STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

R. Scott Sprouse, Circuit Court Judge

MICHAEL D. STAGGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001742

JOHNSON PETITION FOR WRIT OF CERTIORARI

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INDEX

ISSUE PRESENTED

Did the PCR court err in finding that Petitioner knowingly, voluntarily, and intelligently pled guilty where plea counsel failed to conduct a reasonable investigation by not consulting with Petitioner's treating physician regarding whether or not the levels of prescribed medications found in Petitioner's system would have caused sufficient impairment to support the State's felony DUI charges?

STATEMENT

Relevant Facts

On the morning of January 11, 2013, Petitioner was driving to attorney William Bean's office to discuss a pending personal injury case. App 17, ll. 13-20. While on U.S. Route 221 just south of Woodruff in Spartanburg County, Petitioner's truck rear-ended a small Geo Tracker SUV. App. 9, l. 4 - 11, l. 14. The driver and passenger in the Tracker suffered significant injuries. *Id.* A third vehicle, traveling in the opposite direction, was also struck by Petitioner' pick-up truck after it the Geo Tracker and crossed over the center line. *Id.*

Petitioner was arrested at the accident scene after admitting that he had consumed Valium, OxyContin, and smoked marijuana. *Id.* This was confirmed by subsequent blood and urine tests. *Id.* Petitioner, who was disabled because of a work-related accident, was prescribed Valium and OxyContin for pain management. App. 100, l. 5 - 103, l. 2.

Indictment and Guilty Plea

On March 29, 2013, Petitioner was indicted on two counts of felony DUI resulting in great bodily injury by the Spartanburg Grand Jury. App. 143 - 144. On June 26, 2013, Petitioner pled guilty before the Honorable J. Mark Hayes, II. William Bean represented Petitioner and Solicitor Barry Barnette represented the State.

In initial questioning by the court, Petitioner explained that he had a sixth grade education and had never received his GED. App. 4, l. 6 - 5, l. 17. By the time of his guilty plea, Petitioner had served nearly six months of pretrial detention. *Id.* Petitioner entered an *Alford*[1] plea and affirmed to the court that he believed the State had sufficient evidence to find him guilty of the two felony DUIs. App. 12, l. 15 - 13, l. 23.

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[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

In mitigation, defense counsel briefly noted that this accident did not involve alcohol, but rather drugs that - with the exception of marijuana - Petitioner was prescribed. App. 16, l. 5 - 18, l. 11. "I would just emphasize to the Court, this is not a situation involving willfulness. It doesn't involve drinking." App. 18, ll. 2-4.

Judge Hayes sentenced Petitioner to two concurrent fifteen year sentences of imprisonment suspended to probation upon the payment of a $5,100 fine and the service of eight and a half years. App. 19, ll. 2-15. Petitioner did not appeal.

PCR Application

On November 14, 2013, Petitioner filed an application for post-conviction relief alleging that he involuntarily and unknowingly pled guilty because counsel advised him that he would receive time served if he entered an *Alford* plea. App. 81 - 87. Petitioner also alleged that counsel was ineffective for failing to adequately investigate his medical history. *Id.* On August 20, 2014, the State filed a Return. App. 88 - 93.

Evidentiary Hearing

On June 8, 2015, an evidentiary hearing was held before the Honorable R. Scott Sprouse. J. Brandt Rucker represented Petitioner and Assistant Attorney General Justin J. Hunter represented the State. Plea counsel and Petitioner both testified at the hearing.

Hearing Testimony of Petitioner

Petitioner testified that he entered an *Alford* plea, which he equated with a "no contest" plea, because "they're saying I'm guilty of some, but not all." App. 104, ll. 3-18. Petitioner stated that plea counsel assured him that he would be sentenced to time served as a result of pleading guilty. App. 104, l. 19 - 23.

Petitioner said that plea counsel appeared to not understand the toxicology reports provided in discovery. App. 99, ll. 8-19. Petitioner was able to review the toxicology reports for the first time in the penitentiary and stated that the report showed that the small amount of marijuana and other drugs he tested positive for were below the level that would cause impairment. App. 100, ll. 2-22. He also reiterated that he was prescribed Valium and OxyContin. App. 103, ll. 13-19.

Petitioner stated that he would not have pled guilty and would have stood trial had he known that the toxicology report revealed such low levels of the drugs. App. 105, ll. 6-23. During cross-examination, Petitioner again stressed that plea counsel had promised him that he would be sentenced to time-served if he pled guilty. App. 108, ll. 4-24.

When asked why he did not ask any questions at the guilty plea, Petitioner said that he had been denied his pain management medications while in pre-trial detention and was unable to think clearly. App. 109, l. 17 - 110, l. 23.

Hearing Testimony of Plea Counsel

Counsel recalled that he was initially retained to represent Petitioner in a personal injury claim arising out of a car accident. App. 115, ll. 8-13. Counsel claimed that he discussed the circumstances of the DUI charges in detail, but that Petitioner's "contention was that it was not a DUI because he had not been drinking and he was taking his medication which were prescribed for him, and he denied using any illegal substances." App. 116, ll. 11-17.

Counsel stated that Petitioner had tested positive for low levels of both marijuana and methamphetamine, in addition to Valium and OxyContin. App. 117, l. 1 - 119, l. 13. Plea counsel further testified that he understood the toxicology report and that he and Petitioner had gone over the results of the report. *Id.*

Counsel recollected that he advised against a trial because:

> [T]he ultimate issue was going to be the fact that they could prove he driving, they could prove he was taking various medications which can cause impairment. And if the issue came down to one of whether a particular level or levels would sort of determine guilt or result in an acquittal, my thinking and what I discussed with him was that a jury wasn't going to be real receptive to the issue of levels because, if I remember correctly, I think there were five or six different things in his system in addition to the marijuana. So that was - - that was a big negative for him.

App. 120, ll. 8-20. Nevertheless, counsel admitted that he did not speak with Petitioner's medical providers and did not otherwise investigate whether Petitioner was actually impaired. App. 123, l. 19 - 124, l. 5; App. 128, l. 10 - 129, l. 17. Counsel denied ever promising that Petitioner would receive time-served. App. 121, ll. 4-24.

Counsel specifically noted that the solicitor's office did not negotiate with defendants facing felony DUI charges. *Id.* Counsel stated that Petitioner did not want to pled guilty and that this desire was the impetus for Petitioner's *Alford* plea. App. 123, ll. 3-18. Counsel speculated that had Petitioner stood trial, there was a significant chance that he would have received a harsher sentence. App. 126, ll. 3-25.

Order of Dismissal

On July 1, 2016, Judge Sprouse denied Petitioner's application in a written order. App. 134 - 142. The court ruled that Petitioner had failed to prove that counsel was ineffective for not consulting with Petitioner's doctors. App. 139. The court found plea counsel's testimony to be credible and did not believe that there had ever been an offer from the State to recommend a time-served sentence. *Id.*

The court determined that Petitioner's plea was not involuntary or unintelligently entered into. App. 140. Specifically, "[t]his Court finds the record reflects Applicant was fully advised that he was pleading under *Alford* and therefore waiving any challenges to the evidence against him." *Id.*

ARGUMENT

The PCR court erred in finding that Petitioner knowingly, voluntarily, and intelligently pled guilty where plea counsel failed to conduct a reasonable investigation by not consulting with Petitioner's treating physician regarding whether or not the levels of prescribed medications found in Petitioner's system would have caused sufficient impairment to support the State's felony DUI charge.

The central issue in Petitioner's case was whether or not the various medications that Petitioner was taking at the time of the car accident would have resulted in Petitioner being appreciably impaired. App. 11, ll. 4-14; App. 18, ll. 2-11. A toxicology report indicated that Petitioner had tested positive for low amounts of OxyContin, Valium, and amphetamine (likely from Adderall). *Id.* Petitioner also tested positive for low levels of marijuana. *Id.* Petitioner had not consumed any alcohol on day of the accident.

Despite the importance of the toxicology report and Petitioner's medical history to the case, plea counsel never contacted Petitioner's treating physician, Dr. Childress. App. 128, l. 10 - 130, l. 15. Nor did plea counsel seek to hire an expert. *Id.* Instead, counsel simply told Petitioner had he should be plead guilty because the toxicology reports revealed the presence of multiple drugs in his system at the time of the accident. App. 34, l. 5 - 37, l. 21; App. 120, ll. 8-20.

Accordingly, the PCR court erred in finding that plea counsel provided effective assistance of counsel because plea counsel failed to conduct a reasonable investigation. *Id.; see Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges based on ineffective assistance of counsel); *see also Praylow v. Martin*, 761 F.2d 179 (4th Cir. 1985) (provides that a defendant's stated interest in pleading guilty does not relieve counsel of his duty to investigate possible defenses).

Discussion

The United States Supreme Court has held that "[g]uilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results." *Brady v. United States*, 397 U.S. 742, 758, 90 S.Ct. 1463, 1474 (1970). An "unsound result" occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him).

"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, 683 S.E.2d 471 (2009) (citing Hill, 474 U.S. at 57-59; *See Ray v. State*, 303 S.C. 374, 401 S.E.2d 151 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made in light of the erroneous advice given by plea counsel).

Furthermore, the United States Supreme Court has held that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691; *See Wiggins v. Smith*, 539 U.S. 510, 527 (2003) (noting "[i]n assessing the reasonableness of an attorney's investigation, . . . a court must not only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further").

This Court has held that trial counsel has a duty "to discover all reasonably available mitigation evidence and reasonable available evidence tending to rebut any aggravating evidence

introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *See Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007) (finding "[w]ithout a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation") (internal quotation omitted).

As this Court explained, "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Lounds v. State*, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (citing *Ard*, 372 S.C. at 331-32, 642 S.E.2d at 597); *See Von Dohlen v. State*, 360 S.C. 598, 605, 602 S.E.2d 738, 742 (2004) (trial counsel's investigation concerning defendant's mental state was not reasonable where the defense psychiatrist testified during post-conviction proceedings that had he been provided with the additional medical and psychiatric records, he would have testified Von Dohlen suffered from "'major depressive episodes").

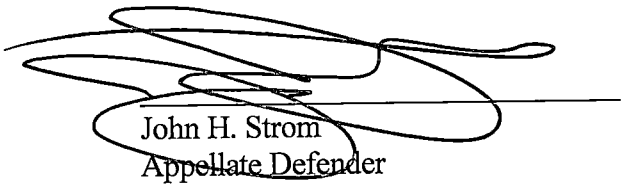
In this case, Petitioner did not freely and intelligently waive his constitutional trial rights because plea counsel failed to interview Petitioner's prescribing doctor prior to recommending that Petitioner plead guilty. App. 128, l. 10 - 130, l. 15. The most important issue in Petitioner's case was ***whether the combination of drugs that Petitioner was prescribed to take would have resulted in appreciable impairment of his ability to drive.***

Petitioner's decision to plead guilty did not relieve plea counsel of his duty to conduct a reasonable and independent investigation into possible defenses. *See Praylow*, 761 F.2d 179. The PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty when "there is a reasonable probability that, but for counsel's errors, [Petitioner] would not have pled guilty and would have insisted on going to trial." App. 105, ll. 6-23; *Hill*, 474 U.S. at 57-59.

CONCLUSION

Based on the foregoing reason, Petitioner Michael Staggs' petition for writ certiorari should be granted to allow a full briefing on the issue

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of March, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

MICHAEL D. STAGGS,

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APPELLATE CASE NO. 2015-001742

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael D. Staggs states:

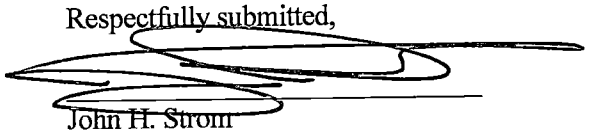
1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on June 8, 2015. In his opinion seeking certiorari from the order of dismissal is without merit.

3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Michael D. Staggs.

Respectfully submitted,



John H. Strom
Appellate Defender
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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 Alicia Olive, Esquire and Michael D. Staggs, #236145, at Macdougall Correctional Institution this 21st day of March, 2016.

John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 21st day
of March, 2016.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.