ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

D. Craig Brown, Circuit Court Judge

SHELDON OAKMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001612

PETITION FOR WRIT OF CERTIORARI

LAURA R. BAER
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

INDEX

ISSUE PRESENTED

Whether the PCR Court erred in finding plea counsel provided effective assistance of counsel where plea counsel failed to articulate any strategic reason for Petitioner's participation in a multi-defendant guilty plea and where Petitioner was prejudiced in that he received a greater sentence than several of his more culpable and less cooperative co-defendants?

STATEMENT OF THE CASE

Introduction

Petitioner Sheldon Oakman pled guilty at a mass plea hearing along with his seven co-defendants. Even though Petitioner's culpability was less than many of the co-defendants and there was substantial mitigation, Petitioner received a thirty (30) year sentence. The trial judge told plea counsel: "Mr. Chandler, I don't know how I can feed him out of any different spoon than I fed the rest of them. The sentence of this Court is that you be committed to the State Department of Corrections for a period of 30 years." App. 194, ll. 9-13. The very next day, four of Petitioner's co-defendants, several of whom were more culpable, received sentences of seventeen (17) years. Mr. Chandler provided no strategic reason for advising Petitioner to enter into his plea alongside the co-defendants and admitted that it likely affected the harshness of the sentence Petitioner received:

> PCR COUNSEL: Did you ever push the issue or address the matter with the Court that you did not want your client lined up with the seven other co-defendants, you wanted him to have his individual day in court to make sure his rights were protected?
>
> PLEA COUNSEL: No, ma'am. No, ma'am. Before then and since then I've done, I guess what you call a cattle call or multiple-defendant pleas. And, I've never seen – and even since, I've never seen the prejudice in multiple-defendant pleas and I didn't see it in Sheldon's case.
>
> But I will, I will say that the circus of it probably added to, you know, added to what ultimately led to the judge giving him such a harsh sentence but, you know, it was well within the range of the plea agreement. It was after a victim who has the right to testify offers some information. And as disappointed as I was in the 30 years, I certainly understood what the judge's position was, obviously, until I heard the second day that there were more-culpable defendants who were given lighter sentences.

App. 426, l. 15 – 427, l. 10. Notably, Mr. Chandler was aware that Judge Early is "very consistent about… feeding everyone out of the same spoon." App. 265, ll. 7-9.

Petitioner Sheldon Oakman was one of eight co-defendants[1] who pled guilty before the Honorable Doyet A. Early, III on April 27, 2009, in connection with the kidnapping, beating, and shooting death of Jeremy Leaphart.[2] Petitioner was the first of the co-defendants contacted by law enforcement. He provided police with the names of his co-defendants, details of the events leading up to and the murder of Leaphart, and the location of the shooting. App. 6, l. 39 – 8, l. 13; App.

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[1] Petitioner's co-defendants were Frankie Gantt *(pled guilty to murder, sentenced to 45 years)*; Darrell Williams *(pled guilty to kidnapping, sentenced to 30 years)*; Johnnie Walker *(pled guilty to kidnapping, sentenced to 30 years)*; Johnnie Oakman, Jr. *(pled guilty to kidnapping, sentenced to 17 years); Andre Norris (pled guilty to kidnapping, sentenced to 17 years)*; Marion Abner *(pled guilty to kidnapping, sentenced to 17 years)*; and Ronnie Bowers, Jr. *(pled guilty to kidnapping, sentenced to 17 years)*.

[2] The statement of facts presented at the plea hearing indicated that the victim, Jeremy Leaphart, went missing on December 24, 2007. Leaphart was involved in the theft or possession of some guns from an earlier incident. On the day he went missing, Leaphart's grandmother received two calls from him saying "they want their guns or $5,000 or they're going to kill me." Leaphart was seen getting into a vehicle with Darrell Williams at approximately 4:00 p.m. There was information that Johnnie Walker and Petitioner were also there when Leaphart was picked up, but the solicitor explained that there was some question as to whether Leaphart had actually called asking for a ride. Investigators spoke with an individual who overheard Williams and Petitioner talking about how Frankie Gantt shot and killed Leaphart. App. 137, l. 9 – 139, l. 19; App. 143, ll. 16-23.

Law enforcement contacted Petitioner on January 19, 2008. He named all of the other people who were involved in the actual kidnapping and who were present when Leaphart was shot. He also directed investigators to the location where Leaphart was shot, where officers located three spent shotgun shell casings, a live shotgun round, and the victim's cellphone. The casings matched a shotgun found under the trailer where Leaphart was beaten and burnt with a hot iron in effort to obtain information about the guns he had been holding for Williams. App. 139, l. 20 – 141, l. 5.

All of the co-defendants, except Williams and Walker, eventually left the trailer with Leaphart. They were supposed to go to Walker's house and clean up Leaphart. Leaphart called 911 from the lead vehicle where he was riding. Frankie Gantt instructed the driver of the lead car to pull over onto a dirt road. Petitioner followed in the second vehicle. After they pulled over, Gantt got a shot gun out of the trunk. Leaphart ran and Gantt shot at him three times, clipping him with at least one of those shots. The statements differed as to who gave Gantt another shell. Gantt then went behind an abandoned building and delivered the deadly shot that killed Leaphart. App. 141, l. 6 – 143, l. 7; App. 179, ll. 10-25; App. 183, ll. 4-13.

All of the co-defendants met at Walker's house, where Williams was upset with Gantt for killing Leaphart. They then got into two vehicles, returned to find Leaphart's body, and loaded it into the trunk of one of the cars. They hid the body under a debris pile in Batesburg. App. 143, l. 24 – 145, l. 8.

179, ll. 10-25. Petitioner's cooperation with police, as well as his lack or criminal record and minimal involvement in the incident, set him apart from his co-defendants. App. 179, l. 5 – 194, l. 8. The victim's family representative who spoke at sentencing also singled out Petitioner's parents and thanked them for their support. App. 152, ll. 10-11; App. 336, l. 17 – 337, l. 9; App. 391, ll. 19-23; App. 442, ll. 1-6.

Given Petitioner's lesser culpability and the substantial mitigation, plea counsel Chandler should have asked that Petitioner's plea and sentencing be held separate from his co-defendants. There was no evidence presented at the PCR hearing that Petitioner's plea offer was premised upon the agreement to a joint plea hearing, thus there was nothing to lose by making such a request. Moreover, plea counsel provided no strategic reason for Petitioner entering his plea alongside all of his co-defendants, immediately followed by back-to-back sentencing hearings. App. 426, ll. 15-25. The prejudice to Petitioner became apparent when the four co-defendants sentenced the day after the plea all received seventeen year sentences, as opposed to Petitioner's thirty year sentence. Mr. Chandler attempted to set Petitioner apart at the reconsideration hearing, but at that point the trial court had already cast Petitioner into the same category as Williams and Walker. See State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) ("[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion.").

Procedural History

On January 24, 2008, Petitioner Sheldon Oakman was charged with one count of accessory after the fact to murder. See General Sessions Case No. F987793. On July 14, 2008, the Aiken County grand jury indicted Petitioner for one count of murder and one count of kidnapping. App.

452 – 453; App. 479 – 480. Petitioner was represented throughout the proceedings by Everett Chandler, and the State was represented by assistant solicitor John Weeks.

On April 16, 2008, Petitioner, along with his seven co-defendants, all appeared before the Honorable S. L. Lynn, Jr. for a preliminary hearing. App. 1. The State did not pursue indictment on the charge of accessory after the fact. App. 32, ll. 25-31; App. 102, ll. 11-17. The magistrate judge denied Mr. Chandler's motions to dismiss the other charges of kidnapping and murder. App. 103, ll. 1-7.

On April 27, 2009, Petitioner and his seven co-defendants all appeared before the Honorable Doyet A. Early, III to enter guilty pleas. App. 109. Petitioner and three of his co-defendants were all sentenced immediately after the entry of the guilty plea. The actual shooter, Frankie Gantt pled guilty to murder and was sentenced to forty-five (45) years. Darrell Williams, Johnnie Walker, and Petitioner all pled guilty to kidnapping and were sentenced to thirty (30) years. App. 157 – 194. The remaining four co-defendants, John Oakman, Jr., Andre Norris, Marion Abner, and Ronnie Bowers, Jr., were sentenced the following day, April 28, 2009. They each received a sentence of seventeen (17) years for kidnapping. App. 194 – 249. Judge Early explained:

> To the victim's family, I, quite honestly, having listened to all of it, feel like there are sort of two levels involved in this case. **I think you got the major players who I sentenced yesterday -- the murderer and then you had the other three who were I felt like were most instrumental in the kidnapping** -- but having listened to these four young men, I feel like that their involvement is not as substantial as the ones yesterday, and they have certain mitigating factors or factors that cause it to be on a different level -- **age, prior record, involvement or lack of involvement, some cooperation** after the fact and my assessment was pretty much coincided with how law enforcement looked at it as well, but, obviously, deals or offers could not have been made because we could not have gotten pleas to everybody admitting their guilt in this thing if the Solicitor had to differentiate. So, that was sort of my job.

App. 248, ll. 2-18 (emphasis added).

On April 29, 2009, plea counsel for Petitioner filed a motion to reconsider Petitioner's sentence. On June 16, 2009, a hearing was held before Judge Early on Petitioner's motion, as well as similar motions filed on behalf of three of his co-defendants, Darrell Williams, Johnnie Walker, and Marion Abner. [3] Mr. Chandler reminded the court of the arguments he made at the original sentencing hearing, which included that Petitioner helped "break the case," that the victim's family understood that Petitioner may receive a lesser sentence, and Petitioner's "lack of significant participation" in the crimes. App. 264, l. 18 – 264, l. 20. He argued that Petitioner was more similarly situated to the co-defendants who received a seventeen year sentence based on age, lack of prior record, and level of involvement. App. 265, l. 21 – 267, l. 13. He further argued that Petitioner should receive some additional benefit, by way a further reduction in his sentence, for his substantial cooperation with police. App. 267, l. 14 – 271, l. 21.

Judge Early took the motions under advisement and instructed the attorneys for Petitioner, Williams, and Walker to each provide him with proposed order with "a factual recitation comparing your client's culpability with everybody else's [culpability]." He also asked for a copy of the plea and sentencing transcript. App. 280, l. 18 – 281, l. 2. Mr. Chandler submitted a proposed "Order Amending Sentence." App. 435, l. 18 – 437, l. 10; App. 441, l. 6 – 442, l. 6; App. 448 – 449 (State's Ex. 1, proposed order). Judge Early later issued a Form 4 Order denying the motion to reconsider. App. 443, l. 24 – 444, l. 8.

A direct appeal was filed by Julie Thames, appealing Petitioner's thirty year sentence. On February 8, 2012, the Court of Appeals issued an unpublished, *per curiam* opinion affirming Petitioner's sentence. App. 282 – 283 (State v. Oakman, 2012-UP-062 (Ct. App. Feb. 8, 2012)).

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[3] In addition to a reduction in their sentence, the defendants requested a clarification for the Department of Corrections that they did not have to register on any sex offender registry as a result of the kidnapping conviction. App. 253, l. 9 – 257, l. 20.

On February 15, 2013, Petitioner filed his Application for Post-Conviction Relief. App. 284. The State filed its Return on June 18, 2013. App. 291. An Amendment to the Application for Post-Conviction Relief was filed on December 17, 2014. App. 297.

Post-Conviction Relief Hearing and Order of Dismissal

On January 12, 2015, an evidentiary hearing was held before the Honorable D. Craig Brown. Petitioner was represented by Tricia Blanchette, and the State was represented by assistant attorney general Daniel Gourley, II. App. 300. In the Order of Dismissal filed May 8, 2015, Judge Brown found that Petitioner did "not establish any constitutional violations or deprivations that would require this court to grant his application." Thus, he denied and dismissed Petitioner's PCR application, with prejudice.[4] App. 506 (OOD, p. 19).

With respect to the allegation that plea counsel was ineffective in failing to protect the interests and rights of Petitioner during a circus like or cattle call guilty plea proceeding, the PCR court noted plea counsel's testimony that "in his opinion Applicant was in no way prejudiced by pleading guilty along with his co-defendants." App. 479 (OOD, p. 14). The PCR court found "[t]o the contrary, by pleading guilty with his co-defendant's plea counsel was able to articulate and argue to the plea judge the reasons why Applicant should receive less time than his co-defendants. Please counsel pointed out that Applicant was the first to talk to police, fully cooperated with police, and essentially broke the case open for investigators." App. 479 (OOD, p. 14). Thus, the PCR court found plea counsel's "actions were reasonable" and "did not fall below professional norms." App. 480 (OOD, p. 15).

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[4] On May 20, 2015, PCR counsel filed a Motion to Alter or Amend pursuant to Rule 59(e). App. 485. The State filed its Return to the motion on June 2, 2015. App. 492. The PCR judge filed an Order denying the Rule 59(e) motion on July 24, 2015.

Plea counsel's statement that he has "never seen the prejudice in multiple-defendant pleas and I didn't see it in Sheldon's case" should not be viewed in isolation. App. 426, ll. 15-25. Immediately following that statement, Mr. Chandler admitted that the mass plea probably contributed to Petitioner receiving the same, harsh sentence. App. 427, ll. 1-10. However, Mr. Chandler rationalized that the effective victim-impact statement, the troubling facts of the case, and news coverage also impacted the sentence. App. 421, ll. 2-18; App. 429, l. 12 – 431, l. 8.

The PCR court also found that Petitioner failed to show that plea counsel was ineffective in failing to effectively argue on his behalf at the reconsideration hearing and failing to provide the court with an order *fully* addressing the issues in the case. App. 481 (OOD, p. 16). The court again found that plea counsel's "actions were reasonable" and "did not fall below professional norms." App. 482 (OOD, p. 17).

Interestingly, the factual basis for the PCR court's findings was that "plea counsel stated he created a document that depicted each of the co-defendants involvement, any mitigating factors, and their sentences. Plea counsel stated he presented this document to the plea judge during the motion for reconsideration..." App. 481 (OOD, p. 16). Mr. Chandler testified:

> I had a public defender who gave me the play-by- play about what was going on and gave me what was going on from there. We ordered a transcript and we took every word from Judge Early, put together a standard that he came up with and basically made a motion to the judge to basically, basically evaluate Sheldon's case in the same way that he evaluated everyone else's case on that second day.

App. 435, l. – 436, l. 3. Though Mr. Chandler initially identified State's Exhibit 1 as the "standard" that he "handed Judge Early," he later identified the same exhibit as the "order amending sentence that [he] had drafted and submitted to Judge Early." App. 436, l. 7 – 437, l. 10; App. 441, ll. 6-9; App. 448 – 449 (State's Ex. 1, proposed order). Notably, the transcript of the hearing on the motion to reconsider does not reflect any document being handed to the judge.

App. 263, l. 24 – 273, l. 7. Rather, State's Exhibit 1 appears to be the proposed order that Judge Early requested each attorney submit on behalf of their client at the end of the reconsideration hearing. App. 280, l. 18 – 281, l. 3.

Plea counsel's response to whether he had the transcript of the co-defendants' sentencing related to the preparation of the proposed amended sentencing was "I can't recall." App, 441, ll. 18-25. Plea counsel could likewise could not "recall" why he did not mention the victim's recognition of support it received from Petitioner's family, especially in light of what he viewed as an otherwise damaging victim-impact statement. App. 442, ll. 1-6. Further, a review of the proposed order reveals that plea counsel did not heed Judge Early's instruction to include "a factual recitation comparing your client's culpability with everybody else's [culpability]." App. 284, ll. 18-22. Most importantly, Mr. Chandler failed to differentiate Petitioner from Darrelll Williams and Johnnie Walker, the two co-defendants who received the same sentence as Petitioner. See App. 448 – 449 (State's Ex. 1, proposed order).

It was Gantt, Williams, and Walker, who were characterized as the most culpable during the second day of sentencing. App. 386, l. 13 – 387, l. 13; App. 226, l. 1-15 (Andre Norris characterized Darrell "Steve" Williams and Frankie Gantt as the two "behind all of this"); App. 240, l. 8-12 (Marion Abner characterized Darrell "Steve" Williams as the person "directing" the others and Frankie "Mon" Gantt as "the bad one"); App. 245, l. 13 – 246, l. 8 (counsel for Ronnie Bowers, Jr. characterized Gantt, Williams, and Walker as the most culpable); see also App. 184, l. 8 – 185, l. 19 (solicitor's comments at Petitioner's sentencing). Williams was characterized as the "ringleader" and "the one who was trying to get the information and that [the other co-defendants] were kind of along for the ride." App. 391, ll. 14-18; App. 15, l. 35 – 16, l. 11. Walker was the co-defendant alleged to have instructed Abner to plug in the iron, which Walker later used to burn Leaphart.

App. 12, ll. 37-41; App. 15, l. 35 – 16, l. 7; App. 234, ll. 11-14; App. 238, ll. 16-18; App. 278, ll. 17-18. Despite the court's perception of Petitioner as "instrumental in the kidnapping" following the second day of sentencing, Mr. Chandler further failed to remind the Court that it was disputed both whether Petitioner was present when Leaphart was picked up and whether Leaphart went willingly at first. App. 248, ll. 2-18; see harmless error discussion, infra.

With respect to both of the allegations of ineffective assistance of counsel mentioned above, the PCR court found that Petitioner was not prejudiced because he received a lawful thirty year sentence and there was overwhelming evidence of guilt. App. 480 (OOD, p. 15); App. 482 (OOD, p. 17-18).

ARGUMENT

The PCR Court erred in finding plea counsel provided effective assistance of counsel where plea counsel failed to articulate any strategic reason for Petitioner's participation in a multi-defendant guilty plea where Petitioner was prejudiced in that he received a greater sentence than several of his more culpable and less cooperative co-defendants.

Petitioner was prejudiced by plea counsel's deficient representation at the plea hearing and reconsideration hearing.

The PCR court erred in finding that "by pleading guilty with his co-defendant's plea counsel was able to articulate and argue to the plea judge the reasons why Applicant should receive less time than his co-defendants." App. 479 (OOD, p. 14). Undoubtedly, plea counsel could have differentiated his client from his co-defendants at an individual plea and sentencing hearing without the risk that the court would "feed" everyone from the "same spoon." Further, plea counsel would have had only the solicitor to contend with rather than the additional seven defense attorneys who represented the countervailing interests to their clients. While plea counsel Chandler testified at the PCR hearing that he does not see the prejudice in multiple-defendant pleas, he admitted that the joint nature of the plea likely contributed to the harshness of Petitioner's sentence. App. 426, l.15 – 427, l. 10. Further, there was not overwhelming evidence of guilt where Petitioner testified that he was guilty of only accessory after the fact, his original charge, and would have asserted a defense of mere presence on the indicted charges. See harmless error discussion, infra.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). This Court has held that a defendant has the right to effective assistance of counsel during the plea bargaining process. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), *overruled on other grounds by* Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); see also Davie v. State, 381 S.C. 601, 608-609, 675 S.E.2d 416, 420 (2009) (holding that

counsel's failure to convey a plea offer constitutes deficient performance); Sprouse v. State, 355 S.C. 335, 340, 585 S.E.2d 278, 281 (2003) (finding defendant was entitled to post-conviction relief where the State failed to honor the plea agreement it made with defendant *and* trial counsel failed to ensure that the State adhered to the original plea agreement); Thompson v. State, 340 S.C. 112, 116–17, 531 S.E.2d 294, 296–97 (2000) (concluding defendant established a claim for ineffective assistance of counsel where trial counsel failed to object when the solicitor recommended the maximum sentence in violation of the plea agreement); Jordan v. State, 297 S.C. 52, 53–54, 374 S.E.2d 683, 684–85 (1988) (holding trial counsel rendered ineffective assistance of counsel in failing to withdraw guilty plea after State reneged on plea, and reasoning that counsel's conduct in not protecting defendant's right to enforce the plea agreement with the solicitor's office fell below "prevailing professional norms").

While group pleas are not *per se* invalid, they are disfavored. Roberts v. State, 276 S.W.3d 833, 837 (Mo. 2009) ("There is no doubt that group plea proceedings like the one in which Movant's plea was entered unnecessarily increase the opportunities for mistakes or confusion."); Howell v. State, 185 S.W.3d 319, 332-34 (Tenn. 2006) (cautioning against the use of group guilty pleas in the context of "package deal" pleas); Rigdon v. Commonwealth, 144 S.W.3d 283 (Ky. Ct. App. 2004) (noting that individualized guilty pleas are preferred); State v. Verdin, 845 So.2d 372, 376-77 (La.Ct. App. 2003) (noting the use of group pleas and stating that personal pleas are preferred but group pleas are not invalid); Cazanas v. State, 270 Ga. 130, 508 S.E.2d 412, 415 (1998) (J. Sears, concurring) (noting a belief "that a group guilty plea hearing is an inappropriate forum for a trial court to accept a defendant's plea of guilty to a serious charge" and that "a trial court should engage in a one-on-one colloquy with [the] defendant, thereby better ensuring the constitutional integrity of the plea-making process").

One of the dangers in the entry of the group plea followed immediately by back-to-back sentencing hearings is that the co-defendants would all be given the same sentences despite their varying levels of culpability. App. 384, l. 17 – 385, l. 2. That happened here – the sentencing judge evenly affirmatively stated that he was "feeding" the defendants from the same "spoon." App. 194, ll. 9-13; App. 265, ll. 7-9. Then, on the second day of sentencing, the trial judge decided to "weigh out the culpability" of the co-defendants. App. 271, ll. 19-23. PCR counsel explained that he did not attend the second day of sentencing because Petitioner had already been sentenced and he expected that all of the co-defendants would receive the same thirty year sentence. App. 421, l. 13 – 422, l. 16; App. 441, l. 17 – 441, l. 5. When PCR counsel was given the opportunity to differentiate Petitioner, he utterly failed to do so. See App. 448 – 449 (State's Ex. 1, proposed order). Petitioner was prejudiced in that he received a thirty year sentence despite his lack of any prior criminal convictions, cooperation with the police, and limited participation in the crime.

There was not overwhelming evidence of Petitioner's guilt.

There was no basis for several of the PCR court's factual findings related to harmless error, including Petitioner's alleged "affirmance" of guilt and his presence when the victim was initially picked up.[5] The facts which were inconsistent and disputed by Petitioner are imperative to

[5] The PCR court correctly noted that "[i]t was disputed whether [Petitioner] provided the kill shot." App. 483 (OOD, p. 18); see also App. 142, ll. 19-21 (solicitor during plea hearing: "somebody -- there is different testimony as to who it was -- gave him another shotgun shell and he finished him off behind this deserted building."); App. 179, l. 14-20 (solicitor during Petitioner's sentencing: "One of the witnesses says that -- or one of the Defendants says that Sheldon was the one that supplied the killing shell -- that he ran out of shells and that somebody supplied him. Sheldon says the other fellow which was John Oakman, Jr., was the one that supplied the shells. So, they had two of them going at each other that way."); App. 183, ll. 4-13; see also App. 69, ll. 33-44; App. 75, l. 25 – 76, l. 27. At the PCR hearing, Petitioner maintained that he did not hand Gantt any shells and that no fingerprints were found on the shells. App. 390, l. 18 – 391, l. 13. Walker testified at the PCR hearing that he never heard the story about Petitioner providing any last shell until all of the co-defendants were in jail and he believed that those allegations were false. App. 314, l. 24 – 316, l. 2.

a harmless error analysis. State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct App. 2003) ("Whether an error is harmless depends on the circumstances of the particular case.").

The solicitor candidly stated at the plea hearing that they were dealing with multiple statements from the various co-defendants, portions of which a jury may have believed or disbelieved if the cases went to trial. App. 146, l. 15 – 147, l. 13. The solicitor indicated:

> [A]t least initially a lot of folks were arrested for accessory after the fact. We upgraded some of them to murder based upon a hand-of-one-hand-of-all theory. We upgraded some of them to kidnapping. Throughout the course of the year there's been various charges depending on what may have been said when one person or another was interviewed and whether or not they established probable cause for other charges.
> ...
>
> I think they were trying to extort money out of him. I do not think all of them, at least initially, thought he was going to be killed, but I think every one of them that's sitting over there in that box **knew he was being held against his will at some point**, and that's the basis for us offering this most serious violent charge to them to plead guilty.

App. 145, l. 13 – 146, l. 24 (emphasis added). "In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987). "Mere presence at the scene is not sufficient to establish guilt as an aider or abettor." Id.

Contrary to the PCR court's finding, Petitioner did not "reaffirm his guilt during the PCR evidentiary hearing." App. 483 (OOD, p. 18). Petitioner testified that he was guilty of being an accessory after the fact, but not of kidnapping or murder. App. 373, ll. 11-16; App. 404, ll. 14-19. Petitioner also admitted that he hit the victim once while at the trailer. App. 402, l. 21 – 403, l. 1. The PCR court also erred in finding that "the co-defendants agreed that Victim was picked up by Applicant and two co-defendants" was an overstatement of the evidence. It was only Johnnie

Walker who identified Petitioner as having been in that car that picked up Leaphart. App. 72, l. 29 – 73, l. 1.

Additionally, the finding that "during the evidentiary hearing [Petitioner] did not dispute that he along with his two co-defendants picked up Victim and took him to the trailer" is entirely inaccurate and directly contradicted by the following testimony:

MR. GOURLEY:	Okay. And you were with, I believe it was Mr. Williams and Mr. Walker when they picked up Mr. Leaphart?
PETITIONER:	**No.**
MR. GOURLEY:	Who were you –
PETITIONER:	Actually if the motion -- Casie and, I think -- Casie Blizzard and Nicky Gunter, they were allowed a photo lineup of every one of us along with other people that were mixed in. They only circled -- the only person they picked out of the photo lineup was Norris.
MR. GOURLEY:	But you would agree with me that your co-defendants stated that you were one of the people that picked up Mr. Leaphart?
PETITIONER:	Yes, my co-defendants stated a lot of things that wasn't true.
MR. GOURLEY:	But you weren't the one that picked up Mr. Leaphart?
PETITIONER:	**No. I was never in the car with Mr. Leaphart, period.**

App. 402, ll. 12-20 (emphasis added); see also App. 306, ll. 10-16. Further, even if Petitioner had been in the car, it was disputed whether Leaphart got in the car willingly, perhaps even after having called and asked for a ride. App. 138, ll. 3-11. It is also noteworthy that none of Petitioner's co-defendants were subject to cross-examination, thus it is unknown whether any testimony they provided under oath at a trial would have been the same as their statements to the police.

Based on the facts that remained in dispute and the "mere presence" defense to accomplice liability, the evidence against Petitioner was not overwhelming. Rather, the credible evidence pointed to Petitioner's involvement as only a minor participant in the incident. As discussed *supra*, in light of Petitioner's minimal involvement and the extensive mitigation in his favor, plea counsel should have opposed the mass plea. Instead, Petitioner was grouped into the same category as two of the worst offenders, Darrell Williams and Johnnie Walker, and "fed with the same spoon." The prejudice to Petitioner was demonstrated in that the four co-defendants sentenced the next day, three of whom were in the car with Leaphart as he called 911 and thus aware of his continued distress, received substantially lower sentences. Therefore, the PCR court erred in finding that plea counsel rendered effective assistance of counsel.

CONCLUSION

Based on the foregoing, Petitioner Sheldon Oakman respectfully requests that this Court grant his petition for writ of certiorari and allow further briefing on the issue raised.

Respectfully submitted,

Laura R. Baer

Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of February, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

D. Craig Brown, Circuit Court Judge

SHELDON OAKMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001612

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 Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Sheldon Oakman, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 29th day of February, 2016.

Laura R. Baer

Laura R. Baer
Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of February, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.