 276 S.C. 240, 226 S.E.2d 896 (1976), where the Court held that a legal sentence must be within statutory limits and not the result of prejudice, oppression, or corrupt motives.

In the case at bar, a sentencing reconsideration motion and hearing would have been an opportunity to take a second look at petitioner's mental state in mitigation and its impact upon the crimes committed. During the plea proceeding, petitioner stated that he attended Francis Marion University for four years and that he did not partake of drugs and alcohol, but that he wanted to be a good father to his baby since his father was absent during the majority of his life, and because when

his father was around, he saw his father physically abuse his mother. Petitioner added that he was very sorry (remorse displayed) for his actions, and that his behavior was not a demonstration of his true character. App. 34, l. 2 – p. 37, l. 2. In addition, petitioner's former attorney asked for mercy on petitioner at sentencing and went on to explain that petitioner received counseling for his mental health issues when he got to college, and that although petitioner was ill, he could grow and become a better person. App. 29, l. 12 – p. 33, l. 20. Petitioner's trial counsel added that petitioner was committed to a Florence Health Center, a Greenville Hospital, and a Marshall Pickens Facility in 2010; and that despite the fact that he was deemed competent to stand trial, he just "snapped" on the date the crimes were committed. App. 23, l. 1 – App. 26, l. 9. Petitioner's mother asked for mercy because she raised petitioner in the right manner, i.e., in the church, and because petitioner was a "good kid." App. 37, l. 4 – 14.

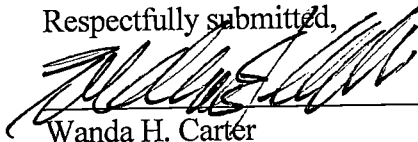
The trial judge sentenced petitioner legally within statutory limits for each conviction, and therefore there were no procedural sentencing objections available for argument in the case. However, the substantive reasonableness of petitioner's excessive forty-year sentence should have been challenged by trial counsel due to the fact that petitioner's mental health issues, which affected his behavior on the day in question, would be addressed during his incarceration. In other words, the forty-year sentence was essentially what would have been the equivalent of a life sentence and did not take into account the fact that he was not a hard core criminal who lacked redeeming value, but rather someone who could be mentally rehabilitated, restored, and placed back in society to be a father to his child and a benefit to himself and society. Clearly, the lengthiness of petitioner's sentence as it stood would only work to punish and remove him from society rather than rehabilitate him.

Therefore, a review of the substantive reasonableness of petitioner's forty-year sentence, which was the equivalent of a life sentence under the totality of the circumstances, should have been challenged by trial counsel via a motion to reconsider his sentence and a request for a hearing in the matter. Counsel's failure to address petitioner's excessive sentence in light of his mental illness and the opportunity for mental rehabilitation constituted deficient representation in the case at bar in violation of petitioner's Sixth Amendment right to competent counsel in a criminal case. Also, but for counsel's error in his regard, a reasonable probability exists that petitioner's sentencing outcome would have been different.

CONCLUSION

Based on the forgoing argument, counsel for petitioner requests that this petition be granted and full briefing allowed on the above raised issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

REGINALD SHEFTALL,

PETITIONER,

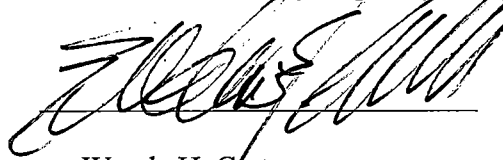
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

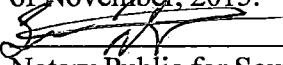
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Reginald Charles Sheftall #348974, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 13th day of November, 2015.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of November, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.