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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County
Tanya A. Gee, Circuit Court Judge

JAMES ALSTON

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001657

JOHNSON PETITION FOR WRIT OF CERTIORARI

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR judge err by finding defense counsel provided effective representation where counsel failed to properly investigate Petitioner's case and told Petitioner that he would get the death penalty if he went to trial, since Petitioner pled guilty because counsel was unprepared for trial and to avoid a death penalty sentence?

STATEMENT OF FACTS

On December 20, 2008, George William Woltz, Jr. was found deceased at his home in Aiken County, South Carolina. App. 19, ll. 10 – 12. Woltz’s hands and feet were bound and his body was in the closet of the master bedroom. App. 19, ll. 12 – 14. The home had been set on fire. App. 19, ll. 14 – 23.

During the investigation of Woltz’s murder, Aiken County officers interviewed a neighbor, Wade Watson, who stated that he saw a 2009 white Mercedes in the deceased’s yard the same night. App. 20, ll. 16 – 23. Watson said that Keith Fitzgerald, who was the deceased’s roommate, and two black males were carrying items from the home to the Mercedes. App. 20, l. 23 – App. 21, l. 2. Officers located the Mercedes, which had been reported as stolen by its owner. App. 22, ll. 10 – 17. The next day, officers recovered the stolen vehicle in front of an apartment complex in Anderson County, South Carolina. App. 23, ll. 1 – 5. Fitzgerald was found sitting inside the stolen vehicle and was arrested. App. 23, ll. 1 – 5.

Following Fitzgerald’s arrest, Petitioner and Trevonta Williams “were identified and located as suspects.” App. 23, ll. 16 – 20. The two men were also located in Anderson County and arrested. App. 23, ll. 16 – 20. Williams gave a statement blaming Petitioner and Fitzgerald for Woltz’s death. App. 24, ll. 1 – 9. Williams stated that he and Petitioner caught a ride to Woltz’s home on December 20, 2008, and Petitioner “hatched” a plan with Fitzgerald to rob Woltz. App. 24, ll. 1 – 9.

Petitioner also gave a statement to police. App. 24, ll. 24 – 25. Petitioner admitted being at the scene but denied beating Woltz. App. 26, ll. 21 – 24. After Williams and Petitioner cooperated with police, Fitzgerald gave a statement in which he admitted to

devising the plan to rob Woltz. App. 27, ll. 1 – 14. Fitzgerald also admitted to throwing a bed sheet over Woltz’s head and beating him with a baseball bat. App. 27, ll. 1 – 14. Fitzgerald smothered Woltz, which suffocated him, and then set the house on fire. App. 27, ll. 1 – 14.

Petitioner, along with co-defendants Fitzgerald and Woltz, was indicted for murder, first-degree burglary, armed robbery, and grand larceny during the June 2009 term of the Aiken County Grand Jury. App. 145 – 154. Petitioner was also indicted for second-degree arson during the December 2010 term of the Aiken County Grand Jury. App. 145- 154.

On April 21, 2011, Petitioner pled guilty as charged before the Honorable Doyet A. Early, III. App. 1. De Grant Gibbons represented Petitioner. Strom Thurmond, Jr. represented the State. App. 1.

Judge Early sentenced Petitioner to a negotiated thirty-five years’ imprisonment for the murder charge, thirty-five years’ imprisonment for the first-degree burglary charge, and thirty years’ imprisonment for the armed robbery. App. 33, l. 22 – App. 34, l. 7. Petitioner was also sentenced to twenty-five years’ imprisonment for the second-degree arson and ten years for the grand larceny. App. 34, ll. 7 – 12. The sentences were concurrent. App. 34, l. 14. Petitioner did not appeal his guilty plea or sentences.

On February 13, 2012, Petitioner filed a PCR application. App. 36. Respondent filed its return on June 14, 2012. App. 48. Petitioner filed an amended PCR application on December 9, 2013. App. 46. On May 18, 2015, an evidentiary hearing was held before the Honorable Tanya A. Gee. App. 54. Lance S. Boozer represented Petitioner. App. 54. Daniel F. Gourley, II. represented the State. App. 54.

Petitioner testified at the evidentiary hearing. App. 60. Petitioner stated that defense counsel failed to investigate his case. App. 64, ll. 2 – 6. Petitioner said that he gave counsel the names of neighbors who could serve as alibi witnesses and asked counsel on several occasions to locate them. App. 66, ll. 10 – 20. However, counsel failed to locate the witnesses and did not follow-up with Petitioner. App. 66, ll. 10 – 20; App. 68, l. 9 – App. 69, l. 1. Petitioner said that counsel told him that the witnesses had moved away. App. 68, ll. 9 – 25.

Petitioner also asserted that defense counsel told him that he would receive the death penalty or a life sentence in prison if he went to trial. App. 70, l. 21 – App. 71, l. 6. Petitioner wanted a trial but felt that counsel was not adequately prepared and that he would receive the death penalty should he be found guilty. App. 72, l. 19 – App. 73, l. 2. Petitioner said that he was “coerced” by counsel into pleading guilty. App. 84, l. 24 – App. 85, l. 6.

Defense counsel stated that he spoke with the people Petitioner wanted him to speak with at the time. App. 107, ll. 8 – 12. Counsel said that the witnesses did not help Petitioner’s case and were primarily “character-type witnesses” that counsel could have used at trial to vouch for Petitioner’s character. App. 107, ll. 8 – 12.

Counsel also asserted that the solicitor was, in fact, considering the death penalty against Petitioner and his co-defendants. App. 110, ll. 3 – 10. However, according to counsel, the solicitor decided “to go forward on the regular charges and not make it a capital case.” App. 110, ll. 3 – 10. Counsel admitted that he informed Petitioner that Petitioner was facing a life sentence if they had gone to trial. App. 111, ll. 4 – 10.

Order of Dismissal

Judge Gee issued an order of dismissal on June 30, 2015. App. 131. The PCR judge found that defense counsel “credibly testified” that the witnesses he spoke with were only character witnesses and were not beneficial to Petitioner’s case. App. 139. The judge also found that Petitioner’s guilty plea was voluntary and that counsel fully informed Petitioner “of the nature and consequences of his plea.” App. 141.

The judge wrote that Petitioner “failed to present sufficient evidence” that counsel was deficient. App. 139. The judge opined that Petitioner had not established any constitutional violations or deprivations that would require the court to grant Petitioner’s application. App. 144.

Petitioner appealed the order of dismissal. This petition for writ of certiorari follows.

ARGUMENT

The PCR judge erred by finding defense counsel provided effective representation where counsel failed to properly investigate Petitioner's case and told Petitioner that he would get the death penalty if he went to trial, since Petitioner pled guilty because counsel was unprepared for trial and to avoid a death penalty sentence.

Defense counsel was ineffective for failing to properly investigate Petitioner's case. Counsel did not timely locate and interview potential alibi witnesses. Further, counsel informed Petitioner that he would get the death penalty should he proceed to trial. Petitioner pled guilty only because counsel was not prepared to present a defense. Petitioner firmly believed that if he lost at trial, he would be given the death penalty.

A criminal defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984). In the context of a guilty plea, a court will conduct a two-prong test when determining whether defense counsel's assistance was ineffective. Hill v. Lockhart, 474 U.S. 52, 58 (1985) (citing Strickland, 466 U.S. at 688).

First, an applicant must show that counsel's performance was deficient. Hill, 474 U.S. at 58 – 59. Whether counsel was "deficient" turns on whether the guilty plea was entered voluntarily, knowingly, and intelligently. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994). See Hill, 474 U.S. at 56 (1985) ("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.'" (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970))).

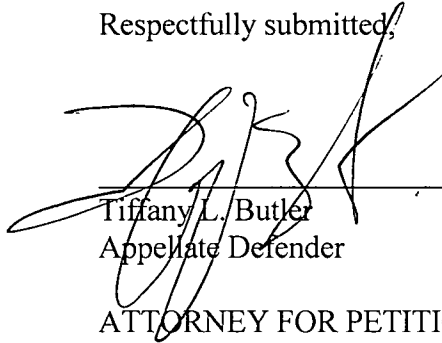
Second, the applicant must show that he was prejudiced by counsel's deficient performance during the guilty plea process. Hill, 474 U.S. at 59. Specifically, the applicant must show that there is a reasonable probability that "but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997). See Rule 1.4(b), SCRPC, Rule 407, SCACR (Counsel "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions" regarding the client's case.); see also Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) ("[A] defendant has the right to effective assistance of counsel during the plea bargaining process.").

Here, defense counsel was ineffective for failing to properly investigate Petitioner's case. Counsel failed to timely locate and interview potential alibi witnesses. In addition, counsel informed Petitioner that he would get the death penalty should he proceed to trial. Petitioner pled guilty only because counsel was not prepared to present a defense. Petitioner firmly believed that if he lost at trial, he would be given the death penalty. Had counsel adequately prepared Petitioner's case for trial and clearly communicated to Petitioner that the State would not seek the death penalty, Petitioner would not have pled guilty and would have proceeded to a jury trial, to which he was entitled.

CONCLUSION

For the reasons argued above, Petitioner James Alston respectfully requests this court to grant his petition for writ of certiorari.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of April, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Tanya A. Gee, Circuit Court Judge

JAMES ALSTON

PETITIONER,

V.

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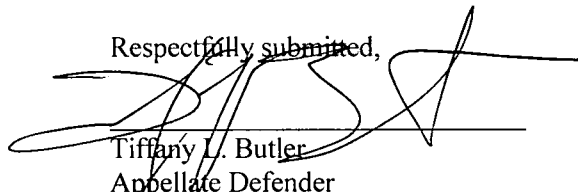
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James L. Alston states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on May 18, 2015. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She 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 her as counsel for James L. Alston.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender
ATTORNEY FOR PETITIONER

This 22nd day of April, 2016

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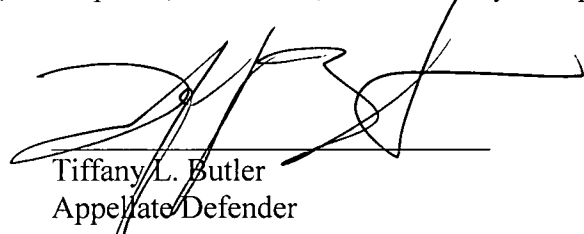
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

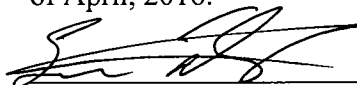
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and James L. Alston, #345846, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 22nd day of April, 2016.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of April, 2016.



(L.S.)

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