STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Michael G. Nettles, Circuit Court Judge

WILLIAM LAMONT SEABROOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000440

JOHNSON PETITION FOR WRIT OF CERTIORARI

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Did trial counsel's failure to discuss trial strategy, including self-defense as a potential defense, constitute deficient performance prejudicial to Petitioner in violation of the Sixth and Fourteenth Amendments to the United States Constitution?

STATEMENT

On December 3, 2012, a Charleston County grand jury indicted Petitioner for murder (2012-GS-10-7250). App. 100-101. On July 24, 2015, Petitioner appeared before the Honorable Kristi Lea Harrington to enter a guilty plea to voluntary manslaughter, a lesser-included offense of murder. App. 1; App. 2, ll. 5-8. Chad Simpson represented the state, and Lorelle D. Proctor represented Petitioner. App. 1. Judge Harrington accepted the guilty plea and sentenced Petitioner to thirty years imprisonment with credit for time served of 1,082 days. App. 21, ll. 23-25; App. 102.

On June 3, 2016, Petitioner filed an application for post-conviction relief (PCR). App. 23-29. On November 27, 2017, Petitioner, through counsel, Rodney Davis, amended his application. App. 37-38. On December 5, 2017, the Honorable Michael G. Nettles convened a hearing on Petitioner's application. App. 39. Davis represented Petitioner, and Justin Hunter represented the state. App. 39. At the conclusion of the hearing, Judge Nettles orally ruled, denying Petitioner relief. App. 85, l. 12 – App. 87, l. 10. By an order filed February 1, 2018, Judge Nettles denied Petitioner relief from his conviction and sentence. App. 89-99.

After receiving the order on February 12, 2018, Petitioner served his notice of appeal on March 6, 2018. This petition follows.

ARGUMENT

Trial counsel's failure to discuss trial strategy, including self-defense as a potential defense, constituted deficient performance prejudicial to Petitioner in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

Relevant facts

Guilty plea

During Petitioner's guilty plea, the state delivered the factual basis to the judge. According to the state, on July 14, 2012, Petitioner approached the deceased. App. 9, l. 12 – App. 10, l. 5. "Brief words were exchanged." App. 10, l. 6. Then, several gunshots were fired. App. 10, ll. 7-9. Ultimately, the deceased died as a result of a gunshot wound. App. 10, ll. 7-9.

The police developed Petitioner as a suspect because he had prior difficulties with the deceased. App. 10, l. 22 – App. 11, l. 4. Plea counsel explained that Petitioner and the deceased knew each other for approximately ten years. App. 15, l. 17. The two were friends until six months before the shooting. App. 15, ll. 17-23. About two weeks before the shooting, Petitioner and the deceased got into a fight and the deceased got "the best of" Petitioner. App. 16, ll. 1-4. A week later, someone robbed the deceased. App. 16, l. 7. For some reason, the deceased believed Petitioner robbed him, however, Petitioner was not arrested for the robbery. App. 16, ll. 8-10. The robbery and the deceased's belief escalated the problems between the two. App. 16, ll. 10-11.

Plea counsel explained that when Petitioner prepared to go to the store on July 14, 2012, he knew he was going to pass by the deceased's house. App. 16, ll. 12-16. Fearful of the deceased, due to their prior difficulties, Petitioner "took a gun with [him] just in case." App. 16,

ll. 16-18. Plea counsel explained that when Petitioner saw the deceased and the two argued, Petitioner got scared and shot. App. 16, l. 22 – App. 17, l. 3.

PCR hearing

Plea counsel represented Petitioner on the murder charge for almost three years. App. 46, ll. 2-12. According to Petitioner, plea counsel did not discuss any possible defenses with Petitioner during that time. App. 46, ll. 22-25. When Petitioner first met plea counsel, he told her about a prior altercation involving the deceased during which the deceased beat up Petitioner. App. 48, ll. 4-10. Petitioner told plea counsel that when he went out walking on that fateful night, he carried a gun because he knew the deceased carried a gun and he feared the deceased would attack him. App. 49, ll. 7-15. Petitioner explained to plea counsel that he was scared when he shot the deceased. App. 49, ll. 20-24. However, according to Petitioner, plea counsel did not discuss self-defense with Petitioner. App. 50, ll. 1-5. Rather, plea counsel told Petitioner that South Carolina did not have self-defense as an available defense. App. 50, ll. 6-12. All discussion of self-defense stopped at this point. App. 50, ll. 13-17. There was no further discussion of a trial strategy between plea counsel and Petitioner. App. 51, ll. 6-9.

Petitioner decided to enter a guilty plea because he feared receiving a life sentence, which plea counsel assured him was inevitable if he went to trial. App. 58, l. 19 – App. 59, l. 8. Further, Petitioner would have gone to trial if plea counsel would have indicated a readiness to try the case. App. 59, l. 22 – App. 60, l. 6. Very specifically, if plea counsel had told him that self-defense was a potential defense, then Petitioner would have gone to trial. App. 60, ll. 20-24.

Plea counsel confirmed that Petitioner and the deceased fought within a couple of weeks of the shooting. App. 69, ll. 15-20; App. 70, ll. 1-6. Plea counsel was aware that Petitioner took his gun with him only because he feared the deceased and was aware that he would have to walk

near the deceased's home. App. 70, ll. 12-16. Finally, plea counsel knew that Petitioner indicated he shot the deceased because he was scared. App. 70, ll. 17-21. According to plea counsel, Petitioner "didn't go out that night wanting to hurt somebody. It was something that happened very fast." App. 71, l. 23 – App. 72, l. 1. Regarding self-defense, plea counsel testified that she thought the two "talked about it." App. 72, ll. 10-12. However, she did not "think it was a self-defense case," therefore, the conversation was likely brief. App. 72, ll. 12-14. She did not recall the exact discussion on self-defense, however. App. 72, ll. 16-17. Plea counsel denied telling Petitioner that South Carolina did not recognize self-defense. App. 72, ll. 21-23.

At the conclusion of the hearing, Petitioner argued that he would not have entered a guilty plea if he had known that he could present self-defense at a trial. Petitioner emphasized that it was undisputed that there was a prior altercation between Petitioner and the deceased. App. 81, ll. 13-18. It was also undisputed that the shooting happened very quickly. App. 81, l. 25 – App. 82, l. 1. Petitioner argued that plea counsel should have "fleshed out more" self-defense with Petitioner. App. 82, ll. 7-9. In other words, self-defense "should have been discussed thoroughly," including that Petitioner would be permitted to act on appearances and use the prior difficulties to his benefit. App. 82, ll. 9-16. Petitioner emphasized that had self-defense been presented as a potential defense for Petitioner to use, then Petitioner would have requested a jury trial. App. 82, ll. 21-25. "Knowing the risks he still would have requested that rather than pleading guilty." App. 82, l. 25 – App. 83, l. 2. In light of plea counsel not discussing self-defense as a valid defense, Petitioner entered a plea instead of going to trial. App. 83, ll. 2-4.

The state argued that "until proven otherwise," the PCR court was required to "trust" plea counsel's "judgment in not pursuing" self-defense "regardless of what some of the evidence would have shown." App. 84, ll. 11-17. The state also argued that plea counsel's testimony was "credible" "about her advice concerning the trial strategy defenses, elements, sentence, about her advice concerning the plea offer that was negotiated to voluntary rather than murder." App. 84, l. 21 – App. 85, l. 2.

Order denying relief

In the order denying relief, Judge Nettles acknowledged Petitioner's testimony that plea counsel failed to discussion possible defenses with him. App. 92. More specifically, Petitioner testified that plea counsel did not discuss self-defense with him. App. 92. More broadly, Petitioner testified that plea counsel did not discuss any trial strategy with him. App. 92. The order also acknowledged plea counsel's testimony that Petitioner informed her of a prior altercation involving the deceased, but she did not think the case was self-defense. App. 92. As such, plea counsel testified she "probably" discussed self-defense with Petitioner. App. 92. However, Judge Nettles concluded that plea counsel's performance was not below professional norms. App. 97. The judge found plea counsel's testimony "credible" that she discussed Petitioner's version of the facts, the state's discovery, and self-defense with Petitioner. App. 97. The judge also found plea counsel's testimony "credible" that she "did not think his facts met a valid self-defense argument." App. 97.

As a result, the judge found that plea counsel "did discuss trial strategy" with Petitioner, that Petitioner failed to show that her conduct was deficient, and that Petitioner failed to show plea counsel's advice was deficient or that he pled guilty pursuant to deficient advice. App. 97. Additionally, Judge Nettles found that Petitioner failed to prove he was prejudiced by plea

counsel's actions. App. 97. More specifically, he found that Petitioner failed to provide any evidence that but for plea counsel's advice concerning defense strategy, he would not have pled guilty but would have proceeded to trial. App. 97.

Discussion

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). In order to show ineffective assistance of counsel as a ground for relief, 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, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

In the context of a guilty plea, a petitioner must show that counsel was ineffective and that there is a reasonable probability but for counsel's errors, he would not have pled guilty. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994).

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the

right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 243-244 (1969); see also Burnett v. State, 352 S.C. 589, 591, 576 S.E.2d 144, 145 (2003). The record must show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege." State v. Patterson, 278 S.C. 319, 322, 295 S.E.2d 264, 265 (1982) overruled on other grounds State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975).

In order for a defendant to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)(citing State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). The judge must question the defendant about the possible punishment that could be imposed. Id. at 434-435. This Court has held that a defendant must "be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999)(citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A guilty plea is rendered involuntary, unknowing, and unintelligent when a defendant pleads guilty to a crime without knowing the direct consequences of the guilty plea. Hazel, 275 SC at 394, 271 S.E.2d at 603.

This Court has held that a "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98,

535 S.E.2d 926, 927 (2000); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)).

There are four elements of self-defense:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." State v. Day, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434 (2000) (quoting State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984)).

In State v. Day, this Court held the trial judge's failure to charge the specific elements of self-defense that were applicable to Day's theory constituted reversible error. 341 S.C. at 418, 535 S.E.2d at 435. The Court found the trial judge's instruction was incomplete because it failed to include a charge indicating: (1) Day had a right to judge the conduct of the decedent more harshly than otherwise because of the decedent's drug consumption, and (2) the jury could consider prior instances of violence or unprovoked aggression by the decedent in determining whether Day had a reasonable belief of imminent danger. Id. Part of Day's defense was his argument that the decedent had previously pulled a gun on him and that the decedent was in a "drug induced paranoia" the day of the incident. Id. Consequently, this Court held the jury

charge, which only included the standard self-defense instruction as outlined by this Court in Davis along with the charge on the right to act on appearances, was incomplete because the trial judge failed to charge on the decedent's substance abuse or his prior acts of violence. Id. Ultimately, the Court reversed Day's convictions and sentence and remanded for a new trial. In short, "[a] self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." Id. (citing State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989)).

Additionally, this Court has held that "words accompanied by hostile acts may, according to circumstances, not only reduce a killing from murder to manslaughter, but may establish the plea of self-defense." State v. Harvey, 220 S.C. 506, 518, 68 S.E.2d 409, 414 (1951) (quoting State v. Mason, 115 S.C. 214, 105 S.E. 286 (1920)). In State v. Fuller, this Court held the trial judge's failure to charge the jury that "words accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense" as stated in Harvey, constituted reversible error. 297 S.C. at 444, 377 S.E.2d 331. The evidence presented at trial revealed that the decedent stated "he was going to take care" of Fuller; that the decedent grabbed Fuller by the throat; and that the decedent called Fuller a racial slur. Id. The evidence also showed the decedent rammed Fuller's car with his truck. Based on this evidence, the Court found the trial judge should have charged the jury that words alone accompanied by hostile acts may establish self-defense. Id.

Plea counsel's failure to engage in a detailed discussion with Petitioner regarding his ability to raise self-defense at trial constituted deficient performance. There was no dispute that Petitioner and the deceased had prior difficulties. There was no dispute that Petitioner and the deceased engaged in a heated argument immediately prior to the shooting. Based upon the facts presented during the guilty plea and the PCR hearing, there was evidence to support a jury

instruction on self-defense. Nevertheless, plea counsel decided the case was not self-defense and had only a cursory conversation with Petitioner about self-defense as a possible trial strategy and defense. Such conduct was below prevailing professional norms.

Petitioner suffered prejudice due to plea counsel's failure to evaluate his case correctly for self-defense and discuss raising self-defense at trial with Petitioner prior to encouraging Petitioner to accept a guilty plea offer. Petitioner testified, unequivocally, that had he known that self-defense was a potential defense for him to present during trial, then he would have not accepted the state's guilty plea offer, but would have gone to trial. The PCR court erred in not considering Petitioner's testimony on this point in its prejudice analysis because this Court has held that a "defendant's undisputed testimony that he would not have pled guilty but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." See Smith v. State, 369 S.C. 135, 631 S.E.2d 260 (2006) (citing Jackson v. State, 342 S.C. 95, 97-98, 535 S.E.2d 926, 927 (2000); Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485-86 (1991)). Therefore, Petitioner is entitled to a new trial.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented. In the event this Court grants the petition and dispenses with briefing, Petitioner respectfully requests this Court reverse the PCR judge, find plea counsel rendered ineffective assistance, and order a new trial.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of August, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
AUG 29 2018
SC Court of Appeals

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Lamont Seabrook states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.

2. She has reviewed the transcripts from the guilty plea hearing and the PCR hearing before Judge Michael G. Nettles, which was held on December 5, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), she has briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for William Lamont Seabrook.

Respectfully Submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

This 29th day of August, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her 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."

Susan B. Hackett

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Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari, a copy of the Appendix, and a copy of the Supplemental Appendix in the above referenced case has been served upon Megan Harrigan Jameson, 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, a copy of the Appendix, and a copy of the Supplemental Appendix have been served on William Lamont Seabrook, #364821, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 29th day of August, 2018.

Susan B. Hackett
Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 29th day of August, 2018.

Hank Hendrick (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023