STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County
George C. James, Jr., Circuit Court Judge

Appellate Case No. 2016-002388

SHONTA HELTON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S ISSUES PRESENTED

I. Whether the PCR court correctly found that petitioner was entitled to a White v. State belated appeal where the state stipulated appellant was denied her right to a direct appeal because of trial counsel's negligence, and trial counsel admitted his mistake in a written PCR exhibit?

II. Whether the PCR court erred by finding trial counsel's failure to request the proper redaction of petitioner's name, and references to her pursuant to Bruton v. United States from co-defendant Dargan's letters about the murder, and counsel's failure to request a limiting instruction were "harmless," since the letters very prejudicially implicated petitioner in the crime without an opportunity to confront Dargan, and the testimony of the witnesses to petitioner's alleged phone call to Dargan were inconsistent, and regardless did not constitute overwhelming evidence of her guilty as an accessory before the fact of murder?

STATEMENT OF THE CASE

Shonta Helton ("Petitioner") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Petitioner was true bill indicted at the February 2013 term of the Sumter County Grand Jury for accessory before the fact of murder (2013-GS-43-0239).[1] Shaun Kent, Esquire ("Trial Counsel") represented Petitioner. Petitioner proceeded to trial on April 14-17, 2014. Petitioner was found guilty as indicted. The Honorable W. Jeffrey Young sentenced Petitioner to a thirty-five year term of imprisonment.

A notice of appeal was filed on Petitioner's behalf. By Order filed August 21, 2014, the South Carolina Court of Appeals dismissed the appeal pursuant to Rule 263(b) SCACR for failing to timely serve the notice of appeal on opposing counsel. The remittitur was issued on September 8, 2014.

Petitioner filed a timely application for post-conviction relief on September 24, 2017, alleging she was being held unlawfully based on the following reasons:

1. Ineffective Assistance of Counsel.
    a. Attorney failed to suppress hearsay evidence.
    b. Failing to file a direct appeal.
    c. Denied discovery motion.
    d. Counsel failed to pursue a motion to sever Applicant's case from co-defendant's case.
    e. Counsel failed to pursue a motion to recuse the trial Judge where the trial Judge was the victim in a criminal case involving Applicant's brother as the Defendant.
    f. Counsel failed to object or prevent co-defendant's letters from being entered into evidence or otherwise properly redacted.
2. "6th amendment entrapment statute."
    a. "Convicted on theory of co-defendants."
3. "Hearsay testimony."
4. "No DNA evidence or scientific proof to connect me with the..."

[1] Although Petitioner states in her argument that she was convicted as an accessory after the fact of murder, see App. 15, the record before the Court shows Petitioner was indicted, tried, and convicted as an accessary before the fact of murder.

a. "actual innocence/no DNA evidence."

5. "excessive sentence in violation of the 14th amendment U.S.C.A."

An evidentiary hearing was held on April 16, 2015, at the Sumter County Courthouse. Petitioner was present at the hearing and represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. The Honorable George C. James, Jr. issued an Order of Dismissal signed on October 14, 2016, and filed on November 2, 2016, denying and dismissing the application with prejudice and granting Petitioner a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Petitioner filed a timely Notice of Appeal of the denial of her post-conviction relief application on November 22, 2016. Petitioner's Appendix, Petition for Writ of Certiorari, and Brief of Appellant Pursuant to White v. State were filed on July 14, 2017. This Return to the Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

The post-conviction relief court's findings of fact and conclusions of law receive great deference during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review of a post-conviction relief evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the petitioner bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, at 441, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, the applicant 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, at 442, 334 S.E.2d at 814.

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, at 442, 334 S.E.2d at 814. The applicant must overcome this presumption to receive relief. Cherry v. State, at 118, 386 S.E.2d at 625.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove 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 a reasonable probability 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.

ARGUMENT

I. The PCR court correctly found Petitioner was entitled to a belated review of direct appeal issues pursuant to White v. State where Trial Counsel admitted to mistakenly failing to file a timely notice of appeal.

Respondent concedes that Petitioner is entitled to a belated review of direct appeal issues pursuant to White v. State where Trial Counsel admitted to mistakenly failing to file a timely notice of appeal of Petitioner's behalf. Respondent consented to the granting of this relief at the evidentiary hearing, and submits the grant of this relief by the PCR court was proper. App. 839.

II. Probative evidence supports the PCR court's finding that Trial Counsel was not ineffective for failing to object and request curative instruction regarding Gary Dargan's letters where the letters did not implicate Petitioner in the murder.

Petitioner argues the PCR court erred in finding Trial Counsel was not ineffective for choosing not to object to the use of Petitioner's name in co-defendant Gary Dargan's letters or request a limiting jury instruction because her rights under the Confrontation Clause were violated as prohibited by Bruton v. United States, 391 U.S. 123 (1968). However, the PCR court correctly relied on probative evidence in making its finding that the letters did not implicate Petitioner in the murder and the failure to request a curative instruction was harmless error, so this Court should affirm its findings.

At trial, the State alleged co-defendant Gary Dargan murdered the victim when Petitioner telephoned Dargan and told him to kill him after the victim embarrassed Petitioner at a party by ruffling her wig. The State introduced into evidence several letters written by Dargan which included references to Petitioner, either by the use of the word "her" or by name. The portion of Dargan's letter which mentioned Petitioner by name reads as follows:

> Now I don't know what the fuck happened to Mario because all he did was pick **Shonta** up from by the curb. Bring her to and holler at me. Then drop her on south side at her friend's house. That's all he did. He don't know shit about the murder or didn't know a murder was about to happen or didn't know anything was going to happen to Mario. He didn't find out that Mario and **Shonta** have got into something until the next day and we started hearing rumors he didn't have shit to do with this."

App. 463, line 8-18 (emphasis added). Nowhere in the letters did Dargan specifically say Petitioner was involved in the murder or told him to kill the victim.

The Bruton issues in Gary Dargan's letters were discussed on the record outside the presence of the jury before testimony about them was presented. App. 419-432. After the discussion, Trial Counsel and the Solicitor worked together to redact all incriminating references

of "he" and "she" to gender neutral language. App. 431. After the Bruton issues were resolved between the parties, Petitioner informed the trial court that they had agreed on a solution and he no longer had an objection under Bruton. Trial Counsel explained on the record at trial that he was choosing not to object to the use of her name in the letters because it did not implicate her in the crime:

THE COURT:	Have we worked out all the Bruton issues?
MR. KENT:	We have, Judge. And as I discussed with you in chambers, we've gone over all of the discussions. There will be some points in which the actual name Shonta is mentioned. However myself and the solicitor would agree that those times would not implicate her.
THE COURT:	So there is no objection.
MR. KENT:	It would be no objection.

App. 432, line 9-17. Trial Counsel clearly explained his reason for choosing not to object at the time the letters were introduced.

At the evidentiary hearing, Trial Counsel testified that, at the time of trial, he felt as though the letters sufficiently did not reference Petitioner. App. 800, line 22 – App. 801, line 5. He stated he believed the letters bolstered his trial strategy of showing Dargan was seeking revenge on a friend who had wronged him and using Petitioner as an opportunity to do so. App. 801, line 6-13; App. 817, line 23 – App. 818, line 18. He testified that, although the letters overall implicated Petitioner, he did not feel the portions of the letters that were presented to the jury implicated her. App. 810, line 5-9.

The PCR court held Trial Counsel was not ineffective for failing to object to the letters or for failing to request a curative jury instruction that the letters could not be used against Petitioner. App. 836. The PCR court based this ruling on the fact that the letters, as redacted, did

not implicate Petitioner in the murder. App. 836. The PCR court explained that it had reviewed the letters in detail in making this finding. App. 836. Although the PCR court noted Trial Counsel should have requested a curative instruction[2], Petitioner could not show any resulting prejudice because the letters clearly did not implicate Petitioner in the crime. App. 836. The PCR court then explained that other evidence against Petitioner was much stronger that the letters:

> The testimony of Tajuana Davis was critical to the State's case. She testified that [Petitioner] asked Gary Dargan to come kill the victim (see pages 105-107 and page 140 of the transcript) after the victim put his hands on her. Betty Welch testified that [Petitioner] told Dargan that "you need to come get this m.f." (page 163). Testimony of [Petitioner]'s argument with the victim is corroborated by Kenyardo Bolden (page 229) and Danielle Govan (pages 209, 211-212). The court concludes the guilty verdict did not stem from any Bruton violations arising from the Gary Dargan letters.

App. 836. Because the PCR court found the guilty verdict did not stem from the use of the Dargan letters, there can be no resulting prejudice from any failure to object to the letters.

The PCR court's finding that Petitioner was not implicated in the murder through any of her co-defendant's letters supports its ruling that Trial Counsel was not ineffective for failing to raise a Bruton objection at trial because Bruton case law does not even apply to this situation. Bruton applies in the context "where the powerfully incriminating extrajudicial statements of a co-defendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial." Bruton, 88 S.Ct. at 1620. The Supreme Court in Bruton held that a defendant's rights under the Confrontation Clause are violated by the admission of a non-testifying codefendant's statement that expressly inculpates a defendant, even if a cautionary instruction is given. State v. Evans, 316 S.C. 303, 450 S.E.2d 47 (1994). Error is harmless where

[2] Respondent does not concede deficiency and submits the PCR court erred in finding Trial Counsel deficient on this ground.

it could not reasonably have affected the trial's outcome. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985).

Because, as the PCR court properly found, the use of Petitioner's name in the letters did not implicate her in the crime, Bruton does not apply, Petitioner's rights under the Confrontation Clause were not violated. Accordingly, Trial Counsel cannot be deficient for failing to raise an objection under Bruton, and there can be no resulting prejudice, as the use of her name in the letters was not improper.

The reasons specifically stated above are clearly probative evidence supporting the PCR court's ruling. It is clear from the order of dismissal that the PCR court spent a good deal of time and effort reviewing the record before the court in making its decision. Its ruling are correct under the law and are based upon the evidence introduced at trial as well as Trial Counsel's testimony from the evidentiary hearing. Therefore, because probative evidence supports the PCR court's finding that Trial Counsel was not ineffective, this Court should affirm and uphold its ruling.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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Attorney General

JULIE A. COLEMAN
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S.C. Bar No. 102214

By: 
ATTORNEYS FOR RESPONDENT

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November 27, 2017

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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PROOF OF SERVICE

I, Felicia V. Hayes, certify that I have served the within **Return to Petition for Writ of Certiorari** on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 27th day of November, 2017.

FELICIA V. HAYES
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

November 27, 2017

RECEIVED
NOV 27 2017
S.C. SUPREME COURT

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: **Shonta Helton v. State of South Carolina**
Appellate Case No: 2016-002388

Dear Mr. Shearouse:

Enclosed please find the original and fourteen (14) copies of the **Brief of Respondent** along with **proof of service** and the original and six (6) copies of the **Return to Petition for Writ of Certiorari** , in the above-referenced matter for filing in your office. By copy of this letter, we are serving opposing counsel with this brief and return today.

Sincerely,

Julie A. Coleman
Assistant Attorney General
Bar No: 102214

JAC/fvh
Enclosures

cc: Robert M. Dudek, Esquire (2 copies)
Victim Services (without enclosure)