STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Aiken County

Tanya A. Gee, The Honorable Tanya A. Gee

RYAN DOOLITTLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001655

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Trial counsel erred in allowing petitioner to plead guilty after a pre-trial order was issued denying the request for immunity under the Castle Doctrine, which petitioner believed was applicable in his case, because his plea waived his right to appellate review of the issue;[1] and but for counsel's failure to advise petitioner to exercise his right to a trial by jury (rather than encourage him to accept the plea offer and plead guilty), then a reasonable probability exists that a favorable ruling on this claim would have been the outcome on appeal.

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[1] In State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013), the Court clarified its position in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), to the extent that an order or ruling **denying** a request for immunity under the Castle Doctrine is not a final order and thus not immediately appealable.

STATEMENT

Petitioner Ryan Keith Doolittle pled guilty to voluntary manslaughter during the September 2012 term of the Aiken County General Sessions Court before Judge Doyet A. Early. Petitioner was sentenced to twenty years imprisonment on his conviction. App. 1 – 76. P. Andrews represented petitioner at the plea proceeding and Assistant Solicitor David W. Miller appeared on behalf of the state. Petitioner did not enjoy the benefit of a direct appeal in the case.

On August 19, 2013, and July 15, 2014, petitioner filed a PCR application and an amended PCR application, respectively, with the Aiken County Office of the Clerk of Court. App. 78 – 87. The respondent filed a return dated October 25, 2013, requesting that a PCR hearing be held in the case. App. 88 – 91; App. 93.

A PCR hearing was convened on May 18, 2015, at the Aiken County Courthouse before Judge Tanya A. Gee. App. 95 – 130. Petitioner was present at the hearing and represented by Lance S. Boozer, and Assistant Attorney General Daniel F. Gourley appeared on behalf of the state.

On June 29, 2015, Judge Gee issued an Order of Dismissal denying petitioner's allegations of ineffective assistance of counsel in the case. App. 132-139. Petitioner appealed Judge Gee's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in allowing petitioner to plead guilty after a pre-trial order was issued denying the request for immunity under the Castle Doctrine, which petitioner believed was applicable in his case, because his plea waived his right to appellate review of the issue;[2] and but for counsel's failure to advise petitioner to exercise his right to a trial by jury (rather than encourage him to accept the plea offer and plead guilty), then a reasonable probability exists that a favorable ruling on this issue would have been the outcome on appeal.

In this case, a verbal altercation occurred between petitioner and Vinnie Brown on April 28, 2012, in the parking lot of Fairway Ridge Apartments located in the City of Aiken. This verbal altercation escalated into a physical altercation between petitioner and Brown because Brown believed that petitioner was in possession of his marijuana. At some point, petitioner escaped to his vehicle, but Brown, who was angry and intoxicated, went up to petitioner's vehicle and began kicking the vehicle. In response to this attack, petitioner fired his gun to protect himself from Brown's advances toward him. Brown died from gunshot wounds. App. 50, l. 9 – p. 51, l. 16; App. 30, lines 9-16. Note that it was eyewitness Robert Conn who admitted that he took possession of the missing marijuana. App. 30, l. 9 – 16.

Apparently, this case had been set for trial because the solicitor's opening remark on the date on which the pre-trial Castle Doctrine hearing commenced was to the effect of "we're prepared to pick a jury in his case." App. 3 lines 15-16. Immediately thereafter, the trial judge heard pre-trial testimony from eyewitness Robert Conn and petitioner regarding his (petitioner's) request for

[2] In State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013), the Court clarified its position in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), to the extent that an order or ruling **denying** a request for immunity under the Castle Doctrine is not a final order and thus not immediately appealable.

immunity under the Castle Doctrine. Conn and petitioner were the only two witnesses who testified during this pre-trial hearing.

During the pre-trial Castle Doctrine hearing, Conn testified that he was at the scene when petitioner and Brown were fighting and saw petitioner get in his vehicle in an attempt to leave, but was interrupted by Brown, who ran up to the vehicle and began kicking the vehicle. Conn stated that Brown was trying to "get at" petitioner. Conn stated that petitioner responded by pulling out a pistol and firing gunshots. Brown was hit by gunfire and died. App. 7, l. 4 – p. 12, l. 22. According to Conn, Brown was in the back driver's seat of petitioner's vehicle prior to the fighting, and that the back window had been rolled down and was still down while Brown was trying to "get at" petitioner. Conn admitted that if Brown had gotten his hand in the back window, then he would have been able to reach and grab petitioner. App. 17, l. 15 – p. 18, l. 14.

Petitioner testified during the pre-trial Castle Doctrine hearing also. Petitioner explained that Brown was an athletic, semi-pro football player, who was highly intoxicated (over .20) at the time the incident occurred, and angry over the mistaken belief that he (petitioner) had stolen his marijuana. Petitioner stated that Brown left the marijuana on the backseat of his vehicle, but added that Conn was the person who stole the marijuana. Petitioner explained further that he fired a gun out of fear to protect himself after Brown threatened to kill him and his kids and because Brown was "rushing [his] car" and kicking the car to prevent him from leaving the scene. Petitioner added that Brown could have reached him had he placed his hands through the open back (driver's side) window of his vehicle. Petitioner concluded that he fired the gun because he believed he was in danger and had to defend himself from Brown's attack. App. 19, l. 1 – p. 31, l. 25.

Defense counsel argued at the Castle Doctrine pre-trial hearing that petitioner fired his weapon in order to protect himself from an enraged, highly intoxicated, athletic, semi-pro football

player who began fighting petitioner (who was non-athletic) and began kicking petitioner's vehicle as petitioner tried to flee all because of the mistaken belief that petitioner had stolen his marijuana. App. 32, l. 13 – p. 34, l. 19; App. 55, l. 6 – 10.

The trial judge denied petitioner's pre-trial request for immunity under the Castle Doctrine. Thereafter, the solicitor offered a plea bargain where petitioner, who was charged with murder, would be allowed to plead guilty to voluntary manslaughter. Petitioner accepted the offer, pled guilty to voluntary manslaughter, and was sentenced to twenty years imprisonment. App. 41, l. 6 – p. 50, l. 7.

During the PCR hearing, petitioner testified that he believed trial counsel did not present a "thorough" Castle Doctrine case. App. 99, l. 22 – p. 100, l. 6; App.101, l. 11 – 22; App. 102, l. 23- p.104, l. 20. Petitioner testified during the PCR hearing as follows:

> A: We hired a private investigator to recreate the crime scene. And to my knowledge the private investigator's finding were to show that I couldn't have shot the man on purpose because where he was set up, I couldn't see him where I was firing the gun at.
>
> Q. Okay. Was that going to be one of your defenses at trial?
>
> A. Yes, sir. App. 103, lines 5 -13.
>
> A. The Castle Doctrine was denied because the burden of proof to show that Mr. Brown was trying to enter the vehicle unlawfully with the intent to commit a crime was on us. And [counsel] didn't argue the fact that Mr. Brown was approaching the vehicle, and it wasn't like he was just standing outside when I went to drive off and shot him. He was charging the vehicle –
>
> Q. Right
>
> A. – whenever the shot were fired. App. 108, l. 25 - p. 109, l.8.

The PCR judge ruled that petitioner's allegation that counsel was ineffective in the presentation of his Castle Doctrine immunity defense was "meritless." App. 137.

Undoubtedly, petitioner believed strongly that his Castle Doctrine defense held great merit. Therefore, instead of encouraging petitioner to plead guilty, counsel should have advised petitioner to invoke his right to a jury trial, argued the Castle Doctrine claim at trial, appealed the jury verdict, and then allowed the appellate court to rule on appeal regarding the applicability of his Castle Doctrine defense in the case. With respect to the appellate review issue, petitioner testified at the PCR hearing as follows:

> Q. ...[Y]ou are here complaining that [trial counsel] did not thoroughly research the Castle Doctrine on your behalf; is that correct?
>
> A. Yes.
>
> Q. And I want to know if you were made aware that you would be able to appeal Judge Early's decision on the Castle Doctrine, would you have gone forward with the plea or would you have insisted on the appeal? And knowing... as your attorney just testified to that if you were to appeal you – the appeal would last 18 months and there's not guarantee that your plea deal would remain on the table. So I just want to understand if you would have had the opportunity to appeal, would you have done that?
>
> A. I wasn't aware that I had the opportunity. Yes, ma'am.
>
> App. 127, l. 18 – p. 128, l. 8.

Trial counsel testified at the PCR hearing and explained in effect that he abandoned the Castle Doctrine issue after the solicitor extended a plea offer on the offense of voluntary manslaughter as a substitute for the murder charge, he believed that the manslaughter plea represented the most successful scenario possible in the case. App. 113, l. 24 – p. 116, l. 11; App. 118, l. 3 – 25; App. 121, l. 22 – 25. Counsel stated that he strongly encouraged petitioner to take the plea offer. App. 125, l. 23 – p. 126, l. 4.

A guilty plea waives all claims of constitutional rights, defects, and violations save jurisdictional questions. State v. Rice, 401 S.C. 330, 737 S.E.2d 485 (2013). Also, the Court in

Isaac made it clear that a **grant** of immunity under the Castle Doctrine is immediately appealable, but a **denial** of pre-trial of immunity per the Castle Doctrine is not immediately appealable. Therefore, in order for petitioner to have received appellate review of his Castle Doctrine claim, he would have had to have exercised his right to a jury trial and if convicted, then appealed his case in order to submit the issue for review by the appellate courts. Counsel should have advised petitioner that a trial would have guaranteed judicial review via appeals of his argument that he was immune from a murder prosecution under the Castle Doctrine. It was error for counsel to have encouraged petitioner to accept the plea offer when there was a strong Castle Doctrine argument which petitioner wanted aired fully and thoroughly.

Arguably, petitioner's Castle Doctrine defense would have been presented as a meritorious appellate issue in the case on appeal. Under S.C. Code Ann § 16-11-440, one is immune from prosecution if he uses deadly force under the following circumstances:

> (A) A person is presumed to have a reasonable fear of imminent peril or death or great bodily injury to himself or another person when using deadly force that intended or likely to cause death or great bodily injury to another person if the person:
> (1.) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
> (2.) Who uses deadly force knows or has reason to believe that an unlawful forcible entry or unlawful and forcible act is occurring or has occurred.

Here, petitioner made his showing for immunity under the Castle Doctrine by a preponderance of the evidence as required. See State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). For example, Brown's violent actions on the date in question showed he was unlawfully and forcefully attempting to enter petitioner's vehicle in order to harm him. Brown was a large, highly intoxicated man who approached and kicked petitioner's vehicle as petitioner attempted to

leave the crime scene. Brown was determined to "get at" petitioner by way of the vehicle per the belief that petitioner had stolen his marijuana. A verbal altercation between Brown and petitioner occurred and a physical altercation between the two men followed. Brown was relentless in his attack of petitioner. Therefore, petitioner was immune from a murder prosecution per the Castle Doctrine because he fired shots while in "reasonable fear of imminent peril of death or great bodily injury to himself when [he] us[ed] deadly force." See S.C. Code Ann § 16-11-440.

In addition, it was clear that petitioner acted in self-defense in the case. Immunity under the Castle Doctrine is predicated on an accused demonstrating the elements of self-defense and an absence of aggression on behalf of the accused. See State v. Curry, 406 S.C. 364, 752 S.E.2d263 (2013). In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and believed that he was in imminent danger of losing his life or sustaining serious bodily injury, and that any reasonable man would have believed the same under the circumstances, and that there was no other means of avoiding the danger other than for the defendant to act as he did in the case. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Note that the duty to retreat is excused from a Castle Doctrine claim. State v. Curry, supra. In the case at bar, Brown was the aggressor who was going "at" petitioner while petitioner was trying to exit the scene. And based on Brown's behavior, as he kicked at petitioner's vehicle in an intoxicated rage in order to get "at" someone whom he believed had his marijuana, i.e., petitioner, there was a chance that had he been able to get his hands through the rolled down back window, he might have been able to accomplish the mission. Any person in petitioner's position would have believed imminent danger and a threat to life and limb existed during the incident in question.

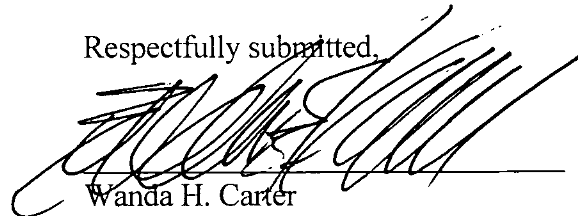
Trial counsel erred in encouraging petitioner to plead guilty rather than have this Castle Doctrine issue aired fully at trial and preserved for review on appeal since petitioner believed he

was immune from prosecution for murder because his plea waived his right to have this defense fully addressed at trial and on appeal. Counsel's error in this regard constituted deficient representation of petitioner in his criminal case in violation of the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). But for counsel's error as outlined above, a reasonable likelihood exists that petitioner would not have pled guilty and the outcome of his case (on appeal or possibly at trial) would have been different.

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant this petition on the above-raised issue.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of March, 2016.

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Tanya A. Gee, The Honorable Tanya A. Gee

RYAN DOOLITTLE,

PETITIONER,

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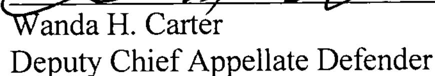
CERTIFICATE OF SERVICE

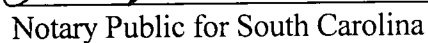
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Ryan Doolittle #352325, McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 23rd day of March, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of March, 2016.


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