

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO SUMTER COUNTY
Court of Common Pleas

MAY 08 2017

S.C. SUPREME COURT

Brooks P. Goldsmith, Circuit Court Judge

GREGORY WRIGHT,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000815

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did trial counsel provide ineffective assistance of counsel when he stipulated to Petitioner's handwriting contained in a letter the State introduced at trial?

STATEMENT OF THE CASE

In July 2008, the Sumter County Grand Jury indicted the Petitioner for possession of firearm during commission of a violent crime (2008-GS-43-927), owning animals for the purpose of fighting (2008-GS-43-929), animal fighting (2008-GS-43-930), animal fighting (2008-GS-43-930), ill treatment of animals (2008-GS-43-931), trafficking in cocaine (2008-GS-43-932), possession with intent to distribute marijuana (2008-GS-43-933), trafficking and trafficking in crack cocaine (2008-GS-43-934). Cameron Littlejohn, Esquire, represented Applicant. On January 12-14, 2009, Applicant proceeded to a jury trial before the Honorable Michael G. Nettles. The jury found the Applicant guilty of possession of firearm during commission of a violent crime (2008-GS-43-927), owning animals for the purpose of fighting (2008-GS-43-930), ill treatment of animals (2008-GS-931) and trafficking in crack cocaine (2008-GS-43-934). The jury found Petitioner guilty of the lesser included offenses of trafficking in cocaine (2008-GS-43-932) and possession with intent to distribute marijuana (2008-GS-43-933). Judge Nettles sentenced the Petitioner to a concurrent sentence as follows:

- Possession of firearm during commission of a violent crime - 5 years
- Owning animals for the purpose of fighting - 5 years
- Animal fighting - 5 years
- Ill treatment of animals - 5 years
- trafficking in cocaine - 25 years
- Trafficking in crack cocaine - 25 years
- Possession of marijuana - 30 days

Petitioner filed a timely notice of appeal. Robert M. Pachak, Esquire, represent Petitioner on appeal. The South Carolina Court of Appeals affirmed all convictions in an unpublished opinion filed July 17, 2013. Wright v. State, Op. No. 2013-UP-326. In an Order dated August 22, 2013, the South Carolina Court of Appeal denied the Petition for Rehearing. Appellate

counsel then submitted a Petition for Writ of Certiorari to the South Carolina Supreme Court. The South Carolina Supreme Court dismissed the appeal as improvidently granted in a memorandum opinion filed March 18, 2015. State v. Wright, Op. No. 2015-MO-011 (S.C. Ct. filed March 18, 2015). The remittitur was returned to the circuit court on March 19, 2015.

On June 8, 2015, Petitioner filed an application for post-conviction relief. The Respondent filed a return on July 9, 2015. Petitioner filed an amended application on January 28, 2016. On March 17, 2016, an evidentiary hearing was held before the Honorable Brooks P. Goldsmith at the Sumter County Courthouse. Lance S. Boozer, Esquire, represented the Petitioner at the hearing. Assistant Attorney General Daniel Gourley represented the Respondent. In a written order signed March 30, 2016, Judge Goldsmith denied the application. A timely notice of intent to appeal was served on April 18, 2016. This petition for writ of certiorari follows:

ARGUMENT

Trial counsel was ineffective when he stipulated to a letter introduced by the State at trial.

In the amended application for post-conviction relief, Petitioner alleged counsel was ineffective for stipulating to a letter at trial. (App. p. 442). Petitioner and his wife lived together in a double wide trailer in Sumter County. (App. p. 70, ll. 2-5). Located behind the Petitioner's trailer was a large privacy fence and beyond the privacy fence was a separate, smaller dwelling. (App. p. 70, ll. 8-10.) Frank Lee Wilson ("Wilson") lived in this smaller house which he rented from the Petitioner. App. p. 265-266). Following an execution of a search warrant, drugs were found in Wilson's pocket, Wilson's house and on the ground behind the privacy fence. (App. pg. 140-143). No drugs were found in Petitioner's home. (App. pg. 160, ll. 1-4). Wilson was named as Petitioner's co-defendant and pled guilty to similar drug charges. (App. pp. 276-279). Wilson also submitted a sworn affidavit to the State that the drugs were his and his alone and testified to the same as a witness at Petitioner's trial. (App. pp. 70 and 276). Investigator Mays testified that he spoke with one of the Petitioner's co-defendants, Larry Rose a/ka/ Hammer. (App. pg. 118, ll. 21-24). Investigator Mays further testified Hammer provided him with a letter he claimed he received from the Petitioner while in jail. (App. pp. 118-119). Counsel objected to the introduction of the letter as evidence. (Id.). In considering counsel's objection, the following colloquy occurred:

THE COURT: I think the objection as to whether or not its admissible from this individual, I think the appropriate thing to do is, and I am not trying the case. But it seems to me that in order to get it admitted, you have to the individual who got it from the defendant.

THE STATE: That ain't going to happen. He's refused to cooperate ever since. But I think Mr. Mays can testify to reading it and determining who wrote it.

THE COURT: Only if he is familiar with the handwriting.

THE STATE: Well we asked for an example, but he said he would stipulate to writing it.

THE COURT: Is that true?

MR. LITTLEJOHN: Your Honor, we did stipulate to the handwriting as being that of the defendant. That's all I stipulated to. I thought that he was going to produce a witness who intercepted this letter directly from my client.

(App. pg. 119-120).

Eventually, the trial court ruled that since counsel stipulated to the Petitioner's handwriting, the letter was admissible. The letter was published as follows:

Hammer, I am just writing you all to keep you posted to what is going on. I was really upset the other day and my blood pressure was really high. Someone said you all have been talking to the investigator, and I was confused. Because I didn't know what no one said. But after talking with Gwen, she said that she talked with you and Lee. She said everybody was still going with their story. Hammer you know yourself that you all don't have to answer questions for nobody. And there is nothing they can do to you all because that's you all's right. And you know that. I don't know what was said, but please don't nobody talk to these investigators, because they will put shit on paper that people don't say. And then try to reword everything. So I got a lawyer out of Columbia that will be here today or tomorrow to talk with all of us. And he is really good. Gwen hired him Thursday, and he already see a lot of shit that is not right already with our case. Hammer, you, and Ervin and Rick and everybody else ain't got shit at all. The only person they want is me. And these crackers are trying to give me jail for something I really had nothing to do with. I told Lee, man, not to do this. And I told him not to do that. But all that is done now, and we just got to stick together. Man, you all know there is nothing I won't do for you all. And I know you all will do whatever for me. So please tell everybody we will be out of here in no more than two weeks at the most. Read every letter I write to Lee so he will understand what is going on. Tell Lee my lawyer is his lawyer. Regardless of how things seem, are going to be all right. The only way we don't, and that's if someone signed a statement on me. And I know you all won't let - - you won't let me, grandma, and L.G. and the family down... These people really want my life. But tell Lee I promise he won't get nothing but probation and maybe a big fine. But I will pay a fine. Tell Lee the same people are talking - - are taking over the case - - or talking over the case about the dogs. So let them know the dogs are mine and his together, because that's what we told them last time they came out to

the house. But on the real, these people don't have shit on these dogs. But tell Lee to say that the buck skin dog with the leg in the pen, to say if they have, she got loose on the chain and got on that new black dog in case they ask what happened to her leg. Because they might ask what happen to that black dog. It ain't nothing but one or two scars on the black dog, but that's all he got to say. Just tell him it was late at night, and he tried to break them up - - to break them up by himself. And the brake stick was just in case something got loose. I love you all, and keep it real. My mama put some money on y'all car (sic). She put \$25 on yours - - and 25 on Lee and 25 on Rick and Ervin... But tell them to say nothing. I love you all. Save my life.

(App. pp. 126-129).

At the PCR hearing, when asked if he recalled this letter coming up at trial, counsel responded that yes, "unfortunately, there was a letter" and it was "a very damaging piece of evidence." (App. p. 495, ll. 2-9). Counsel agreed that the State's theory of the case was that Petitioner was in essence the leader or puppet master to those around him and he basically had the power to get them to do what he wanted. (App. p. 496). Counsel further testified that the letter seemed to confirm the State's theory of the case that the Petitioner was leader of the group and this was an example of Petitioner's attempt to "circle the wagons." (App. pp. 495-496). Counsel admitted that without this letter, there was no evidence that would support the State's theory of the case that the Petitioner was the ring leader of this alleged outfit or that he had the ability to direct the other co-defendants.¹ (App. p. 496). Counsel stated he stipulated that the letter was Petitioner's handwriting and felt he had no choice other than to stipulate to the handwriting. (App. p. 499). Counsel reasoned that the State could have requested handwriting samples and produced an expert to conclude that Petitioner did in fact write the letter and was

¹ In its opening statement at trial, the State presented its theory that Petitioner and Wilson were in a partnership to deal drugs, however, it was "not an equal partnership" and Wilson was Petitioner's "underling." (App. p. 65, ll. 1-6).

not an issue worth contesting. (App. p. 499). Counsel expressed the opinion that he believed the letter was coming in as evidence regardless of his actions. (App. p. 499).

In the order of dismissal, the PCR court concluded:

This Court finds Trial Counsel acted well within reasonable professional norms when stipulating to the letter. Notably, both Trial Counsel and Applicant stated that the letter was written by Applicant. Trial Counsel stated that there was no point in challenging the authenticity of the letter due to Applicant's admission that he wrote the letter... Furthermore, Applicant can show no prejudice due to Trial Counsel's stipulation because Applicant freely admitted that he wrote the letter.

(App. p. 529-530).

Where ineffective assistance of counsel is alleged the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 268 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

performance must have prejudiced the Applicant such that “there is reasonable probably that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

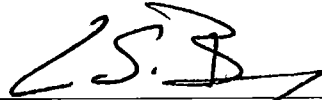
Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546; 419 S.E.2d 778. Determining whether a stated reason for counsel’s conduct is a valid strategic reason depends on the circumstances of each case, and so courts take a case by case approach to decide what is or is not valid trial strategy. Solomon v. State, 347 S.C. 635, 557 S.E.2d 666 (2001).

Petitioner submits the PCR court erred in finding counsel was not ineffective for stipulating to the letter. Regardless of whether Applicant admitted to counsel that he wrote the letter, counsel should not have voluntarily opened the door for the introduction of the damaging letter. Counsel should have made the State prove its case. Based on the Attorney General’s own statements at trial, it was clear that the person who claimed to have received the letter from the Petitioner had become uncooperative and was not going to testify. (App. p. 120, ll. 1-4). Without this witness and absent counsel’s stipulation that the handwriting was Petitioner’s, the State would have been forced to present a handwriting expert to testify that Petitioner did in fact author the letter. Even assuming the State would have engaged a handwriting expert, Petitioner would have then been able to challenge the expert’s methods and opinions during cross-examination either preventing the admission of the letter or calling into question the validity of the expert’s opinion for the jury to consider. Counsel’s decision to stipulate to the handwriting as

Petitioner's makes little sense when he then objected to the introduction of the letter at trial. Counsel was ineffective for stipulating to the letter and Petitioner was prejudiced by counsel's deficient performance.

CONCLUSION

For the reasons stated above, this Court should grant the Petition for Writ of Certiorari and reverse the PCR court's ruling and order a new trial in Petitioner's case. If this Court grants certiorari, Petitioner asks permission under the rules to brief the issue presented.



Lance S. Boozer

ATTORNEY FOR PETITIONER

This 8th day of May, 2017.

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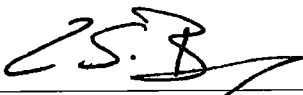
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RESPONDENT

APPELLATE CASE NO. 2016-000815

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the 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 C. Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Gregory Wright, #166553, at Perry Correctional Institution, 430 Oaklawn Rd., Pelzer, SC 29669, this 8th day of May, 2017.



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ATTORNEY FOR PETITIONER