

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Certiorari to Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge

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DANIEL BRIAN MONTY,

S.C. SUPREME COURT
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000225

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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

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Trial counsel erred in advising petitioner to either testify at trial to rebut the state’s case in his defense or plead guilty to sexual misconduct when there was no proof of guilt beyond a reasonable doubt in the case because no DNA evidence linked him to the crime and a valid credibility claim against the prosecutrix existed based on her prior false sex allegations made against others.....3

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ISSUE PRESENTED

Trial counsel erred in advising petitioner to either testify at trial to rebut the state's case in his defense or plead guilty to sexual misconduct when there was no proof of guilt beyond a reasonable doubt in the case because no DNA evidence linked him to the crime and a valid credibility claim against the prosecutrix existed based on her prior false sex allegations made against others.

STATEMENT

Petitioner Daniel Brian Monty pled guilty pursuant to North Carolina v. Alford¹ on the charge of second degree criminal sexual conduct with a minor during the May 2013 term of the Dorchester County General Sessions Court before Judge Edgar W. Dickson. Petitioner was sentenced to imprisonment for a period of six years. App. 1-20. Petitioner did not enjoy the benefit of a direct appeal in his case.

On September 23, 2013, petitioner filed a PCR application with the Dorchester County Office of the Clerk of Court. App. 22-30. The respondent filed a return dated January 3, 2014, requesting that a hearing be held in response to petitioner's PCR application. App. 31-26.

A PCR hearing was convened on October 25, 2016, at the Dorchester County Courthouse before Judge Diane Schafer Goodstein. App. 38-95. Petitioner was present at the PCR hearing and represented by Rodney Davis, and Assistant Attorney General Ruston Neely appeared on behalf of the state. On January 9, 2017, Judge Goodstein signed an Order of Dismissal in the case and filed the same on January 11, 2017.

Petitioner appealed Judge Goodstein's Order of Dismissal. This petition follows.

¹ 400 U.S. 25 (1975).

ARGUMENT

Trial counsel erred in advising petitioner to either testify at trial to rebut the state's case in his defense or plead guilty to sexual misconduct when there was no proof of guilt beyond a reasonable doubt in the case because no DNA evidence linked him to the crime and a valid credibility claim against the prosecutrix existed based on her prior false sex allegations made against others.

During the plea proceeding, the solicitor apprised the plea judge of the state's version of the facts in the case. Apparently, the prosecutrix reported that she went to petitioner's residence on June 5, 2008, after leaving with him from a bar, and that while at his residence, "he forced anal sex upon her." App. 9, l. 18 – p. 11, l. 4.

During the PCR hearing held in the case, petitioner testified in effect that he pled guilty involuntarily under "duress" after being told he would get a twenty-year sentence if he did not take the six-year plea offer, and that he thought he had only a "50/50 chance" at trial, and that he believed that he had no defense despite the fact that no DNA or forensic evidence existed in the case and the prosecutrix faced a credibility challenge as she made false sex-allegations previously. App. 61, l. 3 - p. 62, l. 3; App. 63, l. 24 – p. 64, l. 1; App. 68, l. 14 – p. 69, l. 2; App. 74, l. 8-10.

Trial counsel testified during the PCR hearing and explained that there was a six-year recommendation offered in the case and that a trial would have resulted in his "word" against her "word," and that even though there was no DNA evidence in the case, petitioner would have had to testify to rebut the evidence because the two of them were alone together. App. 76, l. 23 – p. 82, l. 5.

A.) Proof Beyond A Reasonable Doubt/Right to Testify At Trial

During the PCR hearing, petitioner testified that counsel advised him that although there was no DNA evidence against him; nonetheless, the “state ha[d] medical witnesses....that... [the defense] didn’t have,” and therefore, petitioner concluded that “[he] didn’t feel that [he] had witnesses to speak for [him] to help defend.” App. 61, l. 3 – App. 62, l. 3; App. 63, l. 24 – p. 64, l. 1. In effect, petitioner believed he had to present a defense in the case. App. 74, lines 8-10.

Petitioner’s assessment of his defense follows:

Q. Had [counsel] talked to you more fully about someone he hired and spoke with about this DNA evidence...an expert...would you have pled guilty or asked for a trial?

A. If I was assured more of a defense, I would’ve went to trial.

Q. You had testified earlier that you felt because you had no witness on your side, you didn’t really had a defense; but had [counsel] talked to you about the state’s burden of proof and that you didn’t have to prove anything, would you have pled guilty or asked for a trial?

A. I would’ve went to trial. App. 68, l. 14 – App. 69, l. 2.

Trial testified at the hearing and stated that “there was no DNA evidence,” but that the evidence against him would have been the victim’s testimony. App. 80, l. 1-4. Counsel added that petitioner didn’t have an alibi (App. 80, lines 11-12), or a defense in effect and explained his position as follows:

Q. What were those discussions [regarding the right to testify] about?

A. I told him that he would have to testify to rebut the testimony of the victim, [and] that if he didn’t testify, it would be her unrebutted testimony....[as] he couldn’t deny that they were alone together in his home. App. 80, l. 23 – p. 81, l. 9.

A. In other words, if [petitioner] didn’t testify yeah, her testimony would be unrebutted...[and] if he didn’t, then we wouldn’t really

have somebody to present his side...he couldn't deny it. He had to deny it or....[and] he would need to testify to rebut the testimony of the victim or they wouldn't hear his denial. App. 85, l. 13-17; App. 86, l. 8-10.

The PCR judge ruled that petitioner did not satisfy his burden of establishing that counsel was ineffective with respect to informing him of his constitutional rights and how those rights would be waived if he chose to plead guilty as charged in the case. App. 103.

An accused has a right to remain silent and not testify, and further plead not guilty and put the state to its burden of proof. State v. Johnson, 293, S.C. 321, 360 S.E.2d 317 (1987), citing to State v. Sloan, 298 S.C. 435, 298 S.E.2d 92 (1982); State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986); State v. Adkins, 353 S.C. 312, 577 S.E.2d 460 (2003); See also Doyle v. Ohio, 426 U.S. 610 (1978), where the United States Supreme Court held that an accused has the right to remain silent and the exercise of that right cannot be used against him. The prosecution has the burden of proving every element of the offense charged beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979). See the Fifth Amendment and Article 1 § 12 of the South Carolina State Constitution. Compare State v. Posey, 269 S.C. 500, 238 S.E.2d 176 (1977), where the Court held as follows:

A defendant is not required to present a defense and can instead rely entirely on the weakness of the state's case since the state has the burden of proof beyond a reasonable doubt.

Furthermore, counsel stated that the petitioner had no alibi, but an accused does not have to prove alibi. An accused does not have to prove anything at all. Counsel erred in advising petitioner that he had to testify to rebut the state's case, and counsel erred in minimizing the state's lack of proof beyond a reasonable doubt per the state's weak case and in failing to develop and build a defense upon such a weak case.

B.) Credibility of the Prosecution of the Prosecutrix as a Witness

During the PCR hearing, petitioner testified that he spoke to counsel about information he received and gathered regarding prior false sex allegations that the prosecutrix made previously against others, but that counsel never investigated into this and also told him that it was “hearsay,” and that this could not be brought out at trial. App. 63, l. 9-17. Petitioner stated that he gave counsel the contact information needed to prove these false prior sex allegations in question. App. 92, l. 22 – App. 93, l. 12.

Counsel stated during the PCR hearing that he did not investigate into the matter of prior false sex allegations made by the prosecutrix because of the rape shield statute. App. 91, l. 4-20.

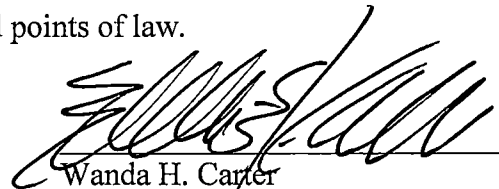
The PCR judge ruled that petitioner did not satisfy his burden of showing that counsel failed to conduct proper investigations into the case on behalf of the defense. App 103-104.

The Rape Shield Statute will not prohibit the impeachment of the credibility of a prosecutrix in a sexual misconduct case. The Rape Shield Statute addresses evidence of issues surrounding one’s general reputation for chastity and does not bar the admission of impeachment evidence bearing on the credibility of the complainant and her story. State v. Lang, 304 S.C. 300, 403 S.E.2d 677 (1991). In Lang, the Court reversed because the defendant was prohibited from introducing evidence of sexuality in an attempt to attack the victim’s credibility, and held that the Rape Shield Statute did not bar credibility evidence in such instances. See also State v. Finley, 300 S.C. 196, 387 S.E.2d 88 (1989), where the Court held that the Rape Shield Statute did not bar evidence of a victim’s sexual conduct if the evidence was offered for a purpose other than to attack the victims morality. Counsel erred in failing to investigate into prior false allegations made by the prosecutrix in this case and in advising petitioner that the same could not be used against her in order to attack her credibility in the event of a trial.

Clearly, petitioner's decision to plead guilty was involuntarily given in that it was based in part on counsel's misadvice as to the prosecutrix's immunity from a credibility attack by the defense if a trial had been held, and in part on counsel's misadvice that he (petitioner) would have had to have testified in the event of a trial in order to prove his innocence rather than remain silent and put the state to its burden of proving guilt beyond a reasonable doubt. Undoubtedly, counsel's misadvice in these legal topics translated into deficient legal representation of petitioner in violation of his right to competent counsel under the Sixth Amendment and but for this obvious receipt of ineffective assistance of counsel here, petitioner would have opted to exercise his right to a trial by jury and plead not guilty in the case. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner's guilty plea cannot stand as voluntarily given in the case.

CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow briefing on the above raised points of law.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of September, 2017.

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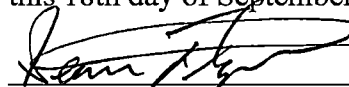
CERTIFICATE OF SERVICE

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 Ruston Neely, Esquire, at the Rembert 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 Daniel Brian Monty, #355627, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 18th day of September, 2017.



Wanda H. Carter
Deputy Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me ATTORNEY FOR PETITIONER
this 18th day of September, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022