

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Bamberg County

Honorable Tanya A. Gee, Circuit Court Judge

EDWARD TYLER,

PETITIONER
S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000634

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err in finding that Petitioner knowingly, voluntarily, and intelligently pled guilty where Petitioner based his decision to plead guilty on plea counsel's advice when Petitioner had no knowledge of plea counsel's failure to investigate a possible battered spouse defense?

STATEMENT

On October 6, 2006, Petitioner shot his wife, Rosalyn Tyler, twice during a heated argument over the ownership of a television with a single barrel shotgun. App. 83, l. 17 - 87, l. 20. Rosalyn was on the phone with her brother when Petitioner walked into their house. *Id.* According to witnesses, Rosalyn attempted to get away from Petitioner by walking out of the house. As Rosalyn descended the stairs, Petitioner shot her knocking her to the ground. Petitioner then reloaded and shot her a second time as she lay on the ground. *Id.*

Indictment and Guilty Plea

On January 8, 2007, Petitioner was indicted for murder by the Bamberg County Grand Jury. App. 134 - 135. On June 4, 2008 Petitioner pled guilty to murder before the Honorable Doyet A. Early, III. Petitioner was represented by Richard Ness. The State was represented by Assistant Solicitor Benjamin Robert Moore. Petitioner was sentenced to forty years imprisonment. Petitioner did not appeal.

PCR Application and Evidentiary Hearing Held Pursuant to *Ferguson v. State*

Petitioner filed an application for post-conviction relief on February 25, 2013. App. 1 - 8. The State filed a Return and Motion to Dismiss on June 18, 2013. App. 9 - 13. A conditional order of dismissal was issued by Judge Early on June 24, 2013. App. 14 - 18. Petitioner filed a "Applicant's Objection and Reply to Proposed and Conditional Order of Dismissal" on July 11, 2013 arguing that the one year statute of limitations should be tolled so as to allow Petitioner to proceed on his claim for post-conviction relief. App. 21 - 22. The State filed an amended Return on September 12, 2013. App. 23 - 27.

On September 13, 2013, Judge Early issued an Order Vacating Conditional Order of Dismissal and Setting Case for Evidentiary Hearing to determine if mental illness prevented Petitioner from filing a timely application for post-conviction relief. App. 28 - 30.

On July 30, 2014 an evidentiary hearing was held before the Honorable R. Knox McMahon. Johnny Casmersky represented Petitioner and Assistant Attorney General Daniel Gourley represented the State. App. 31 - 49. Petitioner testified that he was "out of his mind" following his guilty plea.

He stated that he had been treated for unspecified mental illness prior to the shooting and that SCDC had denied him access to medications necessary to manage his condition. App. 36, l. 3 - 37, l. 24. Petitioner experienced severe depression and "shut down" emotionally and mentally after the guilty plea. App. 38, ll. 5-25. His condition further degraded when he learned that his son had been molested since he was incarcerated. *Id.* Ultimately, he was able to pull himself out of depression and stabilize his mental condition so that he could file a PCR application. App. 38, l. 17 - 40, l. 16.

Judge McMahon granted Petitioner an evidentiary hearing on the merits of the allegations in his post-conviction relief application via a written order issued on October 3, 2014. App. 50 - 54.

Evidentiary Hearing

On evidentiary hearing on the merits of Petitioner's post-conviction relief application was held on May 21, 2015 before the Honorable Tanya A. Gee. App. 55 - 124. Janek Kazmierski represented Petitioner and Assistant Attorney General Daniel Gourley represented the State. Petitioner, plea counsel Richard Ness, and Assistant Solicitor Moore all testified. The transcript

of Petitioner's guilty plea was not available because of the six year gap between Petitioner's guilty plea and when he filed for post-conviction relief.

Petitioner testified that plea counsel failed to investigate his wife's violent history. Petitioner explained that, at the time of the shooting, Rosalyn had been threatening him with a knife. App. 63, l. 5 - 65, l. 15. Petitioner stated that he was simply defending himself when he shot his wife. *Id.*

Petitioner further testified that had plea counsel explained the possibility of arguing self-defense or that Petitioner suffered from battered spouse syndrome, Petitioner would not have pled guilty, but would have insisted on standing trial. *Id.* Petitioner stressed that plea counsel never reviewed the evidence with him and that he did not know what the State's version of events for his wife's shooting were. App. 66, l. 2 - 69, l. 21. Petitioner recalled that his wife weighed three ten hundred pounds and that "she was a good woman, but she did love the fight." App. 69, ll. 9-24.

Plea counsel testified that he met with Petitioner numerous times before the guilty plea and that his associate also met with Petitioner on many occasions. App. 74, l. 3 - 75, l. 23. Plea counsel noted that Petitioner and his wife had a volatile relationship with both parties having multiple convictions for domestic violence. *Id.*

However, plea counsel testified that there were multiple eye witnesses to the shooting who all agreed that Petitioner had shot his wife twice as she was running away from him. App. 76, l. 3 - 77, l. 19. Petitioner used a single barrel shotgun, meaning that he had to reload prior to shooting his wife the second time as she lay on the ground. There was no evidence of an ongoing fight at the time that Petitioner shot. Counsel specifically recalled that he never considered Petitioner's wife to be the possible abuser of Petitioner. App. 76, ll. 3-21.

No knife was recovered from the crime scene. App. 72, ll. 16-24. The State also had evidence that Petitioner's wife was on the phone with her brother when Petitioner entered the house with the shotgun.

He advised Petitioner to plead guilty and unsuccessfully negotiated with the solicitor in an effort secure either a manslaughter charge or their support for a thirty year sentence. App. 79, l. 7 - 81, l. 24. A "heat of passion" defense was not viable in plea counsel's opinion. App. 83, l. 24 - 85, l. 22. Plea counsel had no concerns regarding Petitioner's competency. According to plea counsel, Petitioner pled guilty after lengthy discussions with his family. App. 92, l. 2 - 93, l. 9.

Order of Dismissal

The PCR court denied Petitioner's application in a written order of dismissal issued on March 8, 2016. App. 126 - 133. The court held that Petitioner had failed to prove that counsel was ineffective for failing to pursue a battered spouse defense. App. 132. The court found that there was no evidence to support the defense. *Id.*

ARGUMENT

Did the PCR court err in finding that Petitioner knowingly, voluntarily, and intelligently pled guilty where Petitioner based his decision to plead guilty on plea counsel's advice when Petitioner had no knowledge of plea counsel's failure to investigate a possible battered spouse defense?

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 (1970). An “unsound result” occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. *See Boykin v. Alabama*, 395 U.S. 238 (1969) (provides that a defendant’s decision to plead guilty must be knowingly and voluntarily made); *see also State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (provides that the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea).

Furthermore, the South Carolina Supreme Court has held that the difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.” *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). However, “the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

In this case, Petitioner testified at the evidentiary hearing that plea counsel never discussed the facts of the case with him nor did plea counsel discuss the possibility of presenting a battered spouse defense. App. 76, ll. 3-21.

Plea counsel agreed that Petitioner’s relationship with his wife was mutually violent. App. 72, l. 16 - 79, l. 5. Both had convictions for criminal domestic violence. Petitioner stated that he

acted in self-defense. Plea counsel averred that self-defense was not a viable defense because of the accounts of eye witnesses. Despite this history and the unusual facts of the case, plea counsel summarily dismissed the battered spouse defense. App. 76, ll. 3-21. This decision constituted ineffective assistance of counsel and resulted in an involuntary and unknowing guilty plea.

Evidence in the record strongly suggests that Petitioner may have been suffering from battered spouse syndrome at the time that he shot his wife. Battered spouse syndrome is a recognized phenomenon and relevant to a claim of self-defense. *State v. Hill*, 287 S.C. 398, 339 S.E.2d 121 (1986) (holding that expert testimony on the “battered woman’s syndrome” is admissible to help establish a claim of self-defense in a homicide case.); *see also* S.C. Code Ann. § 17-23-170 (governing the admissibility of evidence concerning battered spouse syndrome).

The syndrome is defined as “a series of common characteristics that appear in [individuals] who are abused physically and psychologically over an extended period of time by the dominant [spouse]” *Id.* at 400, 339 S.E.2d at 122 *citing to State v. Kelly*, 478 A.2d 364, 371 (1984). Expert testimony on the syndrome is “relevant to the issue of self-defense and highly probative of the defendant’s state of mind at the time of the incident.” *Id.*

Given the history of violence in his marriage, Petitioner could have been suffering from battered spouse syndrome. Plea counsel had a duty to investigate whether this was the case. Instead plea counsel simply dismissed Petitioner’s self-defense argument based solely on eye witness’ statements. *See Cobbs v. State*, 305 S.C. 299, 408 S.E.2d 223 (1991) (provides that failure to investigate possible defenses constitutes 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 counsel of his duty to investigate possible defenses).

Furthermore, Petitioner testified that had he been advised of any possible defenses, he

“would not have pled guilty . . . [and] would have insisted upon going to trial.” App. 66, l. 2 - 68, l. 24 (emphasis added); *See Hill v. Lockhart*, 474 U.S. 52, 57-59 (1985) (provides, in pertinent part: To prove ineffective assistance of counsel from a guilty plea, the defendant must show: (1) “the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases” and (2) that “there is a reasonable probability that, but for counsel’s errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.”). Petitioner also testified that the only reason he pled guilty was because of plea counsel’s advice. *Id.*

Although Petitioner pled guilty, an “unsound result” occurred in this case because the record does not reflect that Petitioner freely and intelligently waived his constitutional trial rights when he based his decision to plead guilty on plea counsel’s advice. *See Brady*, 397 U.S. at 758; *see also Boykin*, 395 U.S. 238; *accord Hazel*, 275 S.C. 392, 271 S.E.2d 602; *Berry*, 381 S.C. at 635, 675 S.E.2d at 427. Therefore, the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty when he would have went to trial had plea counsel advised him of his possible defenses. App. 132; *See Boykin*, 395 U.S. 238; *see also Hill*, 474 U.S. at 57-59.

CONCLUSION

Based on the foregoing reasons, Edward Tyler's petition for writ of certiorari should be granted in order to allow full briefing on the issue.



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of November, 2016.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Edward Tyler states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's trial before Judge Tanya A. Gee, which was held on May 21, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Edward Tyler.

Respectfully Submitted,



John H. Strom
Appellate Defender
ATTORNEY FOR PETITIONER

This 17th day of November, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



John H. Strom
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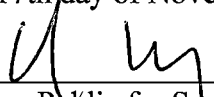
RESPONDENT

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CERTIFICATE OF SERVICE
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Julia Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Edward Tyler, #318077, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 17th day of November, 2016.


—————
John H. Strom
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of November, 2016.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025