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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC SUPREME COURT

Certiorari to Aiken County

Honorable D. Craig Brown, Circuit Court Judge

SHELDON OAKMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-001612

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN REPLY

Introduction

Even though Oakman cooperated with police[1] and his culpability was far less than the majority of his co-defendants and plea counsel Everett Chandler knew that Judge Early is consistent about "feeding everyone from the same spoon," plea counsel pled Oakman guilty **alongside his seven co-defendants**. App. 265, ll. 7-9. Oakman was prejudiced in that he received a thirty year sentence, the same as two of his more culpable co-defendants and substantially higher than the seventeen year sentences received by the four co-defendants whose level of culpability was more akin to his. The thirty year sentence further reflected not reward for Oakman's cooperation with police.

Please counsel stubbornly maintained at the PCR hearing that has never seen any problem with multiple-defendant guilty pleas and saw no problem with it in Oakman's case. App. 426, l. 15 – 427, l. 10. The obvious problem with mutli-defendants pleas and sentencing is that the court may feel compelled to impose the same sentences despite the varying levels of culpability and individual mitigation as to each co-defendant. That was precisely the model that Judge Early employed when Oakman was sentenced, stating: "I don't know how I can feed him out of any different spoon than I fed the rest of them." App. 194, ll. 9-11. It was not until the second day of sentencing that Judge Early decided to consider "levels" of involvement and mitigation. App. 248, ll. 2-18.

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[1] Petitioner Oakman was the first to cooperate with the police, naming all of his co-defendants and providing details on who was present during the various portions of the incident that lead to the victim's death. He also directed investigators to the location where Jeremy Leaphart was shot. App. 6, l. 39 – 8, l. 13; App. 139, l. 20 – 141, l. 5; App. 179, ll. 10-25.

Though plea counsel filed a motion for reconsideration, he again made no request for an individual hearing on the motion. Thus, the reconsideration hearing was held in conjunction with three of Oakman's co-defendants. App. 251 – 281. Judge Early agreed to take the motions under advisement and instructed the attorneys to prepare an order with a "factual recitation comparing [their] client's culpability with everybody else's [culpability]." App. 280, ll. 18-24. Chandler's proposed order failed to comply with that directive, squandering his opportunity to remedy the effect of the multi-defendant plea and sentencing. App. 448 – 449.

There are three major problems in the Respondent's argument in its Return to the Petition for Writ of Certiorari. First, plea counsel employed **no strategy** in his representation of Oakman such that his deficient conduct cannot be excused as strategic. Second, the prejudice to Oakman is apparent from the far greater sentence that he received than his similarly situated co-defendants. Third, the Respondent misconstrues the implication of Oakman's guilty plea to his ability to collaterally attack his conviction and sentence. As such, there is no evidence to support the PCR Court's dismissal of Oakman's PCR application.

Plea counsel's conduct cannot be excused as strategy.

Plea counsel Chandler failed to contemplate the detrimental effect that pleading guilty alongside his co-defendants would have upon Oakman. Chandler admitted that he has never seen any problem with multiple-defendant guilty pleas and saw no problem with it in Oakman's case. App. 426, l. 15 – 427, l. 10. However, at the sentencing reconsideration hearing, plea counsel acknowledged Judge Early's reputation for being "very consistent about... feeding everyone out of the same spoon." App. 265, ll. 7-9. He further admitted at the PCR hearing that the "circus of it probably added to . . . what ultimately led to the judge giving him such a harsh sentence" within the range of the plea agreement. App. 427, ll. 1-4. Because plea counsel's

testimony was favorable to Oakman, the PCR court's finding that plea counsel was credible is largely irrelevant. See Respondent's Return to Cert, p. 6.

Recently, in Castro v. State, Op. No. 27648 (S.C. Sup. Ct. filed July 20, 2016) (Shearouse Adv. Sh. No. 29 at 15), this Court found that there was no evidence to support the PCR judge's finding that trial counsel articulated a "valid strategic reason" for failing to object to the trial judge's improper consideration of petitioner's decision to proceed to trial in sentencing petitioner. Rather, the attorney's testimony at the plea hearing "reveal[ed] no strategic discretion was employed by counsel on this matter at all." Castro, *supra*. In Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999), this Court similarly found that trial counsel's PCR testimony that he did not consider the possibility of petitioner testifying after his father's damaging testimony evidenced counsel's failure to use his discretion in employing an appropriate trial strategy in light of the unexpected testimony. In the present case, PCR counsel's testimony likewise revealed that he employed no strategic reasoning but rather failed to consider the negative consequences of a multi-defendant plea. App. 426, l. 15 – 427, l. 10.

Petitioner was prejudiced in that he was categorized with and received the same sentence as his more culpable co-defendants.

Respondent contends that the PCR court's finding that Oakman "was in no way prejudiced" by the multi-defendant plea is supported by "plea counsel's testimony that he was able to present to the plea judge all of the reasons why he [Oakman] should have received a lesser sentence than his codefendants." Respondent's Return to Cert, p. 7. Plea counsel, a private attorney whose reputation is vital to his business, testified: "I think I made an effective argument, basically how Sheldon – and separated Sheldon from these bad actors more specifically -- all of them, but even more importantly the three that he was sentenced with on the first day with those who had already received those serious sentences." App. 427, l. 25 – 428, l.

5. The problem was not only with what counsel failed to include in his argument, but the environment of the mutli-defendant sentencing hearing that amplified the judge's existing proclivity to "feed from the same spoon." See App. 265, ll. 7-9. Furthermore, plea counsel had an opportunity to argue for a lesser sentence at the reconsideration hearing, but even that hearing was conducted in conjunction with three of Oakman's co-defendants. Additionally, counsel failed to follow Judge Early's instruction to prepare an order with a "factual recitation comparing [their] client's culpability with everybody else's [culpability]." App. 280, ll. 18-24; App. 251 – 252.

The plea colloquy in this case consisted primarily of affirmative group responses, though some individual questioning was done of each defendant and their respective attorney. App. 112 – 136. After the Court accepted the guilty pleas, the solicitor gave a lengthy recitation of the facts it would intend to prove at trial, admitting throughout that some facts were undisputed and others varied depending on whose account you read. App. 136, l. 24 – 149, l. 18. After the victim impact statement, the defendants were addressed individually for sentencing. App. 150 – 194. Oakman and three of his co-defendants were sentenced on April 27, 2009, the same afternoon as the plea. Frankie Gantt, who pled guilty to murder as the triggerman, was sentenced to forty-five years. Darrell Williams, Johnnie Walker, and Oakman pled guilty to kidnapping and were sentenced to thirty years. App. 194. Though plea counsel made some attempt to differentiate Oakman, Judge Early said: "I don't know how I can feed him out of any different spoon than I fed the rest of them." App. 194, ll. 9-11. He then pronounced Oakman's thirty year sentence. App. 194, ll. 9-13.

The four remaining co-defendants, Johnnie Oakman, Jr., Andre Norris, Marion Abner, and Ronnie Bowers, Jr., were sentenced the next day, April 28, 2009. App. 194, ll. 14-16. Unlike the first day of sentencing, the judge allowed all four co-defendants to present their mitigation evidence

prior to imposing sentences for any of them. App. 194, l. 14 – 247, l. 10. Judge Early then met with the solicitors, defense attorneys, and head investigating officer in chambers where they discussed the varying degrees of culpability amongst the eight co-defendants. App. 247, l. 11 – 248, l. 18. When they came back on the record, Judge Early explained that he had now determined that there were two levels of culpability in the case. He described that there were "the major players who [he] sentenced yesterday," who described as "the murderer" and "the other three who [he] felt like were most instrumental in the kidnapping." App. 248, ll. 2-7. He found that remaining four co-defendants' "involvement [was] not as substantial." App. 248, ll. 7-9. He further found that there were mitigating factors, including their age, prior record, involvement or lack of involvement, [and] some cooperation after the fact." App. 248, ll. 8-12. He then sentenced the four co-defendants to seventeen years. App. 249, ll. 5-12.

At the reconsideration hearing, Chandler argued that Oakman was more similarly situated to the co-defendants who received seventeen year sentences. App. 264, l. 12 – 267, l. 13. He further argued that Oakman's cooperation with police warranted a further downward departure from the seventeen year sentence. However, Chandler lost much of his credibility when he suggested that Judge Early consider a sentence of five years. App. 267, l. 14 – 271, l. 12. Judge Early agreed to take the motions under advisement and instructed the attorneys to submit a proposed order on behalf of their respective client, with "a factual recitation comparing your client's culpability with everybody else's [culpability]." App. 280, l. 18 – 281, l. 3.

The Order submitted by plea counsel did not comply with that directive. See App. 448 – 449. Chandler pointed out that the differing ages of the co-defendants, noting that Oakman was twenty-one years old, which was more comparable to Marion Abner, age twenty-one, Ronnie Bowers, age nineteen, and John Oakman, age seventeen, who all received the lesser seventeen year

sentence. Williams and Walker were ages twenty-nine and twenty-six, respectively. He also noted that Oakman had no prior convictions. However, the brief paragraph regarding level of involvement mentioned only Frankie Gantt and Ronnie Bower, making no reference of the other five co-defendants. App. 448 – 449. Perhaps the most important quotation that Chandler could have brought to Judge Early's attention was the solicitor's response to one of Judge Early's questions during Oakman's sentencing, where he said:

> Now, you know, **as far as a scale of people I would think that he's lesser involved in the planning and implementation of this than Johnnie Walker and Darrell Williams were.** Do I think that he knew that Jeremy was going to be killed by Frankie Gantt on that dirt road? I don't think he did. I mean, I will just be candid with you. I realize that if we tried all of these people under the theory of hand-of-one-is-the-hand-of-all we may get one jury to convict one of them and an acquittal on the next jury and this is the best solution for us.

App. 184, l. 21 – 185, l. 6 (emphasis added). Thus, plea counsel wasted his only meaningful opportunity to rectify the prejudice from Oakman's multi-defendant plea and sentencing.

Had plea counsel properly represented Oakman's interests, Chandler would have supplied the Court with a detailed comparison of Oakman's culpability versus each of his co-defendants. Frankie Gantt was the gunman, who made a unilateral and impulsive decision to kill the victim. App. 146, ll. 2-8; App. 147, ll. 6-14. The solicitor admitted that it may have been "stretching it to some degree to believe that they all knew that [Leaphart] was going to be killed." App. 146, ll. 11-17. However, he argued that everyone "knew [Leaphart] was being held against his will at some point." App. 146, ll. 18-24. Darrell Williams was characterized as the "ring leader" though everyone agreed that he was very upset when he learned that Gantt had killed Leaphart. App. 146, l. 25 – 147, l. 6; App. 148, ll. 15-19. Even so, the solicitor said the co-defendants were consistent in stating that Williams was trying to get information from Leaphart and the others were "kind of along for the ride." App. 147, ll. 19-23.

It was Williams who had been involved with Leaphart in the possession of stolen guns that led to the incident. App. 138, ll. 11-13. While there was some information that Oakman was present when Darrell Williams and Johnnie Walker picked Leaphart up earlier in the day, the solicitor explained that there was also some evidence that Leaphart may have actually asked for them to give him a ride. App. 138, ll. 3-8. The solicitor noted that "there was real question as to whether or not [the victim] was kidnapped initially," but that there was a kidnapping once Leaphart was held against his will in Saluda County. App. 143, ll. 8-23.

All of the co-defendants were present at the trailer in Saluda where Leaphart was beaten. App. 140, l. 14 – 141, l. 5. With the exception of John Oakman, Jr, who was restrained by Williams because "Leaphart had had enough," the other seven co-defendants all participated in the physical assault. App. 147, l. 24 – 148, l. 9. Leaphart left the trailer with Frankie Gantt, John Oakman, Jr., Marion Abner, and Andre Norris, who all rode in one car. Petitioner Oakman and Ronnie Bowers followed them in another car. Darrell Williams and Johnnie Walker stayed behind. App. 141, ll. 6-14; App. 144, ll. 2-6. Oakman was thus not in the vehicle when Leaphart placed a call to 911. App. 141, l. 15 – 142, l. 3.

Gantt directed the driver of his vehicle to pull over off of a dirt road and pop the trunk. Gantt took out a shotgun and ordered Leaphart to get out of the car. App. 142, ll. 4-14. When Leaphart ran, Gantt shot at him. App. 142, ll. 15-22. The solicitor did not initially name who gave Gantt the final shotgun shell to reload the gun, stating that "there is different testimony as to who it was." App. 142, ll. 16-21. During Oakman's initial sentencing hearing, the solicitor told the court:

> Your Honor, Mr. Sheldon Oakman is one of the ones in this thing that's kind of been – that's been a little perplexing. He was in the second car. He was at the location of the physical abuse in Saluda County. He was driving the second car when Jeremy was killed. 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. It is no question that Frankie Gantt was the one that shot all of the shells. Sheldon gave us three statements. He was actually the first one interviewed that started giving up the people that was involved and, ultimately, gave us three recorded statements.

App. 179, ll. 10-25. Chandler denied that Petitioner Oakman provided the final shell at the sentencing hearing and explained that the co-defendants who made that allegation were aware of Oakman's cooperation with police. App. 75, ll. 4-13. Though John Oakman, Jr. was the other person accused of providing the last shot gun shell to Gantt, he was sentenced to seventeen years. The solicitor said that all eight of the co-defendants participated in the concealment of Leaphart's body in a trash pile. App. 144, ll. 7-21.

Notably, Johnnie Walker testified at the PCR hearing that Leaphart willingly went with them when they picked him up in Lexington County and drove him to a trailer in Saluda County. App. 311, l. 13 – 312, l. 7. Walker confirmed that Oakman was not in the car with Leaphart when they later left that trailer for Walker's house, but was rather the driver of the other car. App. 312, l. 8 – 313, l. 3. Consistent with the solicitor's recitation of facts at the plea, Walker said that neither he nor Darrell Williams were present when Leaphart was shot. App. 313, ll. 6-23; App. He said that there was no plan to kill Leaphart. App. 313, l. 24 – 314, l. 7. He confirmed that Oakman was the first one of the co-defendats to speak to the police. App. 314, ll.15-17. He indicated that he never heard the allegation that Oakman provided the last bullet to Gantt until after they were all "locked up." App. 314, l. 24 – 315, l. 9. Walker explained that they were all young and scared, so people started lying. App. 315, l. 10 – 316, l. 2. Walker further stated that based on his personal knowledge of Oakman's involvement, he would not have classified his culpability as any higher

than the four co-defendants who were sentenced to seventeen years the next day. App. 317, l. 12 – 318, l. 8.

In sum, the multi-defendant plea hurt Chandler's ability to differentiate Oakman from his co-defendants, especially in light of Judge Early's tendency for sentencing co-defendants the same. After Judge Early decided to depart from his normal practice of "feeding from the same spoon" on the second day of sentencings, there became an opportunity to convince him to reclassify Oakman. In fact, Oakman was arguably the only defendant who had a real chance of reconsideration. Despite a wealth of information in the plea and sentencing transcript, to which Chandler made some citation in the proposed order, Chandler's discussion of Oakman's level of involvement consisted only of three sentences. Chandler wasted Oakman's opportunity by filing a perfunctory proposed order that failed to substantial compare and distinguish Oakman's culpability.

Petitioner's plea of guilty does not preclude collateral relief.

Respondent attempts to defend the application of an overwhelming evidence standard at the PCR hearing. Respondent's Return to Cert., pp. 8 – 10. Respondent contends that Oakman "waived his right to challenge the characterization of the evidence against him when he pled guilty." Respondent's Return to Cert., p. 9. Under Respondent's logic, no one who pled guilty would ever be successful in a PCR action because they could never meet the prejudice prong of Strickland in light of their prior admission of guilt. That is certainly not the case in light of the cases in this State granting post-conviction relief following a guilty plea. For example, in Sellner v. State, ___ S.C. ___, 787 S.E.2d 525 (2016), this Court held that plea counsel was ineffective where she advised Sellner that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon. In Shirely v. State, 306 S.C. 241, 411 S.E.2d 215 (1991), this Court held that plea counsel was ineffective where he failed to inform petitioner

prior to the plea that his statements may have been made involuntarily, and, if so, would be inadmissible at trial.

Respondent's argument that Oakman's guilty plea precludes relief is reminiscent of Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981), where this Court held that the PCR applicants who reiterated their guilt at the post conviction hearing and stated that they would plead guilty again if granted a new trial were not entitled to post-conviction relief. 276 S.C. at 297, 277 S.E.2d at 892. However, in Craddock v. State, 327 S.C. 303, 304-05, 491 S.E.2d 251 (1997), this Court clarified that the rule set forth in Whetsell "applies only where the applicant is not prejudiced by any allegations of the PCR application because of the admission of guilt." In Craddock, the applicant admitted his guilt at the PCR hearing but testified that he would not have pled guilty but for the fact that counsel promised him a twenty-five year sentence in exchange for his guilty plea. 327 S.C. at 304-05, 491 S.E.2d at 251. The Court found that Craddock's "admission of guilt did not render counsel's allegedly deficient performance non-prejudicial" such that Whetsell was inapplicable. Id.

In Johnson v. Catoe, 336 S.C. 354, 358, 520 S.E.2d 617, 619 (1999), this Court again clarified that "[t]he operative fact in *Whetsell* is not the admission of guilt but the fact that the PCR applicants in that case stated **they would plead guilty again if granted a new trial.**" (emphasis in original). The Johnson Court ruled:

> In conclusion, *Whetsell* does not stand for the proposition that a defendant who admits his guilt is barred from collaterally attacking his conviction. *Whetsell* stands only for the narrow proposition that a PCR applicant who has pled guilty on advice of counsel cannot satisfy the prejudice prong on collateral attack if he states he would have pled guilty in any event.

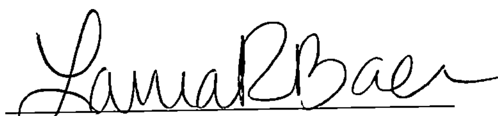
Id. at 358-59, 520 S.E.2d at 619. Here, Oakman's allegations are that plea counsel was deficient in having him participate in a multi-defendant guilty plea and failing to differentiate

Oakman in the proposed order he submitted following the reconsideration hearing. The prejudice to Oakman from the deficient representation is that he was sentenced to thirty years, the same as the more culpable and least cooperative co-defendants. Oakman testified that he received no benefit from pleading guilty and wanted a new trial. App. 409, l. 9 – 410, l. 7; see also App. 333, ll. 22-25; App. 343, ll. 7-22. Thus, even had Oakman reaffirmed his guilt at the PCR hearing, he would not have waived his claim of ineffective assistance of counsel related to the matter of sentencing.

Moreover, as more fully discussed in the Petition for Writ of Certiorari, Oakman testified that while he may be guilty of a lesser offense, he was not guilty of kidnapping. Cert. Petition, pp. 15 – 16; see App. 373, ll. 11-16; App. 404, ll. 14-19; App. 402, l. 21 – 403, l. 1; App. 402, ll. 12-20. There was no evidence that Petitioner "reaffirmed his guilt during the PCR evidentiary hearing," which is likely why Respondent failed to cite any testimony from the PCR hearing to support the PCR court's erroneous finding. Respondent's Return to Cert., p. 8; App. 483. Therefore, the PCR court erred both in its finding of overwhelming evidence of guilt and in its application of that finding to Oakman's PCR allegations.

CONCLUSION

For the reasons set forth herein and in the Re-Petition for Writ of Certiorari, Petitioner Sheldon Oakman respectfully requests that this Court grant certiorari to allow full briefing on the issue raised in his Petition.



Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of August, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

Honorable D. Craig Brown, Circuit Court Judge

SHELDON OAKMAN,

PETITIONER,

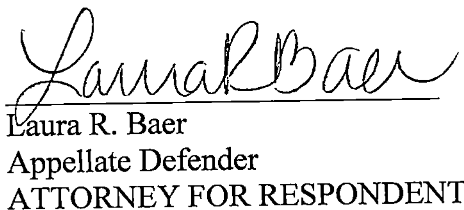
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

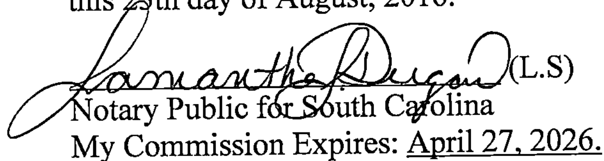
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Sheldon Oakman, #334454, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 25th day of August, 2016.



Laura R. Baer
Appellate Defender
ATTORNEY FOR RESPONDENT

SUBSCRIBED AND SWORN TO before me
this 25th day of August, 2016.



(L.S)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.